

2 Background

- 2.1 The legislation requires that no person shall, in any area in which the sex establishment licensing provisions have been adopted, use any premises, vehicle, vessel or stall as a sex establishment except under and in accordance with the terms of a licence granted by the appropriate local authority. A 'sex establishment' is a sex shop, a sex cinema or a sexual entertainment venue. This report concerns an application for a licence to use premises as a sexual entertainment venue. A 'sexual entertainment venue' is defined by legislation as "any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer".
- 2.2 The meaning of 'relevant entertainment' is "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.
- 2.3 It is important to note that although the definition of relevant entertainment makes reference to a 'live display of nudity', 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.
- 2.4 Whilst each case should be judged on its own merits, it is 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; and live sex shows. This list is not exhaustive and, as the understanding of the exact nature of these descriptions may vary, should only be treated as indicative. Ultimately, decisions to licence premises as sexual entertainment venues shall depend on the nature of the content of the entertainment provided and not the name it is given.
- 2.5 Applicants are required to display a public notice at the premises and in addition, publish a notice in a local newspaper advising that an application has been submitted and inviting written objections. The Licensing Manager can confirm that both of these requirements have been met by the applicant. Only objections received within 28 days of the date of the notice may be considered by the Council. The names and addresses of objectors must be kept confidential unless the objectors indicate otherwise. Three objections have been received from residents which appear in Annex 3 to this report. It is the view of officers that none of these objections cite grounds which would justify refusal of the Licence. A further objection from the Council's Environmental Protection Team is discussed in more detail in paragraph 3.1 below.

3 Consultations/Communications

- 3.1 The Police, Head of Housing and Environmental Health (Environmental Health Manager) and local ward members have been consulted on this application.
- 3.2 No objection has been raised by the Police who proposed a number of conditions requiring the provision of CCTV and door staff which the applicant has agreed to.
- 3.3 The Head of Housing and Environmental Health (Environmental Protection Team) has raised an objection to the SEV Licence. They have some concerns about the potential noise impact on occupants of the three flats above the premises, Flats 45a, b & c London Street. The premises have been found in the past to be not well sound-proofed and consequently there is a risk of noise transmission associated with accompanying music, raised voices and other boisterous behaviour that might be expected with such entertainment. The Team is further concerned that the proposed trading hours appear to conflict directly with those permitted in according with the Premises Licence under the Licensing Act 2003. This followed a review of the licence on 10 June 2011 whereby two new conditions were attached (see Annex 4). These restrict all licensable activities after 2300 hours on the days intended for the Sexual Entertainment Venue Licence whilst any of the flats above are occupied or until such time as a scheme of noise insulation measures are agreed by the Environmental Health Manager. Having spoken to a representative of the owner of the flats, it is understood that the three flats are currently occupied by tenants. Also, the applicant has stated that the flats above are occupied albeit by tenants who accept that they may suffer some degree of noise nuisance. In addition, there has been no scheme of noise insulation measures agreed with the Environmental Health Manager. Therefore, it appears that by operating until 0200 hours the applicant would be in breach of the Premises Licence if any licensable activities were to take place at the same time as the activities requiring the Sexual Entertainment Venue Licence. Even if no licensable activities were to take place in breach of the licence, the reasons for the restrictions being made at the 10 June 2011 licensing review remain valid. This is the case because the premises were observed to be poor at containing not only music noise but also noise from customers within the premises due to raised voices etc. The Environmental Protection Team asked questions of the applicant in respect of this matter and the answers appear in Annex 5 to this report. The Team was pleased to note that it is the applicant's intention to hold the SEV activities only in the basement, and not the ground floor. In the absence of an approved noise insulation scheme and occupation of the flats above, the separation gap between the basement and the occupied flats is a helpful safeguard against noise associated with the SEV activities. If the licence application is granted, the Team recommends a condition restricting the SEV activities to the basement only. However, the Team is concerned that there seems to be an admission that the applicant has not been operating in accordance with the

additional conditions that were attached to the existing Premises Licence (under Licensing Act 2003) following the review on 10 June 2011 and that the applicant does not intend to do so in the future either. In other words, it appears to them that the applicant is effectively seeking the endorsement of the Council to operate outside of the Premises Licence conditions currently in force. On the basis that the inconsistency with the Premises Licence ought to be resolved before the current SEV application is approved, the Team objects to the application.

4 Options

- 4.1 The Council has limited grounds upon which it can refuse a licence. An application can be refused if the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason. Alternatively, it can be refused if the licence were to be granted to a business which 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. Neither of these statements is relevant in the case of the application before the Committee. An application could also be refused if “the number of sex establishments in the relevant locality at the time the application is made is equal to or exceeds the number which the authority consider appropriate for that locality”. The Committee has not decided to set such a limit.
- 4.1.1 The only other grounds for refusal and one which is relevant to this application is 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 in respect of which the application is made.
- 4.1.2 The “relevant locality” is defined in the Act as meaning, in relation to the premises, the locality in which it is situated. If any objections are received, in assessing the application the Committee should consider these in the light of the statutory grounds for refusal mentioned above. In doing so, Members may call on their own views in reaching a decision as to what is appropriate in any particular location. The Committee, in determining the application, should consider each of these issues and determine whether grant or refusal is appropriate and, if so, why. However, it would be unlawful to refuse the application merely because the Committee consider sex establishments are immoral or should not be permitted and inconsistency with a Premises Licence is not a ground for refusing a SEV Licence.

- 4.1.3 It is suggested therefore that Members consider the matters outlined in paragraph 4.1.1 above and detailed below. If Members decide that a licence should not be granted, they must provide details of how the “relevant locality” was chosen, how its character was identified and why that character was thought to make the licensing of a sexual entertainment venue inappropriate.
- 4.2 In determining what is appropriate, it is normal to consider what other premises are in the vicinity of the proposed premises. The Committee may recall that at its meeting held on 17 November 2010 it decided to adopt the policy set out as Annex 1 attached to this report to be used in deciding whether or not a licence should be granted.
- 4.3 The policy states that “Test Valley Borough Council will treat each case on its own merits but is unlikely to approve applications for a Sexual Entertainment Venue in areas that are predominantly residential or close to ‘sensitive premises’ such as schools, places of religious worship or places of education and learning”. This list should not be regarded as definitive and is provided to assist the Committee in determining the application. As an example, if there were a school or church in London Street or part of any immediately adjacent street within the vicinity of the premises then it is generally accepted that this would provide the Council with sufficient grounds for refusing the application.
- 4.4 An analysis of properties within the immediate vicinity of The Piston Broke has not revealed any properties that might be of particular relevance in determining the application apart from the residential flats above the premises which are the basis of the objection from the Environmental Protection Team. It is also appropriate to mention that the application seeks a licence from 2100 hours onwards when the majority of commercial and other premises in the locality will be closed.
- 4.5 It is suggested that the Committee approach the determination of this application in four steps. Firstly, the Committee should identify an area of reasonably consistent character within which The Piston Broke falls, and consider the application on its own merits. Secondly, the Committee should consider whether the grant of a licence to the applicants for this use of the premises would be inappropriate given the character of the area. Thirdly, the Committee should identify any potential sensitive use of premises near to The Piston Broke (having regard to the comments in paragraph 4.3 above), and consider whether the nature of that use and the proposed use of The Piston Broke is such that the premises are too close. In considering this matter the Committee will need to take account of the objection from the Environmental Protection Team in terms of the residential flats and fourthly consider the layout, character or condition of the premises in respect of which the application is made having regard to the Environmental Protection Team comments about noise insulation. Members should also consider that whilst this is a new application, the premises has used the exemption available under the legislation to provide sexual entertainment on 11 occasions within the last 12 months without the need for a SEV Licence and has done so without incident.

- 4.6 The Committee should be aware that if a licence is granted, the conditions adopted by the Council attached as Annex 2 to this report would apply to the licence save that the Council can where appropriate exclude or amend any of the conditions. It may, if appropriate, attach special conditions to the licence to address a specific issue with the premises. In this respect, the Committee's attention is drawn to the comments in paragraph 3.4 above where the Environmental Protection Team recommends a condition restricting activity to the basement of the premises.

5 Option Appraisal

- 5.1 The options are either to grant a licence or not grant. If the latter, the Council runs the risk that the applicants may appeal by way of judicial review with the risk of the Council losing the appeal (with costs). If the licence is granted, there is a minimal risk that nuisance is caused by the (continued) use of the premises and the amenity of any local residents or businesses may suffer. The imposition of conditions will reduce the likelihood of nuisance being caused and if it does occur, the Council could take this into consideration when an application to renew the licence is submitted.

6 Resource Implications

- 6.1 There are no resource implications as a result of this report. The Committee may wish to note that the application attracts a fee of £1,460.

7 Legal Implications

- 7.1 If an application is refused on the grounds of the unsuitability of the applicant then the applicant may appeal the decision in a magistrate's court. If the application is refused on the basis of a numerical limit or for the reasons set out in paragraph 4.1.1 above then the applicant can only challenge the refusal by way of a judicial review.

8 Equality Issues

- 8.1 An Equalities Impact Assessment is not needed because the issues covered have previously been considered by this Committee and the decision to grant a licence does not constitute a change in policy.

9 Other Issues

- 9.1 Community Safety – none specific other than that mentioned in paragraph 3.1 above.
- 9.2 Environmental Health/Sustainability Issues – none specific.
- 9.3 Property Issues – none.
- 9.4 Wards/Communities Affected – (Andover) St. Mary's.

10 Conclusion

- 10.1 The application has attracted three objections from residents but these do not cite grounds which can be considered valid in deciding whether or not a licence should be granted. The Committee must therefore determine the application taking into account the objection from the Environmental Protection Team as it relates to the layout, character or condition of the premises and the location of the premises in relation to other premises in the immediate area particularly the residential flats immediately above the proposed premises. It should be noted that the Council would be able to exercise control over the premises if a licence were granted by attaching conditions to the licence. It should also be noted that a licence, if granted, would be for a period of 12 months and would then have to be renewed. Upon application for renewal the Committee would be able to take account of the impact of the premises upon the neighbouring area.

<u>Background Papers (Local Government Act 1972 Section 100D)</u>			
Report to Licensing Committee 17 November 2010 and all associated paperwork.			
<u>Confidentiality</u>			
It is considered that this report does not contain exempt information within the meaning of Schedule 12A of the Local Government Act 1972, as amended, and can be made public.			
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