

Planning and Rights of Way Panel 6th October 2020
Planning Application Report of the Head of Planning & Economic Development

Application address: 35 - 41 London Road, Southampton			
Proposed development: Change of use of basement nightclub (Sui generis use) and part of ground floor café/restaurant to gentleman's club (Sui generis use) including extended hours of operation to Monday - Saturday, 21:00 - 02:00 and Sunday 21:00 - 00.30 [Amended Description: closing hours reduced from 05:00 since validation of application]			
Application number:	20/00367/FUL	Application type:	FUL
Case officer:	Stuart Brooks	Public speaking time:	5 minutes
Last date for determination:	EOT 15.10.2020	Ward:	Bevois
Reason for Panel Referral:	Five or more letters of objection have been received	Ward Councillors:	Cllr Kataria Cllr Rayment Cllr Barnes-Andrews
Referred to Panel by:	None	Reason:	n/a
Applicant: Star Dust Entertainment Ltd		Agent: n/a	

Recommendation Summary	Conditionally approve
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Reason for granting Permission

The development is acceptable taking into account the policies and proposals of the Development Plan as set out below. Other material considerations have been considered and are not judged to have sufficient weight to justify a refusal of the application, and where applicable conditions have been applied in order to satisfy these matters. The scheme is therefore judged to be in accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004 and thus planning permission should therefore be granted. In reaching this decision the Local Planning Authority offered a pre-application planning service and has sought to work with the applicant in a positive and proactive manner as required by paragraphs 39-42 and 46 of the National Planning Policy Framework (2019). Policies – CS1, CS3, CS6, CS7, CS13, CS18, CS19, CS25 of the of the Local Development Framework Core Strategy Development Plan Document (Amended 2015). Policies – SDP1, SDP4, SDP5, SDP7, SDP10, SDP11, SDP16, REI7 of the City of Southampton Local Plan Review (Amended 2015). Policies AP5, AP8 of the City Centre Action Plan March 2015.

Appendix attached			
1	Development Plan Policies	2	Relevant Planning History
3	SEV license	4	Hampshire Police comments

Recommendation in Full

Conditionally approve

1. The site and its context

- 1.1 The application site is located within London Road and comprises a vacant basement nightclub located below the commercial units of 35 - 41 London Road, and also the rear part of a ground floor café/restaurant use at 35 London Road which is also vacant. The entrance to the basement nightclub is shared with the existing ground floor café/restaurant use. A fire escape exits onto the Winchester Street side of the building adjacent to Mede House.
- 1.2 The surrounding area is characterised by a mix of ground floor commercial uses, with residential properties and offices above. Immediately to the west of the site in Winchester Street is the residential block of flats known as Mede House, and there are residential flats on the first and second floors above the premises. The area falls within the Bedford Place evening zone (as defined by saved policy AP8 of the City Centre Action Plan (CCAP)) with a number of commercial and late-night uses including public houses, restaurants, night clubs and other live music entertainment venues associated with the night time economy. These are situated nearby streets in London Road, Vernon Walk, Carlton Place, Lower Banister Street and Bedford Place. There are a number of residential neighbourhoods located on the edge of the evening zone mainly to the west of Bedford Place and east of London Road heading out of the city centre.
- 1.3 The Bedford Place / London Road lie within the Cumulative Impact Policy Area for Licensing Applications. This area was identified by the Council (as the Licensing Authority) as already suffering due to the concentration of licensed premises and activities. In these areas, applications for licences for new premises or substantial variations to existing licences (such as longer opening hours) are unlikely to be permitted unless the applicant can demonstrate that the changes will not have an adverse impact on the area. Licensing is a separate regime to Planning, although this report will provide details on both matters for completeness.

2. Background & Proposal

- 2.1 The existing lawful use of the basement is a nightclub – a Sui Generis use in Planning terms - and this was confirmed with the granting of a lawful development certificate (LDC) . The licensed opening hours of this basement nightclub since 2005 have been 11:00 to 02:00 every day, except Sundays 12:00 to 00:30.
- 2.2 This application seeks to change the use of the basement nightclub venue and the rear part of the ground floor restaurant/cafe to a Sexual Entertainment Venue (SEV)/gentleman’s club; with operating hours of Monday- Saturday 21:00 - 02:00 and Sunday 21:00 – 00.30 hours. The applicant recently successfully applied to the Council’s licensing team to convert the use of the nightclub to a SEV (**see Appendix 3**). As the application for a SEV license comprise ‘a substantial variation to the existing license’ the applicant was subject to a significant level of scrutiny by the Council’s Licensing Officers and Members of the Licensing (Licensing & Gambling) Sub Committee on the 27th June 2019.
- 2.3 The applicant’s original Planning submission proposed to align the planning application hours with those under the licensed hours – closing at 05:00 hours, however, following negotiations with officers the applicant has now agreed to

amend the proposed hours. The licensing and planning regime are governed by different legislation so the outcome of the operating hours allowed under the license does not pre-determine the hours permitted by planning permission as the Planning system can look at different material considerations to Licensing and is governed by different legislation. The planning regime considers the proposed use and operating hours in relation to development plan policies and impacts of the amenities of nearby residents.

- 2.4 The internal layout of the venue shows 12 private booths for performance dancers. The conditions of the SEV license issued by the Council's Licensing team sets out strict safety and conduct restrictions on the performer and customer which must always be adhered to by the operator (**see Appendix 3**). In addition, there is a performance stage, bar, DJ booth, and other ancillary facilities for the operator including changing rooms for the performers. The basement location of the main part of the venue, and the rear VIP area on the ground floor, will ensure that the activities associated with the SEV are kept private and restricted from public viewing. This complies with the requirement of the operator's license to ensure that "the interior of the premises where sexual entertainment is offered shall not be capable of being seen from the outside of the premises".

3. Relevant Planning Policy

- 3.1 The Development Plan for Southampton currently comprises the "saved" policies of the City of Southampton Local Plan Review (LPR) (as amended 2015) and the City of Southampton Core Strategy (as amended 2015) and the City Centre Action Plan (CCAP) (adopted 2015). The most relevant policies to these proposals are set out at **Appendix 1**.
- 3.2 The National Planning Policy Framework (NPPF) was revised in 2019. Paragraph 213 confirms that, where existing local policies are consistent with the NPPF, they can be afforded due weight in the decision-making process. The Council has reviewed the Development Plan to ensure that it is in compliance with the NPPF and are satisfied that the vast majority of policies accord with the aims of the NPPF and therefore retain their full material weight for decision making purposes, unless otherwise indicated.
- 3.3 Given the primarily basement location of the SEV use, the premises does not have its own a shopfront so the requirements of CCAP policy AP 5 (Retail Uses) as a secondary retail frontage to maintain an active frontage would not be applicable. That said, the existing restaurant will continue to have an active shopfront. Saved policy RE17 (Food and Drink) of the Local Plan Review supports A3/A4 uses within the city centre subject to appropriate controls to mitigate noise disturbance and other associated nuisances to the amenities of neighbouring residential properties. The policy acknowledges that these uses have their places and can add to the vitality of shopping centres. However the potential for noise from within the premises, and from customers entering and leaving the premises amongst other issues will require careful consideration and. these impacts are further assessed in the 'planning considerations' of the report.

- 3.4 City Centre Action Plan and Core Strategy (policy CS1) acknowledges the city centre is the primary focus for major leisure, cultural and tourism facilities in Southampton and beyond.
- 3.5 The Council will use its planning and licensing functions to promote a night time economy with a range of activities that contribute to a vibrant city centre whilst minimising potential disturbance to nearby residential areas. Policy AP8 sets out guidance to manage the impact of the night time economy to minimise its potential disturbance to nearby residential areas. The approach in the Plan is to promote clusters of facilities in identified areas where extended opening hours are supported. Outside of these hubs, tighter restrictions will be placed on what opening hours are acceptable. New uses with extended opening hours (beyond 23.00 hours) will therefore be directed to designated evening zones and late-night hubs as shown on the Policies Map. Elsewhere in the city centre proposals for extended opening hours outside the designated late-night hubs and evening zones will only be permitted where they would not cause late night noise and disturbance to residents.

4. Relevant Planning History

- 4.1 A schedule of the relevant planning history for the site is set out in **Appendix 2** of this report.

5. Consultation Responses and Notification Representations

- 5.1 Following the receipt of the planning application a publicity exercise in line with department procedures was undertaken which included notifying adjoining and nearby landowners, and erecting a site notice on **15.05.2020**. At the time of writing the report **5 representations** have been received from surrounding residents. The following is a summary of the points raised:

- 5.2 ***Impact of late-night noise and disturbance on nearby residents from live music venue and increased litter. Especially from noise from staff disposing of waste at closing time at the back of the premises, and patrons gathering outside the premises on the street to smoke and talk.***

Response

The Council's Environmental Health Team have raised no objection to the impact from noise disturbance and smoking areas, subject to appropriate controls over number of smokers and other measures to manage the ancillary operations of the use through planning conditions. The proposal will have a negligible impact when considered against the existing lawful nightclub use and established hours of operation.

- 5.3 ***Application seeks to align hours with recently consented license. The use is entirely different to the existing, patrons will be allowed to take home opened bottles of spirits and only the staff will be doing any dancing, that is not at all the same as a night club. The applicant stated at the licensing meeting that there could be up to 300 patrons rather than the 80 stated in the application.***

Response

Since the submission of the application, the applicant has agreed to reduce the operating hours to align with the historic licensed hours of the former night clubs. This should be given significant material weight as a fall back position when assessing the harm of the proposed hours. It is acknowledged that the activities and the entertainment enjoyed by patrons associated with the SEV is different to the lawful night club use in land use terms, however, this would not cause adverse harm by itself to the character and amenity of the local area. Notwithstanding the capacity of patrons mentioned by the applicant at the licensing meeting, the scale and intensity of use would have a similar impact to the lawful nightclub use and, therefore, would not cause further material harm to the character and amenity of the local area.

- 5.4 ***Operating longer opening hours without the LPA knowledge should not justify non-compliance with policy AP 8 permitted hours. Contrary to midnight terminal hour set by policy AP8. Will set precedent for other local businesses to operate later. Other applications to extend hours after midnight have been recently refused at nearby premises.***

Response

The existing lawful use as a nightclub with long established licensed closing hours of 2am Mon-Sat and 0030 Sundays is a legitimate fallback position and is given significant weight when considered against the policy requirements of policy AP8. The unique circumstances of the site history will therefore not set a precedent for other nearby premises to extend their operating hours beyond midnight.

- 5.5 ***Result in crime and safety issues. Workers and patrons smoking at the dark rear of the premises would be vulnerable from persons ejected from the club and drunk persons attending other clubs in Salisbury Street and Vernon Walk. No evidence that the SEV would not cause less crime and safety issues. Increase health risk due to COVID 19 being prevalent.***

Response

Patrons will not be smoking at the rear of the premises as this is a staff smoking area only. The activities associated with the SEV use are not considered to cause adverse harm to public safety and increase the risk of crime in the local area. This is given the strict licensing conditions that the operation of the SEV must adhere to in order to control safety and conduct (**see Appendix 3**), and the supporting comments by the Designing Out Crime Officer at Hampshire Constabulary (**see Appendix 4**). The health risk due to COVID should be given limited material weight as the performers and patrons would be protected under other employment rights and health & safety legislation (social distancing rules set by NHS England), whilst the assessment of the planning application is mainly based on the land use issues.

- 5.6 ***The proposed pizzeria A5 use needs planning permission and should have closing hours no later than midnight.***

Response

The pizzeria is a restaurant which would continue operating under its existing use and hours; only the rear part of the existing ground floor café/restaurant is subject to the proposed SEV change of use.

- 5.7 ***The noise report based on activity in Grosvenor Square is an inaccurate comparison. The study was unable evaluate the actual impact given the***

COVID restrictions. The noise disturbance to nearby residential streets from patrons leaving at 5am will be greater given the lower background noise levels.

Response

Notwithstanding, the applicant has agreed to reduce the operating hours to align with the historic licensed hours of the former night clubs. This should be given significant material weight as a fall back position when considering similar harm caused by the lawful night club use as the result of the dispersal of patrons through nearby residential streets as they leave the venue. The Environmental Health team have raised no objection to the impact from noise disturbance.

Consultation Responses

5.8 SCC Environmental Health (Pollution & Safety) – No objection

It is deemed that the number of persons at the premises, travelling to and from and the level of music within will be reduced compared to previous uses. There has been significant works completed previously to minimise sound transmission to the residential accommodation above and if this has not been removed or altered the same protection should remain. The lower floor doors are to remain closed during opening hours to minimise noise break out and the smoking area should be defined and the numbers using the area at any one time should be controlled.

5.9 Hampshire Constabulary – Objection removed to use opening until 5am (see *Appendix 4*)

6.0 Planning Consideration Key Issues

6.1 The key issues for consideration in the determination of this planning application are:

- The principle of development;
- Character and amenity;
- Parking highways and transport
- Mitigation of direct local impacts

6.2 Principle of Development

6.2.1 With regards to the proposed SEV use, the principle of encouraging the expansion of the night time economy is supported in the city centre subject to the acceptability of other material considerations (as discussed below). In this instance, the location of the premises is within the designated Bedford Place evening zone (see Map 6 under CCAP policy AP 8) and, therefore, the business would normally be expected to operate no later than midnight (see table 5 of the policy). Although the late night hours for the venue would be contrary to the Council's planning policies to manage the negative impacts of the night time economy in the city centre, other relevant material considerations, such as the historic operating hours of the nightclub uses, have to be weighed up 'on balance' when assessing whether the proposed opening hours would cause 'adverse' harm. This harm should also be weighed up against the social and economic benefits to the night time economy by re-using the vacant premises (former nightclub).

6.2.2 The proposed SEV use is likely to have a more gradual dispersal of patrons than a nightclub and therefore is less likely to lead to the late night disturbance impacts that can be associated with a nightclub. That said, it is considered reasonable to require the proposed hours of use to align with the historic operating hours of the lawful nightclub. Hours of operation beyond 2am would create an end of night venue, open later than many other premises within this area, and as a consequence would create increased noise disturbance and anti-social behaviour later into the evening, extending the dispersal, which would be harmful to residents living within this area.

6.3 Character and amenity

6.3.1 It is not proposed to significantly intensify the scale of the late-night use (former nightclub), whilst the venue would likewise continue to offer live music entertainment and serve alcohol to patrons. As a late-night nightclub use is already lawfully allowed at this premises, to operate till 02:00 hours, it is considered that the patron borne activities associated with the scale and intensity of the proposed use would not cause any further adverse harm to the character and amenity of the area. This includes the impact from the disturbance of patrons to the nearby residential properties surrounding the local area and the wider impact to neighbourhoods on the edge of the city centre from patron dispersal through those residential streets after midnight.

6.3.2 The Environmental Health team are satisfied that the proposed use of the premises would not cause significant adverse noise disturbance to adjacent residents compared to previous users. They have requested a planning condition to control number of smokers at any one time and define the smoking area. Furthermore, the lower floor doors are to remain closed during opening hours to minimise noise break out.

6.3.3 The activities primarily associated with the SEV such as performance dancing is markedly different to the type of entertainment enjoyed by patrons of nightclub, however, the nature of those activities would not cause any further disturbance by its own would be classed as adversely harmful to the amenity or be out of keeping with the mixed residential and commercial uses of the of the surrounding area. Furthermore, the activities associated with the SEV use are not considered to cause adverse harm to public safety and increase the risk of crime in the local area. This is given the strict licensing conditions controlling the safety and conduct that the operation of the SEV must adhere to (**see Appendix 3**), and the supporting comments by the Design & Crime Prevention Officer (**see Appendix 4**).

6.3.4 Notwithstanding that the SEV licensed granted allowed the venue opening hours till 05:00, the nature of the amenity impacts assessed by the planning process are different to those under the licensing regime, In particular, the planning assessment should take into account the wider amenity impact in the early morning hours (when residents occupiers are accepted peace and quiet to sleep) from the dispersal of patrons into surrounding residential neighbourhoods rather than simply 'nuisance'. This is given that there is no control over the behaviour and movements of patrons once they leave the premises.

6.4 Parking highways and transport

- 6.4.1 The number of trips associated with the proposed use is unlikely to significantly change compared to the existing, whilst the high accessibility of the city centre location would ensure that the traffic associated with the proposed use would not significantly affect the local road network. Further details of the suitable management and storage of refuse can be secured by condition.

6.5 Mitigation of direct local impacts

- 6.5.1 The Council would normally seek contributions towards late night community safety measures to mitigate the impact of new late night uses within the city centre with opening hours beyond 22:00. However, as the proposed SEV would operate with the same hours as the lawful nightclub use would have a neutral impact on community safety. Therefore, no contributions are required for direct mitigation.

7. Summary

- 7.1 In summary, the reduced hours now sought (from 5am to 2am) that move away from the current license but align with the licensed hours of the existing lawful use as a nightclub use, coupled with the similar scale and intensity of the late-night entertainment use, ensures that the proposed change of use to a SEV would not cause any further adverse harm to the character and amenity of the local area.

- 7.2 The SCC licensing safeguards will ensure that are adequate controls over the operation of the SEV to protect the safety and amenity of the staff, patrons and nearby occupiers. Furthermore, the Hampshire Constabulary (Designing Out Crime Officer) does not object on these grounds. Whilst the operating hours beyond midnight does not strictly comply with CCAP policy AP 8 for the London Road area, a valid exception to the policy criteria can be justified given the individual and unique circumstances of the site history and, therefore, approval would not set a precedent for other late-night businesses to extend their hours beyond midnight. By bringing back a vacant unit into use, the social and economic benefits would diversify and positively contribute the night time economy in the city centre as supported by policy AP 8. The reduced hours agreed with the applicant is a fair compromise in balancing 'support of the night time economy' and 'safeguarding living conditions' and the amenity of the local community.

8. Conclusion

- 8.1 It is recommended that planning permission be granted subject to conditions set out below.

Local Government (Access to Information) Act 1985

Documents used in the preparation of this report Background Papers

1. (a) (b) (c) (d) 2. (b) (c) (d) (e) 4. (g) (vv) 6. (a) (b)

SB for 06/10/20 PROW Panel

PLANNING CONDITIONS

01. Full Permission Timing Condition (Performance)

The development hereby permitted shall begin no later than three years from the date on which this planning permission was granted.

Reason: To comply with Section 91 of the Town and Country Planning Act 1990 (as amended).

02. Dual use (Performance)

The permitted use of the premises shall benefit from a dual nightclub or Sexual Entertainment use for a limited period of 10 years only from the date of this Decision Notice (under Class V, Part 3, Schedule 2 of the Town and County Planning (General Permitted Development) Order 2015 amended). The use that is in operation on the tenth anniversary of this Decision Notice shall thereafter remain as the permitted use of the property.

Reason: In order to provide greater flexibility to the development and to clarify the lawful use hereby permitted and the specific criteria relating to this use.

03. Hours of Use (Performance)

The use hereby approved shall not operate outside the following hours:

Monday to Saturday - 21:00 to 02:00;

Sunday and recognised public holidays - 21:00 to 00:30;

Reason: To protect the amenities of the occupiers of existing nearby residential properties.

04. Premises Management Plan (Pre-Occupation)

The sexual entertainment venue use hereby approved shall not commence until the following details of operational management are submitted to and approved in writing by the Local Planning Authority:

- (a) refuse management including the siting of ,storage and disposal of refuse and glass. Any external bin storage facilities should not be used and no collections shall take place between the hours of 23:00 – 07:00 everyday.
- (b) method of delineating the smoking area from public spaces and maximum numbers of patrons permitted to use the smoking area at any one time;
- (c) ground and lower floor doors (including the restaurant door/windows) to remain closed during the permitted business opening hours to minimise noise break out;
- (d) a Closed Circuit Television (CCTV) system to be fitted within the premises with cameras deployed to provide images of the adjacent public realm with the installation of 360° mega pixel cameras, together with a system that supports the use of these cameras;
- (e) deliveries and servicing to be permitted only between the hours of 07:00 - 23:00;

The approved Premises Management Plan shall be adhered to throughout the duration of the use hereby approved unless agreed otherwise in writing by the local planning authority.

Reason: In the interest of protecting residential amenity, crime and safety, the character of the area and highways safety.

05. Extract Ventilation (Pre-Occupation)

If the pizzeria restaurant requires a new extract ventilation system, details of the extraction scheme shall be implemented prior to hot food cooking processes commencing in association with the existing restaurant kitchen in accordance with a written scheme for the appearance and siting, control of noise, fumes and odours from extractor fans and other equipment to be first submitted to and agreed in writing by the Local Planning Authority and shall thereafter be retained for the duration of the restaurant use.

Reason: To protect the amenities of the occupiers of existing nearby properties.

06. Approved Plans

The development hereby permitted shall be carried out in accordance with the approved plans listed in the schedule attached below, unless otherwise agreed in writing with the Local Planning Authority.

Reason: For the avoidance of doubt and in the interests of proper planning.

POLICY CONTEXT

Core Strategy - (as amended 2015)

CS1	City Centre Approach
CS3	Promoting Successful Places
CS6	Economic Growth
CS7	Safeguarding Employment Sites
CS13	Fundamentals of Design
CS18	Transport: Reduce-Manage-Invest
CS19	Car & Cycle Parking
CS25	The Delivery of Infrastructure and Developer Contributions

City of Southampton Local Plan Review – (as amended 2015)

SDP1	Quality of Development
SDP4	Development Access
SDP5	Parking
SDP7	Urban Design Context
SDP10	Safety & Security
SDP11	Accessibility & Movement
SDP16	Noise
REI7	Food and Drink Uses (Classes A3, A4 and A5)

City Centre Action Plan - March 2015

AP 5	Supporting existing retail areas
AP 8	The Night time economy

Supplementary Planning Guidance

Planning Obligations (Adopted - September 2013)
Parking Standards SPD (September 2011)

Other Relevant Guidance

The National Planning Policy Framework (2019)

Relevant Planning History

Case Ref:	Proposal:	Decision:	Date:
19/00902/ELDC	Lawful development certificate for the existing use of the basement as a nightclub (sui generis)	Granted	14.10.2019
05/00916/VC	Variation of Condition 01 of consent 02/00667/VC (allowed under appeal ref: APP/D1780/A/03/1111452) to extend opening to 02:00 on Monday to Thursdays. NB. The Council refused this application given the material weight of the emerging changes to Local Plan Review policies for night time uses at the time to start designating night time zones under policy CLT14.	Refused	12.09.2005
05/00500/EN_UUC	Enforcement enquiry into use of A3 unit as a nightclub in breach of condition 04 of 961373/3820/E – Case closed as no breach (the primary use was still considered to be A4 'Drinking Establishment, which was introduced under revised Use Classes Order).	Closed – No breach	17.01.2006
03/00004/VC	Variation of Condition 02 of consent 961373/3820/E to extend opening hours to 1:00 Monday to Thursday, 2:00 Friday & Saturday and 12:30 on Sunday	Allowed	07.07.2003
02/00667/VC	Variation of Condition 02 of consent 961373/3820/E to extend opening hours to 1:00 Monday to Thursday, 2:00 Friday & Saturday and 12:30 on Sunday	REF	09.09.2002
00/00625/VC	Variation of condition 02 of consent 99/00986/VC to alter the individual to whom the varied hours relate.	CAP	14.10.2002
99/00986/VC	Extension of opening hours (relief of Condition 02 of permission 961373/3820/E	CAP	26.11.1999
980923/EX	Variation of Condition 2 of planning permission 961373/3820/E to extend opening time 12.30am.	Consent	19.11.1998
961373/E	Change of use of part ground floor and basement of 35-41 to German Cellar Bar.	CAP	26.03.1997

Application 20/00367/FUL

APPENDIX 3

SCC License for SEV



Licence Number	2019/03785/19SEX
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SEX ESTABLISHMENT LICENCE

LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982, SECTION 2

SOUTHAMPTON CITY COUNCIL by virtue of the powers contained in section 2 and schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, hereby grants to:

Southampton Clubs Limited

of the following address:

36 Alie Street,
London.
E1 8DA

A licence to use the premises known as

Black Diamond

and situate at

**Basement
35 London Road
Southampton
SO15 2AD**

in the City of Southampton as a

SEXUAL ENTERTAINMENT VENUE

This licence has effect from 28th day of August 2019 until

27th day of August 2020

The permitted hours of this licence:

Monday	21:00 - 05:00
Tuesday	21:00 - 05:00
Wednesday	21:00 - 05:00
Thursday	21:00 - 05:00
Friday	21:00 - 05:00
Saturday	21:00 - 05:00
Sunday	21:00 - 05:00

SUBJECT TO THE FOLLOWING CONDITIONS:

1 Annex A

Standard Conditions applicable to Sex Establishments consisting of Sex Shops, Sex Cinemas or Sexual Entertainment Venues

Southampton City Council, in exercise of the powers conferred by paragraph 13 of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 hereby make the following Regulations prescribing standard conditions applicable to licences for sex establishments.

Interpretation

In these Regulations the following expressions that is to say "Sex Establishment", "Sex Shop", "Sex Cinema", "Sexual Entertainment Venue", "Sex Article", and "Vessel" shall have the meanings respectively assigned by Schedule 3 of the Act (and where amended by Section 27 of the Policing and Crime Act 2009).

In these Regulations the following expressions shall have the meanings hereby respectively assigned to them namely:

"the Act" means the Local Government (Miscellaneous Provisions) Act 1982, as amended.

"the council" means Southampton City Council and/or any authorised officer acting on behalf of the Council.

"the premises" means any premises, vehicle, vessel or stall licensed under the Act.

"licence holder" means a person who is the holder of a sex establishment licence.

"permitted hours" means the hours during which the licensed premises are permitted to be open to the public.

"licence" means a licence granted pursuant to Schedule 3 of the Act.

Part One - General Conditions

1. Management of Premises

1.1. The Licence holder, or some responsible person nominated by him and approved in writing by the council for the purpose of managing the sex establishment ("the manager"), shall have personal responsibility for and be present on the premises at all times when the premises are open to the public.

1.2. In accordance with section 14 of the 1982 Act, the Licence holder shall display, on the licensed premises in a conspicuous position, a copy of the licence and/or any special conditions attached.

1.3. The name of the person responsible for the management of the sex establishment, whether the licence holder or manager, shall be displayed in a conspicuous position within the premises throughout the period during which he is responsible for the conduct of the premises.

1.4. The licence holder shall retain control over all parts of the licensed premises as set out on the approved premises plan and shall not let or part with possession of any part.

1.5. No person under the age of 18 shall be admitted to the premises and rigorous identity checks SHALL be made on any person who appears to be under the age of 18.

1.6. To ensure compliance of 1.5 above, the licence holder shall exhibit appropriate warning notices as

to the minimum age requirements on both the exterior (frontage) door and also conspicuously on the appropriate inner lobby door.

1.7. No person under the age of 18 shall be employed to work at the premises in any capacity or shall be allowed to work at the premises on a self-employed basis.

1.8. Neither the Licence holder nor any employee or agent shall tout or solicit custom for the sex establishment immediately outside or in the vicinity of the licensed premises.

1.9. Where the Licence holder is a body corporate or an unincorporated body, any change of director, or other person responsible for the management of the body is to be notified in writing to the council within 14 days of any such change. In addition, the Licence holder shall provide any details as the council may require in respect of any new director, officer or manager upon request in writing from the council.

2. Conduct of the Premises

2.1. No change from one type of sex establishment to another shall be made without the written consent of the council.

2.2. No part of the premises shall be used by prostitutes for the purpose of solicitation or otherwise exercising their calling.

3. Premises Interior and Layout

3.1. The premises layout shall comply with deposited plans unless otherwise approved in writing by the council.

3.2. No alterations, additions or modifications to either the internal or external parts of the licensed premises shall be made without the prior written consent of the council.

3.3. External doors shall be closed at all times other than when persons are entering or leaving the premises. The external doors shall be fitted with a device to provide for their automatic closure and such devices shall be maintained in good working order.

3.4. The premises shall be fitted with an inner entrance lobby door or partition screen so that no part of the interior of the premises or any of the contents of the premises shall be visible when persons are entering or leaving the premises.

3.5. No access shall be permitted through the premises to any other premises adjoining or adjacent except in the case of emergency.

3.6. No part of the interior of the licensed premises shall be visible whatsoever to persons outside the premises.

3.7. No external advertising, words, signs, displays or illuminations shall be permitted unless previously approved by the council.

3.8. The external fabric, appearance and look of the licensed premises shall consist of materials and colours approved by the council in order to:

3.8.1 Ensure that the frontage is of a discreet nature

3.8.2 Ensure that it is appropriate to the character of the locality.

4. CCTV

4.1. A recording CCTV system shall be installed and fully operational whilst the venue is open to the public.

4.2. The recording equipment will be stored and operated in a secure environment with limited access, to avoid damage, theft, unauthorised viewing and to maintain the integrity of the system.

4.3. A record will be kept of any access made to information held on the system.

4.4. The system will be serviced at twelve monthly intervals and maintained to a standard that is acceptable to the police licensing department responsible for the area. A record of service and maintenance completed shall be held for a minimum of three years at the premises.

4.5. The system clock will be checked regularly for accuracy taking account of GMT and BST.

4.6. An additional recording CCTV camera shall be installed and fully operational whilst the venue is open to the public to cover the area outside the front of the premises.

4.7. The CCTV system will have sufficient storage capacity for 31 days of good evidential quality images.

5. CCTV Access

- 5.1. Police and authorised officers of the council shall have access to data from the systems quickly and easily and therefore provision will be made for the licensee or a member of staff to have access to the secure area and also be able to operate the equipment and to supply footage in a format which can be easily viewed by police or council officers.
- 5.2. All operators will receive training from the installer when equipment is installed and this training will be cascaded down to new members of staff.
- 5.3. An operator's manual will be available to assist in replaying and exporting data.
- 5.4. The premises shall not be operated pursuant to the grant of a licence until such time as the CCTV System has been approved by the Police. The CCTV must be maintained in a satisfactory working condition and subject to police approval in order to remain operating under the licence.

6. General

- 6.1. The Licence holder shall take all reasonable precautions to ensure public safety on the premises and shall comply with any reasonable request made by the council.
- 6.2. The council may substitute, delete, vary or amend these conditions at any time.

Part Two - Additional Conditions for Premises Operating as Sexual Entertainment Venues

7. External Appearance of the Premises and Public Displays of Information

- 7.1 The grant of a licence for a Sexual Entertainment Venue shall not be deemed to convey any approval or consent which may be required under any enactment, byelaw, order or regulation other than Schedule 3 of the Act.
- 7.2 The Premises shall be maintained in good repair and condition.
- 7.3 The Licensee shall ensure that the interior of the premises where sexual entertainment is offered shall not be capable of being seen from the outside of the premises.
- 7.4 At no time shall performances be capable of being seen from outside of the premises
- 7.5 Alterations or additions either internal or external and whether permanent or temporary to the structure, lighting or layout of the premises shall not be made except with the prior approval of the Council.
- 7.6 The copy of the licence and of any Regulations required to be exhibited in accordance with paragraph 14(1) of Schedule 3 of the Act shall be reproductions to the same scale as those issued by the Council. The copy of the licence required to be displayed aforesaid shall be suitably protected and the copy of any Regulations shall be retained in a clean and legible condition.

8. Control of Entry to the Premises

- 8.1 Any individual employed on the premises to conduct a security activity (within the meaning of section paragraph 2(1) (a) of schedule 2 to the Private Security Industry Act 2001) must be licensed by the Security Industry Authority (for so long as that Authority is operative).
- 8.2 The Licensee must ensure that a sufficient number of authorised door supervisors are employed in the premises to check entrants; enforce the venue Drugs Policy, House Rules and Dancer Code of Conduct; complete the incident book as necessary and supervise customers and performers whilst sexual entertainment is provided.
- 8.3 No person under the age of 18 shall be admitted to the premises at any time that it is offering sexual entertainment and a notice to this effect shall be clearly displayed at the entrance(s) to the premises.
- 8.4 The Licensee will operate a Challenge 25 Policy whereby prospective customers who appears to be aged 25 or under will be refused admission unless they can prove that they are aged 18 or over by producing suitable photographic identification. Prominent notices must be clearly displayed to this effect at the entrance(s) to the premises.
- 8.5 Information shall be clearly displayed within the internal exit areas of the premises, reminding departing customers to behave in a responsible and appropriate way towards all persons, particularly women.
- 8.6 Prospective customers shall be informed of the House Rules.

9. Advertising

9.1 The Licensee shall not permit the display on the exterior of the premises of photographs or other images, excluding trade marks or logos, which are unacceptable to the Council, and which may offend public decency.

9.2 The Licensee shall have regard to the Advertising Standards Authority CAP Code.

9.3 Where the Council has given notice in writing to the Licensee objecting to any public advertisement on the grounds that, if displayed, it would offend public decency or be likely to encourage or incite crime and disorder that advertisement shall be removed or not be displayed.

10. CCTV

10.1 The Licensee shall ensure that CCTV is installed and maintained to the reasonable satisfaction of the Police. The equipment will be password protected and have a constant and accurate time and date generation.

10.2 CCTV shall be installed in any private performance areas. Such areas will also be specifically monitored.

10.3 The recording system will be able to capture a minimum of 4 frames per second and CCTV images shall be retained for a period of at least 28 days and made available to a police officer or authorised Council officer (subject to the Data Protection Act 1998). The said images shall be down loaded on request and a copy provided to such an officer at the earliest practicable opportunity together with any software required to enable playback.

10.4 Records must be made on a weekly basis and retained for at least one year to demonstrate that the CCTV system is functioning correctly and that data is being securely retained. These will be made available to a police officer or authorised Council officer on request.

10.5 In the event of a technical failure of the CCTV equipment the Licensee must report the failure to the Southampton Police Licensing unit.

11. Performers

11.1 Performers shall be aged not less than 18 years. The Licensee must maintain records of the names, addresses and dates of birth of performers including identity checks.

11.2 Performers must remain fully dressed in public areas and in all other areas except while performing.

11.3 No personal performances shall be given to customers seated at the bar or to standing customers.

11.4 Performers must re-dress when the performance has ended.

11.5 Performers must not perform a nude table dance unless in a supervised area and within sight of a floor supervisor.

11.6 Performers may not accept any telephone number, email address, address or contact information from any customer, except in the form of a business card, which must be surrendered to the Licensee or their representative before leaving the premises.

11.7 There shall be no intentional full body contact between customers and performers during a performance except for the placing of money or tokens into the hand or garter of the performer at the beginning or conclusion of the performance.

11.8 Performers will stop immediately and move away from any customer who is offensive or attempts to touch them during a performance and shall report such behaviour and any other inappropriate behaviour or breach of house rules to the management.

11.9 No performances shall include any sex act with any other performer, persons in the audience or with the use of any object.

11.10 Performers must not engage with the customer in any act of, or communication likely to lead to an act of, prostitution or solicitation.

11.11 The Licensee is to implement a policy for the safety of the performers when they leave the premises.

12. Customers

12.1 Customers must remain seated during the entire performance of a private dance.

12.2 Customers must remain fully dressed at all times.

12.3 The Challenge 25 proof of age scheme shall be operated at the premises whereby any person

suspected of being under 25 years of age shall be required to produce identification proving they are over 18 years of age. The only acceptable forms of identification are recognised photographic identification cards, such as a driving licence or passport;

12.4 All persons entering the premises must supply verifiable identification details that are passed through a digital scanning and recording system such as Club Scan, Idvista or similar computerised system.

12.5 The premises shall maintain a Refusals log whereby any occasion a person is refused entry shall be recorded and available upon request by the Police or an authorised officer of the council. The refusals log to be maintained for 12 months.

12.6 Any person who appears to be drunk / intoxicated or under the influence of illegal drugs shall not be permitted entrance to the premises.

12.7 A policy of random searches of persons entering the premises shall be operated.

12.8 Any person found to be in possession of illegal drugs upon entry shall be prevented entry and, where possible, restrained until the Police can take such person into custody. Any persons found using illegal drugs on the premises shall be removed from the premises or, where possible, restrained until the Police can take such person into custody.

12.9 The licensed premises shall be so arranged by screening or obscuring windows, doors and other openings so that the interior of the licensed premises shall not be visible to persons outside the building.

12.10 The premises shall subscribe to an approved radio system and radios shall be operational at all times the premises is open to the public.

13 External Appearance of the Premises and Public Displays of Information

13.1 The exterior of the premises shall not contain any displays or depictions of the human form, or any imagery that suggests or indicates relevant entertainment takes place at the premises, or other language stating the nature of such activities, including use of the word "nude". The condition does not prevent the use of the words "Licensed Sexual Entertainment Venue" on a single plate in characters no higher than 10 cm at the entrance to the premises.

13.2 Any external displays or advertising may only be displayed with the prior approval of the Council.

13.3 The prices for entrance and any compulsory purchases within the venue shall be clearly displayed on the exterior of the premises.

13.4 All charges for products and services shall be displayed in prominent areas within the premises, and at each customer table and in the bar area.

13.5 Rules for customers shall be displayed in prominent areas within the premises, and at each customer table and in the bar area.

13.6 No charge shall be applied unless the customer has been made aware of the tariff of charge by the performer in advance of the performance.

13.7 Performers may not stand in any lobby, reception or foyer areas or outside the premises entrance for the purposes of greeting customers or encouraging customers to enter the venue.

13.8 The use of cruising cars by the premises to solicit for custom and/or transport people to or from the premises is prohibited.

13.9 The use of flyers and similar promotional material for the premises is prohibited.

14 Conduct of Performers and Rules relating to performances of sexual entertainment

14.1 There shall be a written code of conduct for performers that has been agreed in writing by the Licence holder, the council and the Police.

14.2 All performers shall be required to certify their agreement to comply with the code and a record shall be kept on the premises and be made available upon request by the Police or an authorised officer of the council. The code shall include the basic criteria as set out in the Code of Conduct for Dancers included within this policy.

14.3 No changes shall be made to the Dancer's Code of Conduct without the prior written consent of the council and the Police.

14.4 The Dancer's Code of Conduct must include a statement that any dancer who does not comply with the Code of Conduct will face disciplinary proceedings.

14.5 All management and staff (including security staff) must be aware of and familiar with the content of the Dancer's Code of Conduct and shall ensure it is complied with at all times.

14.6 A copy of the Dancer's Code of Conduct shall be prominently displayed in each area of the premises where the public have access, which shall include toilet areas as well as in any area used as a

changing/dressing room for dancers.

15 Code of Conduct for Customers

15.1 There shall be a written Code of Conduct for Customers that has been agreed in writing by the Licence holder, the council and the Police.

15.2 The code shall include the basic criteria as set out in the Code of Conduct for Customers included within this policy.

15.3 The Code of Conduct for Customers shall be displayed in prominent positions throughout the licensed premises so that it is visible to all patrons.

15.4 No changes shall be made to the Code of Conduct for Customers without the prior written consent of the council and the Police.

15.5 The Code of Conduct shall include a statement that any customers who fail to comply with the Code of Conduct will be required to leave the premises.

15.6 All management and staff (including security staff) must be aware of and familiar with the content of the Code of Conduct for Customers and shall ensure it is complied with at all times.

15.7 On any occasion whereby a customer breaches the Code of Conduct, such details shall be recorded in the incident log.

15.8 Any customer breaching the rules of the Code of Conduct shall be asked to leave the premises. Any customer who has previously been asked to leave the premises and again breaches the Code of Conduct shall be banned from the premises.

16 Disciplinary Procedure for Performers

16.1 The Licence holder shall ensure that a written disciplinary procedure is in force so as to take appropriate action against performers who breach the Code of Conduct and that a copy of the procedure is provided to each performer who works at the premises.

16.2 All performers shall sign an acknowledgement that they have received a written copy of the disciplinary procedure and have read and understood its contents.

16.3 Any disciplinary procedure shall NOT make any provision for financial penalties against performers who breach the disciplinary procedure. Any sanctions shall be limited to verbal or written warnings, suspension or revocation of the performer's right to dance at the premises.

17 The Protection of Performers and the Prevention of Crime on the Premises

17.1 Performers shall be provided with secure and private changing facilities.

17.2 All entrances to private areas to which members of the public are not permitted access shall have clear signage stating that access is restricted.

17.3 Any exterior smoking area for use by performers shall be kept secure and separate to any public smoking area.

17.4 The Licence holder shall implement a written policy to ensure the safety of performers when leaving the premises following any period of work.

17.5 Private booths must not be fully enclosed, however use of flame retardant see-through curtain is permitted. There must be a clear sight-line from outside the booth so that any performance of sexual entertainment can be directly monitored.

17.6 There must be a minimum of one member of security staff present on any floor where a performance of sexual entertainment is taking place.

17.7 Any private booths shall be fitted with a panic button or security alarm.

18 Record Keeping and Management

18.1 All performers shall be required to provide valid identification prior to first employment at the premises. Acceptable forms of identification are recognised photographic identification cards, such as a driving licence, passport or national ID card.

18.2 All performers and staff shall be eligible to work in the UK and proof of eligibility records shall be kept on the premises. Management shall ensure that such records are regularly checked to ensure compliance.

18.3 Employment records for performers and staff shall be kept for a minimum of 6 months following the cessation of their employment.

18.4 Accurate payment and remuneration records shall be maintained and shall be made available upon request to the Police or an authorised officer of the Council. All fees and charges for performers shall be stated in writing and prominently displayed within the changing area.

18.5 No films may be shown at the premises unless they have been passed by the British Board of Film Classification. No films classified as R18 shall be shown on the premises.

19 Dress Code

19.1 The premises shall operate a dress code for customers to the satisfaction of the Police.

Annex B

Sexual Entertainment Venues - Code of Conduct for Dancers

The Dancer's Code of Conduct shall include the following conditions as a minimum standard:

There shall be no intentional physical contact between performers and customers at any time, before, during or after the performance, with the exception of leading a customer by the hand to, or from, an area permitted for performances of sexual entertainment in advance of, or following, a performance.

The performer may not simulate any sexual act during a performance.

Performers must not use any inappropriate, lewd, suggestive or sexually graphic language in any public or performance areas of the premises.

Performers must not touch the breasts or genitalia of another performer, at any time as part of a performance.

There shall be no use of sex articles (as defined by paragraph 4(3) of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982) at any time.

There shall be no nudity by performers in public areas of the premises, unless the Council has agreed in writing that area may be used for performances of sexual entertainment.

Performers must fully dress (i.e. no nudity) at the end of each performance.

Performances of sexual entertainment may only take place in designated areas of the premises as agreed in writing by the Council.

There shall be no photography permitted by customers on the premises.

Customers must remain seated for the duration of a performance.

Performers shall not arrange to meet, or have further contact with, customers outside of the premises.

Dancers shall not perform if under the influence of alcohol or drugs.

All dancers shall comply with this Code of Conduct. Any failure to adhere to the rules set out in Code shall result in the dancer becoming subject to the consideration of disciplinary action as set out in the Disciplinary Procedure.

Annex C

Sexual Entertainment Venues - Code of Conduct for Customers

The Customer's Code of Conduct shall include the following conditions as a minimum standard:

Customers may not touch dancers during a performance.

Customers may not make lewd or offensive comments to performers.

Customers must not harass or intimidate performers.

Customers must not ask dancers to perform any sexual favour.

Customers may not perform acts of masturbation or indulge in other sexual behaviour.

Any customer failing to comply with this Code of Conduct will be asked to leave the premises and may face a time-limited or permanent ban from attending the premises.

Dated this 6th day of September 2019

Police Comments



Gosport NPT Neighbourhood Police Office
Town Hall
High Street
Gosport
Hampshire
PO12 1EB

Mr. S. Brooks
Planning Services
Southampton City Council
Lower Ground Floor
Civic Centre
Southampton
SO14 7LY

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101

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Text Relay
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Our ref: app/20
Your ref: 20/00367/FUL

14th July 2020

Dear Mr Brooks.

BASEMENT, 35 – 41 LONDON ROAD, SOUTHAMPTON, SO15 2AD

Further to a request from Miss Lines, I visited the premises on the 3rd July 2020. Present at the meeting were myself, Miss Lines, Mr. Mihalache (DPS Black Diamond, Reading) and Mr. Paul (Miss Lines' business partner).

During the meeting Miss Lines and her associates presented compelling evidence (both written and verbal) that the operation of this premises as a Sexual Entertainment Venue (SEV), will not bring about an increase in incidents of crime and anti-social behaviour.

The evidence consisted of:

- An explanation of the business model – including: an income analysis and notes supplied by Miss Lines
- The Human Trafficking and Modern-Day Slavery Policy
- The Implementation of both the Premises Licence dated 28th August 2019 and the SEV Licence dated 28th August 2019

Given the above I withdraw my object to the opening of the premises until 5am (05:00) as an SEV.

I note that a Closed Circuit Television (CCTV) system is to be fitted within the premises with cameras deployed to provide images of the public areas. Given this situation I would recommend the installation of 360° mega pixel cameras, together with a system that supports the use of these cameras.



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Deaf? Non-emergency text 07781 480999
For crime and community information www.hampshirealert.co.uk



If I can be of any further assistance please do not hesitate to contact me.

Yours sincerely,

S York
Designing Out Crime Officer

DISCLAIMER

This survey is based on information supplied by yourself and the current crime trends. I can only give a view on what measures might reduce the risk of crime and there can be no guarantee that the measures will prevent crime. The advice is given free with no intention of creating a contract. Neither the Home Office or Hampshire Constabulary take any other legal responsibility for the advice given.



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