

DECISION-MAKER:	LICENSING (GENERAL) SUB-COMMITTEE		
SUBJECT:	APPLICATION FOR GRANT OF A SEXUAL ENTERTAINMENT VENUE LICENCE – FYEO, 135-136 HIGH STREET		
DATE OF DECISION:	14 AUGUST 2013		
REPORT OF:	HEAD OF LEGAL, HR AND DEMOCRATIC SERVICES		
<u>CONTACT DETAILS</u>			
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STATEMENT OF CONFIDENTIALITY
None

BRIEF SUMMARY

The Licensing (General) Sub-Committee is requested to consider and determine the application for grant of a Sexual Entertainment Venue (SEV) licence made by For Your Eyes Only Limited in respect of FYEO, 135-136 High Street, Southampton, SO14 2BR.

RECOMMENDATIONS:

- (i.) That the Sub-Committee consider and determine the application.
- (ii.) That, should the Sub-Committee determine to grant the application, consideration be given to the attachment of standard conditions to such licence (in line with the views expressed by Hampshire Constabulary) (as shown in Appendix 2).

REASONS FOR REPORT RECOMMENDATIONS

1. As the Council has resolved to adopt the provisions of schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 which relate to the licensing of sexual entertainment venues, the Sub-Committee is required to consider and determine the application in line with the current scheme of delegation.

ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

2. None.

DETAIL (Including consultation carried out)

Background Information

3. The Council originally adopted Schedule 3 of the 1982 Act in so far as they related to sex shops and sex cinemas in 1983 and readopted them with effect from 3rd July 1995.

4. The Policing and Crime Act 2009 amended the Local Government (Miscellaneous Provisions) Act 1982 with effect from 6th April 2010, by introducing a new category of sex establishment called Sexual entertainment venues (SEVs) enabling local licensing authorities to adopt provisions for the regulation of lap dancing clubs and similar venues under Schedule 3 of the 1982 Act. Previously the power was limited to sex shops and sex cinemas.
5. On 11th July 2012, Council resolved to adopt the provisions of schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 which relate to the licensing of SEVs.

The new regime came into force in Southampton on 20th August 2012 (known as the “first appointed day”), after which a 12 month transition period has been in effect.

The effect of the transitional period is that existing operators, who, immediately before the first appointed day, had a Licensing Act 2003 premises licence and lawfully used the premises as a sexual entertainment venue under that licence (or were undertaking preparatory work to use the venue in that way), were allowed to continue to provide relevant entertainment until the 20th August 2013 (the “third appointed day”) or the determination of any application they have submitted before the 20th February 2013 (the “second appointed day”), whichever is later.

After the third appointed day, the regime, and any licences granted, will be fully in force.

The Legislation – Definitions

6. Paragraph 2A of Schedule 3 as inserted by section 27 sets out the meaning of a “sexual entertainment venue” and “relevant entertainment” for the purposes of the statutory provisions.

A sexual entertainment venue is defined as:

“Any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or entertainer.”

Relevant entertainment is defined as:

“Any live performance or live display of nudity which is of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of an audience (whether by verbal or other means).”

It should be noted that an audience can consist of just one person e.g. when the entertainment takes place in private booths.

Relevant entertainment is therefore different from regulated entertainment as defined in the Licensing Act 2003.

7. In terms of considering what constitutes “relevant entertainment” each case must be judged on its merits, but the informal guidance produced by the Home Office suggests that the definition of relevant entertainment would apply to the following forms of entertainment as they are most commonly understood:

- Lap dancing
 - Pole dancing
 - Table dancing
 - Strip shows
 - Peep shows
 - Live sex shows.
8. However, the list above cannot be exhaustive and, as the understanding of the exact nature of these descriptions may vary, it should therefore merely be used as an indicator for certain types of entertainment. Ultimately, decisions on the licensing of individual premises as sexual entertainment venues will depend on the content of the entertainment provided and not on how it is described.
9. The relevant entertainment must be provided for the financial gain of the “organiser” or “entertainer”.
- “Organiser” means any person who is responsible for the organisation or management of the relevant entertainment or the premises at which the relevant entertainment is provided. In most cases this definition will relate to the manager of the premises but there could be circumstances where it will relate to an individual who is responsible for organising the relevant entertainment on behalf of the persons responsible for the management of the premises.
10. The 1982 Act also sets out those premises that are NOT sexual entertainment venues. These are:
- Sex shops and sex cinemas;
 - Premises which provide entertainment on an infrequent basis. These are defined as premises where –
 - (a) No relevant entertainment has been provided on more than 11 occasions within a 12 month period;
 - (b) No such occasion has begun within a period of one month beginning with the end of the previous occasions; and
 - (c) No such occasion has lasted longer than 24 hours.
 - Other premises or types of performances or displays exempted by an order of the Secretary of State.
 - Private dwellings with no public admittance.

Application Details

11. On 14th February 2013, an application for a sexual entertainment venue licence in respect of FYEO, 135-136 High Street, was received from For Your Eyes Only Limited, whose registered office is at 15-16 Stockholm Close, Tyne Tunnel Trading Estate, Tyne & Wear, NE29 7SF. A copy of the application and plans of the premises are attached as Appendix 1
12. The premises does currently benefit from a premises licence issued under the Licensing Act 2003. This licence had effect immediately before the first appointed day, and the premises were operating as a sexual entertainment venue immediately before the first appointed day. Therefore, the transitional provisions have applied to this premises and the premises is currently operating as an sexual entertainment venue.

13. **Legislation – Notices and Objections**

14. Applicants for the grant of an SEV licence are required to display a notice on or near the premises to be licensed for 21 days and advertise give public notice of the application by publishing an advertisement in a local newspaper circulating in Southampton.
15. Any person objecting to an application for the grant of an SEV licence is required to give notice of in writing to the local authority, not later than 28 days after the date of the application.
16. No objections were received in relation to this application within the 28 day consultation period.
17. A copy of the application has been provided to Hampshire Constabulary, who have confirmed that they have no objection to the application.
18. The Act does not provide objectors with an explicit provision to be heard in person by the Sub-Committee. However, those persons from whom valid objections have been received have been advised of the date and time of the meeting and have also been advised that they may only address the meeting at the invitation of the Sub-Committee.
19. When considering an application for the grant, of a licence the Sub-Committee should have regard to any observations submitted to it by the chief officer of police and any objections that they have received from anyone else within 28 days of the application. Any person can object to an application but the objection should be relevant to the grounds set out in paragraph 12 of the Local Government (Miscellaneous Provisions) Act 1982 for refusing a licence. Objections should not be based on moral grounds/values and local authorities should not consider objections that are not relevant to the grounds for refusal.
20. **The Legislation - Criteria**
21. Paragraph 12 of Schedule 3 sets out the grounds for refusing an application for the grant, renewal or transfer of a licence.

A licence must not be granted:

(a) to a person under the age of 18;

(b) to a person who is for the time being disqualified due to the person having had a previous licence revoked in the area of the appropriate authority within the last 12 months;

(c) to a person, other than a body corporate, who is not resident in an EEA State or was not so resident throughout the period of six months immediately preceding the date when the application was made; or

(d) to a body corporate which is not incorporated in an EEA State; or

(e) to a person who has, within a period of 12 months immediately preceding the date when the application was made, been refused the grant or renewal of a licence for the premises, vehicle, vessel or stall in respect of which the

- application is made, unless the refusal has been reversed on appeal.
22. A licence may be refused by the Sub-Committee where:
- (a) the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason;
 - (b) if the licence were to be granted, renewed or transferred the business to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant, renewal or transfer of such a licence if he made the application himself;
 - (c) the number of sex establishments, or of sex establishments of a particular kind, in the relevant locality at the time the application is determined is equal to or exceeds the number which the authority consider is appropriate for that locality;
 - (d) that the grant or renewal of the licence would be inappropriate, having regard—
 - (i) to the character of the relevant locality; or
 - (ii) to the use to which any premises in the vicinity are put; or
 - (iii) to the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.
23. A decision to refuse a licence must be relevant to one or more of the above grounds.
24. It is considered advisable to merely deal with this application on its merits and not to embark on an additional exercise of determining a precise “relevant locality” and an appropriate number of establishments in it. Such an exercise is only recommended if after having regard to the area generally if it is felt that the number and / or proximity of premises may be inappropriate.
25. SEV licences can be granted for a maximum of one year, or for such shorter periods specified in the licence as the Sub-Committee may think fit.
26. **The Legislation - Conditions**
27. If the Sub-Committee determines to grant a licence it has power to impose terms, conditions and restrictions on that licence, either in the form of conditions specific to the individual premises concerned or standard conditions applicable to all sex establishments, or particular types of sex establishments.
- Examples of the matters that standard conditions may address can include, but are not restricted to:
- The hours of opening and closing
 - Displays and advertisements on or in sex establishments
 - The visibility of the interior of a sex establishment to passers-by
 - Any change of use from one kind of sex establishment to another.
- If such standard conditions are introduced by the local authority, they will apply to every licence granted, renewed or transferred by the authority unless they have been expressly excluded or varied.

28. Guidance issued by the Home Office (a copy of which is attached as Appendix 4) states;
- In many cases licences granted under the 2003 Act to existing operators will contain conditions that relate expressly and exclusively to the provision of relevant entertainment. Such a condition might prohibit contact between a performer and customer during a lap dance. In these cases, in order to avoid duplication, where conditions on premises licences or club premises certificates relate only to the provision of relevant entertainment, they shall be read as if they were deleted from the 3rd appointed day onwards.
 - In cases where conditions on a premises licence or clubs premises certificate are inconsistent with, and less onerous than, the conditions in the licence granted under the 1982 Act they shall likewise be read as though they have been deleted.
 - Where a local authority decides to grant a sex establishment licence to an existing operator, who is subject to conditions on their existing premises licence or club premises certificate that relate expressly to the provision of relevant entertainment, they may wish to replicate the existing conditions on the new sex establishment licence if they believe that the existing conditions are sufficient. However, they could equally decide to impose new conditions consistent with Schedule 3 if they believe that new or additional conditions are necessary.
29. A set of proposed standard conditions to apply to all SEV licences is attached as Appendix 2. In relation to these conditions, the Hampshire Constabulary Western Licensing Team have advised as follows;
- That a condition requiring CCTV storage for 31 days (Section 4.7) will conflict with the CCTV condition on the premises licence issued under the Licensing Act 2003. Should an SEV licence be granted, they have suggested an amendment be made to this condition to require CCTV storage for 28 days, which is in line with the condition that exists on the Licensing Act 2003 premises licence (a copy of which is attached as Appendix 3).
 - That the condition requiring the operation of a Challenge 25 scheme (Section 11.1) would be appropriate for the premises at this time instead of the condition requiring the operation of an ID scanner (Section 11.2).
30. **The legislation - Appeals**
31. In the event that the Sub-Committee refuse an application for the grant of a SEV licence, the applicant may appeal the decision in a Magistrates' Court, unless the application was refused under paragraph 12(3)(c) or (d) of the Local Government (Miscellaneous Provisions) Act 1982, in which case the applicant can only challenge the refusal by way of judicial review.

RESOURCE IMPLICATIONS

Capital/Revenue

32. There are no financial implications as the cost of processing such applications is contained within existing budgets.

Property/Other

33. None.

LEGAL IMPLICATIONS

Statutory power to undertake proposals in the report:

34. Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 sets out the City Councils power to determine an application for the grant of an SEV licence.

Other Legal Implications:

35. Section 17 of the Crime and Disorder Act 1998 places the Council under a duty to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area.

36. The Human Rights Act 1998 Act requires UK legislation to be interpreted in a manner consistent with the European Convention on Human Rights. It is unlawful for the Council to act in a way that is incompatible (or fail to act in a way that is compatible) with the rights protected by the Act. Any action undertaken by the Council that could have an effect upon another person's Human Rights must be taken having regard to the principle of proportionality - the need to balance the rights of the individual with the rights of the community as a whole. Any action taken by the Council which affects another's rights must be no more onerous than is necessary in a democratic society. The matter set out in this report must be considered in light of the above obligations.

POLICY FRAMEWORK IMPLICATIONS

37. None.

KEY DECISION? n/a

WARDS/COMMUNITIES AFFECTED:	Bargate
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SUPPORTING DOCUMENTATION

Appendices

1.	Application for SEV licence made by For Your eyes Only Limited
2.	Copy of proposed standard conditions
3.	Copy of Licensing Act 2003 premises licence
4.	Home Office Guidance relating to SEVs

Documents In Members' Rooms

1.	None.
2.	

Equality Impact Assessment

Do the implications/subject of the report require an Equality Impact Assessment (EIA) to be carried out.	No
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Other Background Documents

Equality Impact Assessment and Other Background documents available for inspection at:

Title of Background Paper(s)	Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)
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2.		