
Report to: Licensing (Sexual Entertainment Venues) Sub-Committee

Date of Meeting: 10 April 2013

Subject: Sex Establishment (Sexual Entertainment Venue) Licence - Grant
Black Orchid Gentlemen's Club, 8 Coronation Walk, Southport PR8 1RE

Report of: Director of Built Environment **Wards Affected:** Dukes

Is this a Key Decision? No

Is it included in the Forward Plan?
No

Exempt/Confidential No

Purpose/Summary

To give consideration to an application for the grant of a Sex Establishment (Sexual Entertainment Venue) Licence.

Recommendation(s)

The Sub-Committee's instructions are requested.

How does the decision contribute to the Council's Corporate Objectives?

The Corporate Objective Monitoring does not apply to this Sub-Committee as the Sub-Committee is acting in a quasi judicial capacity.

Reasons for the Recommendation:

Under the Scheme of Delegation Officers cannot determine applications which have received relevant representations.

What will it cost and how will it be financed?

(A) Revenue Costs

There are no financial costs associated with the proposals in this report

(B) Capital Costs

There are no financial costs associated with the proposals in this report

Implications:

The following implications of this proposal have been considered and where there are specific implications, these are set out below:

Legal	The Head of Corporate Legal Services will provide legal advice to the Licensing Sub Committee on the issues set out in this report.
Finance	There are no financial implications arising directly from this Report except in the event of any Appeal made against the Sub-Committee's eventual decision, the costs of which would depend upon the length of the Appeal process.
Human Resources	None
Equality	
1. No Equality Implication	<input checked="" type="checkbox"/>
2. Equality Implications identified and mitigated	<input type="checkbox"/>
3. Equality Implication identified and risk remains	<input type="checkbox"/>

Impact on Service Delivery:

None.

What consultations have taken place on the proposals and when?

Consultations have taken place as per the provisions of Local Government (Miscellaneous Provisions) Act 1982.

Are there any other options available for consideration?

No

Implementation Date for the Decision

Immediately following the Sub-Committee Meeting.

Contact Officer: Kevin Coady
Tel: 0151 934 2946
Email: kevin.coady@sefton.gov.uk

Background Papers:

- Local Government (Miscellaneous Provisions) Act 1982.
- Policing and Crime Act 2009.
- *Sexual Entertainment Venues – Guidance for England and Wales* issued by the Home Office.
- Application for a Sex Establishment (Sexual Entertainment Venue) Licence.

1. Application details

Application: Grant

Applicant: PDP Leisure Limited

Premises: Black Orchid Gentlemen's Club
8 Coronation Walk,
Southport PR8 1RE

Representative: Mr Nick Archer, Halliwell McCormack
Archer, Solicitors

Terms Applied For:

Days of Operation	Hours of Operation	Area to be Licensed
Monday to Sunday	14.00 to 06.00	Whole of Licensed Area

2. Background information

- 2.1 Schedule 3 of the Policing and Crime Act 2009 inserted the new category of "sex establishment" called a "sexual entertainment venue" into Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 ("the 1982 Act"). Thus bringing the licensing of lap dancing and pole dancing clubs and other similar venues under the regime set out in the 1982 Act (which was used to regulate establishments such as sex shops and sex cinemas) rather than under the Licensing Act 2003 ("the LA03").
- 2.2 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 the entertainer.*" The meaning of '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).*" An audience can consist of just one person (e.g. where the entertainment takes place in private booths).
- 2.3 The Guidance issued by the Home Office over these matters indicates that whilst local authorities should judge each case on its own merits, it would be expected that the definition of relevant entertainment would apply to the following forms of entertainment as they are commonly understood:
- Lap dancing
 - Pole dancing
 - Table dancing
 - Strip shows
 - Peep shows
 - Live sex shows

- 2.4 It should be noted that although the definition of relevant entertainment makes reference to a 'live display of nudity', the Guidance indicates that the mere fact that there is a display of nudity does not mean that a sex establishment licence will necessarily be required. For example, if the display forms part of a drama or dance performance in a theatre, in most cases it cannot reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience.
- 2.5 Paragraph 2A(14) of Schedule 3 sets out the definition of a 'display of nudity'. In the case of a woman, this means exposure of her nipples, pubic area, genitals or anus and, in the case of a man; this means exposure of his pubic area, genitals or anus.
- 2.6 The relevant entertainment must be provided for the financial gain of the 'organiser' or 'entertainer'. The '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. The Guidance states that in most circumstances, this will refer to the manager of the premises, but could also refer to someone who is responsible for organising the relevant entertainment on behalf of the persons responsible for the management of the premises.
- 2.7 The Guidance indicates that the 'organiser' must be someone who is in a position of responsibility over the provision of the relevant entertainment and should not be interpreted to mean a member of staff who is merely employed to work during the provision of relevant entertainment. It is only necessary for one person to hold a sexual entertainment venue licence for the premises, even if there is more than one person who is responsible for the organisation or management of the relevant entertainment or the premises.
- 2.8 The following are not sexual entertainment venues for the purpose of the 1982 Act:
- (a) sex shops and sex cinemas;
 - (b) any premises that at the time in question:
 - (i) has not provided relevant entertainment on more than 11 occasions within the previous 12 months;
 - (ii) no such occasion has begun within the period of one month beginning with the end of any previous occasion;
 - (iii) no such occasion has lasted for more than 24 hours; or,
 - (c) premises specified or described in an order made by the relevant national authority.
- 2.9 The Sexual Entertainment Venue provisions were formally adopted by the Council with effect from 9th August 2010. There was a 'transitional period' which allowed any existing or new applicants to make application between certain "appointed days" following adoption. The 1st appointed day in the District was 9th August 2010; the 2nd appointed day was 9th February 2011; and 9th August 2011 was the 3rd appointed day. No applications were received.
- 2.10 Members will recall that these premises were previously granted a Sexual Entertainment Venue Licence by the Licensing (Sexual Entertainment Venues) Sub-Committee on 29th May 2012; this was to a different operator who now no

longer has any interest in these premises. This Licence will expire without renewal on 28th May 2013.

3. Notices

- 3.1 The application has been advertised in the prescribed manner. No public objections have been received with regard to this application.

4. Response to consultations

Merseyside Police

- 4.1 Merseyside Police have no particular issues to raise re this application. However they do point out that the standard conditions for this type of Licence would conflict with the applicant's proposed variation of the Premise Licence issued under the Licensing Act 2003.

Department of Built Environment – Environmental Health (Commercial)

- 4.2 No comments have been raised with regard to this application.

5. Additional licensing information

- 5.1 In general the Authority has discretion whether or not to grant a licence for the use of any premises, vehicle, vessel or stall to be used as a class of sex establishment.

- 5.2 A Licence cannot, however, be granted to:

- a person under 18;
- a person who has held a licence but has had it revoked within 12 months preceding the date of application;
- 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;
- to a body corporate which is not incorporated in an EEA State; or
- a person who has within the last 12 months preceding the date of the application been refused a licence in respect of the same premises.

- 5.3 When determining a licence application, the local authority must have regard to any rights the applicant may have under Article 10 (right to freedom of expression) and Article 1, Protocol 1 (protection of property) of the European Convention on Human Rights.

- 5.4 Paragraph 10 (15) of Schedule 3 of the 1982 Act gives a statutory right to any person to object to an application. However, only objections received within the statutory 28 days can be considered: *R v Birmingham City Council and others, ex parte Quietlynn Ltd and others* (1985) 83 LGR 461.

- 5.5 If objections are received then the Authority is under a duty to provide, in general terms, details of the objections to the applicant. However, without the consent of the objector the Authority cannot divulge their name and address.

- 5.6 The Authority must give the applicant an opportunity of appearing before the body making the decision before refusing an application.
- 5.7 The Authority may refuse an application for the grant or renewal of a licence on one or more of the grounds below:
- (a) that the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason;
 - (b) that 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) that 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 to:
 - (i) the character of the relevant locality; or
 - (ii) the use to which any premises in the vicinity are put; or
 - (iii) the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.
- 5.8 An applicant whose application for the grant or renewal of a licence is refused, or whose licence is revoked, on any ground specified in Paragraph 5.2 above does not have a right to appeal unless the applicant seeks to show that the ground did not apply to him.
- 5.9 Similarly, an applicant whose application for the grant or renewal of a licence is refused on either ground specified in Paragraph 5.7 (c) or (d) above does not have the right to appeal the decision. In such cases the applicant can only challenge the refusal by way of judicial review.
- 5.10 The following may at any time, before the expiration of the period of 21 days following receipt of the application's determination, appeal to the magistrates' court acting for the relevant area:
- (i) an applicant for the variation of the terms, conditions or restrictions on or subject to which any such licence is held whose application is refused;
 - (ii) a holder of any such licence who is aggrieved by any term, condition or restriction on or subject to which the licence is held; or,
 - (iii) a holder of any such licence whose licence is revoked.

CONDITIONS

- 5.11 The Authority may make regulations prescribing Standard Conditions to be applicable to licences for sex establishments, i.e terms, conditions and restrictions on or subject to which the licences are in general to be granted, renewed or transferred.
- 5.12 These Conditions may regulate:
- the hours of opening and closing of the sex establishment;

- displays or advertisements on or in such establishments;
- the visibility of the interior of sex establishments to passers-by; and,
- any change from one kind of sex establishment to another kind of sex establishment.

5.13 These regulations may make different provision for sexual entertainment venues, sex cinemas and sex shops, and as well as for different kinds of sexual entertainment venues, sex cinemas and sex shops.

5.14 The Conditions applicable to this type of premise are attached within Annex 1 to this Report. Members may think it prudent to include the proposed opening hours, as shown in Section 1 above, in any Conditions they may decide to attach.

**Sexual Entertainment Venue
Standard Conditions**

1. Premises licensed as a Sexual Entertainment Venue under the provisions of Schedule 3 of the Local Government (Miscellaneous Provisions) Act, 1982, shall be used only for the purpose of a Sexual Entertainment Venue as defined in Paragraph 2A of the said Schedule 3 and shall not be used, wholly or in part, for any other purpose during the period the premises are licensed as a Sexual Entertainment Venue.
2. An appropriate room, to be agreed in writing with Sefton Council, shall be set aside to provide a changing and rest area for entertainers. Arrangements shall be made to ensure that there is restricted access to this room which shall be maintained at all times whilst the licensable activities are taking place and until such time as all performers using the dressing room have finished.
3. No person under the age of 18 years of age shall be admitted to or allowed on the premises whilst licensable activities are taking place.
4. No lewd or indecent conduct or conduct likely to cause a breach of the peace shall be permitted on the premises.
5. Door Supervisors, registered in accordance with the Security Industry Authority, shall be on duty at all times when licensable activities are taking place.
6. The Licence Holder shall provide at least one female Door Supervisor during the same period.
7. Patrolling attendants, registered as Door Supervisors, shall continually monitor all entrances/exits/toilets.
8. Performers shall be aged not less than 18 years.
9. Only the performers shall provide the entertainment, no audience participation shall be permitted.
10. During any lap dancing performance, performers may not:
 - a) touch customers in any way;
 - b) approach closer than 30cms (12") from any part of a patron;
 - c) part their legs;
 - d) climb onto furniture provided for patrons; or,
 - e) simulate sex acts.
11. No performance shall involve the use of sex articles (as defined in the Local Government (Miscellaneous Provisions) Act 1982).
12. Any person who can be observed from the outside of the premises must be properly and decently dressed. Scantily clad individuals shall not exhibit in the entranceway or in the area surrounding the premises.

13. The Licence Holder shall not display outside the premises, or on any advertising material, photographs or other images which indicate and suggest that striptease or similar dancing takes place on the premises and which may be offensive.
14. CCTV shall be provided in the form of a recordable system, capable of providing pictures of evidential quality in all lighting conditions particularly facial recognition.
15. CCTV cameras shall encompass all ingress and egress to the premises and all areas where the licensable activity occurs.
16. CCTV equipment shall be maintained in good working order and recordings kept in date order, numbered sequentially and kept for a period of 31 days and handed to Police on request.
17. The CCTV recording equipment and tapes/discs shall be kept in a secure environment under the control of the Licence Holder or other responsible named individual.
18. Appropriate signage representative in respect of the use of CCTV at the premises shall be displayed in conspicuous positions.