



NORTHAMPTON
B O R O U G H C O U N C I L

Name of Committee:	LICENSING
Meeting Date:	1 March 2011
Directorate:	Public Protection
Corporate Manager:	Steve Elsey
Agenda Status:	Public part of Agenda

Report Title	Application for Sexual Entertainment Venue Licence – Urban Tiger, Wellingborough Road Northampton.
---------------------	--

1. Recommendations

That the Committee consider and determine the application.

2. Summary

On 25 May 2010 the Council passed a resolution as authorised under Section 2 of the Local Government (Miscellaneous Provisions) Act 1982, to adopt Schedule 3 (as amended by Section 27 of the Police and Crime Act 2009) of the Local Government (Miscellaneous Provisions) Act 1982.

The said Act came into force on 1 July 2010 and the resolution took effect on that date.

When dealing with an application for a sex establishment licence, the members of the committee are not acting as the licensing committee under the 2003 Act and are instead exercising their functions under Schedule 3.

The Council also amended the existing 'Sex Establishment' Policy, agreed by the Licensing Committee at its meeting on 28 May 1998, to include the words 'Sex Entertainment Venues' and to place a restriction on both location and numbers in the following terms: -

"That the appropriate number of Sex Establishments and Sex Entertainment Venues in the Borough of Northampton be restricted to the following localities:

- a) The area bounded by and including the Wellingborough Road, Kettering Road and Abington Avenue be limited to three.

The area of Regent Square be restricted to a single “Sex Establishment”.

The Policing and Crime Act 2009 was introduced to give local communities a stronger say over the establishment and location of lap dancing clubs and similar establishments in their area, and Local Authorities more power to reject applications for lap dancing clubs or impose conditions on the Licences. It brought the licensing of lap dancing clubs in line with other sex establishments such as sex shops and sex cinemas. This change in legislation is aimed at recognising that local people do have legitimate concerns about where lap dancing clubs are located.

Lap dancing premises were regulated under the Licensing Act 2003 (“the 2003 Act”) and required a Premises Licence under Section 1 of the 2003 Act. There were no special provisions made within the 2003 Act for lap dancing clubs and so applications were submitted in the same way as a pub or restaurant. If an application was submitted to the Licensing Authority for a Premises Licence the only mandatory conditions that applied related to the sale of alcohol. It was only if relevant representations were made by an interested party that the Authority could, following a hearing, impose other conditions or reject the application. Even then it was only be able to do so where such a step was necessary to promote one of the four licensing objectives as set out in the 2003 Act – (prevention crime and disorder, public safety, prevention of public nuisance and the protection of children from harm).

The powers that were available to Local Authorities to control the establishment of lap dancing premises or impose conditions on their licences were therefore very limited. Following a DCMS consultation with Local Authorities the majority of those that responded felt that the powers at that time to regulate lap-dancing clubs were inadequate and wanted the Government to intervene.

It had also been documented in the media that under the existing law there had been an increase in the number of lap dancing venues and many communities felt powerless to object to the opening of a new lap-dancing club in their area.

From April 2010 Lap dancing venues have been regulated under the Local Government (Miscellaneous Provisions) Act 1982 (the “1982 Act”). It was up to each Local Authority to decide whether the provisions of the 1982 Act should apply to their area, so it is possible that the new legislation will not necessarily apply all over England and Wales. However, this Local Authority resolved to adopt Schedule 3, as amended, and is able to impose a wider variety of conditions on lap dancing clubs e.g. relating to opening hours, advertisements and the visibility of the interior to passers by.

This Local Authority is also able to refuse to grant or renew a Licence on the grounds that such a club would be inappropriate having regard to the character of the area, the use of other premises in the area (e.g. local schools) and can also have regard to the number of similar premises in the area, if the application is equal to or exceeds the number the Authority considers appropriate. The Council has been able to dictate the appropriate number of Sex Establishment premises within the area it has designated as an appropriate area.

Similarly, local residents are able to make written representations to the Local Authorities on these grounds, rather than being limited to make representations based

on the four licensing objectives found in the Licensing Act 2003.

For the purposes of this duty 'local people' are defined as anyone who lives or works in the local authority area.

Under the new legislation, lap-dancing clubs are classified as "sexual entertainment venues and the legislation allows Local Authorities to decide what, in its opinion, should be included as relevant entertainment.

With the new legislation, there are no "grandfather rights" for existing clubs. If they wish to continue trading they need to apply for a Licence under the new regime. A transitional period of 12 months was given to existing clubs to apply for a new Licence. Premises, which fail to apply for a new Licence within this period, face closure.

Existing clubs or those wishing to operate new lap dancing premises needed to make an application for a new licence to the Local Authority and are required to give public notice of the application in a local newspaper and at the premises. Any persons wishing to object to the application must give written notice within a statutory 28-day consultation period stating the general grounds of their objection. Any contested application will be considered before the Authority's appropriate committee or sub-committee.

Objections (Home Office Guidance).

When considering an application for the grant, renewal or transfer of a licence the appropriate authority should have regard to any observations submitted to it by the chief officer of police and any objections that they have received from anyone else within 28 days of the application. Any person can object to an application but the objection should be relevant to the grounds set out in paragraph 12 of Schedule 3 for refusing a licence. Objections should not be based on moral grounds or values and local authorities should not consider objections that are not relevant to the grounds set out in paragraph 12.

The committee must also be wary of objectors' motives behind the objection and that there is no element of a 'vendetta' against the applicant or venue.

Paragraph 12 of Schedule 3 sets out the grounds for refusing an application for the grant, renewal or transfer of a licence.

A licence must not be granted:

- (a) to a person under the age of 18;
- (b) to a person who is for the time being disqualified due to the person having had a previous licence revoked in the area of the appropriate authority within the last 12 months;
- (c) to a person, other than a body corporate, who is not resident in an EEA State or was not so resident throughout the period of six months immediately preceding the date when the application was made; or

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

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

A licence may be refused where:

(a) the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason;

(b) if the licence were to be granted, renewed or transferred the business to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant, renewal or transfer of such a licence if he made the application himself;

(c) the number of sex establishments, or of sex establishments of a particular kind, in the relevant locality at the time the application is determined is equal to or exceeds the number which the authority consider is appropriate for that locality; or

(d) that the grant or renewal of the licence would be inappropriate, having regard;

(i) to the character of the relevant locality;

(ii) to the use to which any premises in the vicinity are put; or

(iii) to the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.

A decision to refuse a licence must be relevant to one or more of the above grounds.

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.

The Provision of Services Regulations 2009 amended Schedule 3 to the 1982 Act to state that, if having considered an application for the grant, renewal or transfer of a licence, the appropriate authority decides to refuse it on one or more of the above grounds, it must provide the applicant with reasons for the decision in writing.

3. Procedures

On 14 December 2010, an application for a Sex Entertainment Venue Licence was received in respect of Urban Tiger Wellingborough Road Northampton. The applicant is Urban Crowd Limited, Barratts Club, Kingsthorpe Road, Northampton.

The premises have a current Premises Licence and have been trading as a similar venue since 2003. During that time the Council has received one complaint with regard

to advertising on the exterior of the building. This was resolved, the advertisement was removed.

The obligatory notice appeared in a local newspaper and notices were displayed on the premises and were in order

Northamptonshire Police has no comment to make with regard to the application nor do they have any objection to the application.

A total of 78 objections have been received and are deemed to be valid, some are residents in Northampton, persons as far afield as San Francisco, Belgium, Northumberland, Preston, Sheffield, Bristol, Hampshire, Somerset, and Coventry. Others have responded by email and have not included their home address with the objection. A petition containing 19 signatures was also received. 24 objections did not contain a contact address.

Due to the generic nature of the majority of objections, most have a common theme, it has been asked that a speaker or speakers be nominated to put those objections to the committee, this to avoid repetition.

The applicant represented by Julia Palmer, Solicitor will be given the opportunity to make the application.

This will be then be followed by any questions, led by the chair, that the committee may wish to ask the applicant.

The Chair may then invite other interested parties to ask questions.

Objectors will then be given the opportunity to make their objections in person to the Committee.

The committee are aware of the nature of all objections received.

This will again be followed by any questions, led by the chair, that the committee may wish to ask the objectors.

The applicant's representative may also ask questions of the objectors.

Each party will be given a period of time, to be decided by the Chair, in which to present their case and may be given permission by the Chair to question any other party.

There will then be a summing up by the objector and the applicant before the committee make their decision.

3A. Any Relevant Policies

Local Government (Miscellaneous Provisions) Act 1982.

Policing and Crime Act 2009.

Sex Shop Licence Conditions.

The Council Policy on Sex Establishments. (As amended 25 May 2010).

4. Options and Evaluation of Options

That the Committee consider the application.

5. Resource Implications (including Financial Implications)

Licensing Officers will enforce any conditions that may be imposed by the Committee.

6. Consultees (Internal and External)

Internal	Legal
External	Home Office. Sexual Entertainment Venues (Guidance for England and Wales.)

7. Compliance Issues

Finance Comments

Relevant fees will be collected.

Legal Comments

"Any objections received for this application must fall within Paragraph 12 Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 and the members of the committee must steer away from any moral considerations raised by any objector(s).

The committee ought to have due regard to the European Convention of Human Rights Act Article 1 Protocol 1 (peaceful enjoyment of possessions) and Article 10 (freedom of expression)"

Crime and Disorder Issues

N/A

Equality Impact Assessments

The Equality Act 2010 provides a new cross-cutting legislative framework to protect the rights of individuals and advance equality of opportunity for all; to update, simplify and strengthen the previous legislation; and to deliver a simple, modern and accessible framework of discrimination law which protects individuals from unfair treatment and promotes a fair and more equal society.

In implementing the Licensing of Sex Entertainment Venues, associated legislation and guidance, this Licensing Authority is committed to ensuring that the obligations and duties within this legislation are met.

Human Rights Act Implication

Local Authorities must take into account any rights the existing operator may have under Article 1, Protocol 1 of the European Convention of Human Rights,(which entitles every person to the peaceful enjoyment of their possessions) and Article 10 (freedom of expression).

Other compliance issues: None

8. Background Papers

Home Office	Policing and Crime Bill	
Sex Entertainment Venue	Supplementary Guidance	30/11/09 12/02/10

Name	Signature	Date	Ext.
Author	Mr P Bayliss	3/2/11	7099
Corporate Manager	Steve Eley		
Director	Julie Seddon		