

## **ITEM 9            Sexual Entertainment Venue Licence – The Piston Broke, 43 London Street, Andover**

Report of the Head of Legal and Democratic (Portfolio: Corporate)

### **Recommended that:**

- 1.     The Committee approve the application for a Sexual Entertainment Venue Licence in respect of premises at The Piston Broke, London Street, Andover.**
- 2.     The Head of Administration issue a licence for a period of 12 months with the conditions as detailed in Annex 2 attached to this report subject to any amended conditions the Committee considers appropriate.**

### **SUMMARY:**

- An application for a Sexual Entertainment Venue Licence has been received in respect of premises known as The Piston Broke, London Street, Andover.
- As the Head of Administration does not have the necessary delegated powers, the application must be determined by the Licensing Committee.

## **1     Introduction**

- 1.1    An application has been received from TJJ Promotions Limited for a Sexual Entertainment Venue (SEV) Licence in respect of The Piston Broke bar, 43 London Street, Andover. These premises are currently the licensed Sexual Entertainment Venue within the Borough. The Council adopted with effect from 1<sup>st</sup> April 2011 an amendment to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 which means that the existing legislation used to license a Sex Shop or Sex Cinema was extended to also include Sexual Entertainment Venues. There is no delegated power for applications to be determined by officers so the matter must come before this Committee for determination.

## **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 license 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. No objections have been received.

### **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 with no objections received.

### **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.
- 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 some residential flats above the premises. 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. Members should also consider that whilst this is a renewal of the existing licence and thus unless a material change has occurred regarding the area, the premises or other premises within the area, refusal of the application could be deemed appropriate.
- 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.

## **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 £1460.

## **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 no objections. The Committee must therefore determine the application taking into account 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.

### Background Papers (Local Government Act 1972 Section 100D)

Report to Licensing Committee 17 November 2010 and all associated paperwork  
Report to Licensing Committee 20 September 2012

### Confidentiality

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.

No of Annexes:	Two
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