

BRISTOL CITY COUNCIL
LICENSING (HEARINGS) SUB- COMMITTEE
24 APRIL 2017

LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982
APPLICATION FOR THE RENEWAL AND VARIATION OF A SEXUAL ENTERTAINMENT VENUE
LICENCE MADE BY SELECT MONEY TREE LIMITED IN RESPECT OF PREMISES TRADING AS JACK
OF DIAMONDS, 46 WEST STREET, BRISTOL, BS2 0BH.

Report of the Director of Neighbourhoods and City Development

Purpose of Report

1. To seek consideration of an application for the renewal and variation of the Sexual Entertainment Venue (SEV) licence in respect of premises trading as Jack of Diamonds, 46 West Street, Bristol, BS2 0BH.

Background

2. The Council has adopted the Local Government (Miscellaneous Provisions) Act 1982, as amended, therefore, subject to limited exceptions and exemptions, or in the absence of a waiver, premises offering relevant entertainment require a SEV licence to operate in the City of Bristol.
3. There is a presumption in the legislation that applications for a licence will be granted unless there is a statutory ground for refusal. Some refusal grounds require the Council to refuse an application (mandatory grounds for refusal) and some grounds enable the Council to refuse an application but do not require the Council to refuse (discretionary grounds for refusal).
4. Where a licence is granted any standard conditions in regulations made by the Council will automatically be imposed unless expressly excluded or varied by the Council. The Council, through this committee, has made regulations and has also adopted policy to facilitate consideration of applications. Guidance is provided to the committee in subsequent paragraphs of this report.
5. The applicant states that relevant entertainment is to be mainly provided by way of:

- 1 Pole dancing on stage (to include topless striptease every 10-20 minutes).*
- 2 Table dancing to include topless striptease in performing area and at tables.*
- 3 Full nude striptease to be performed in private/performing area..”*

The proposed relevant entertainment to include live performance, live displays of nudity, male exposure of the pubic area, genitals and anus, female exposure of nipples, pubic area, genitals and anus. A copy of the previous SEV licence is attached for member’s information at Appendix A.

6. The proposed variation seeks the following:

“To permit the playing of topless pool and to permit the use of topless bar staff

To vary the conditions relating to door supervisors and decrease the number required at any time.”

The applicant has requested that the current condition 2.3 (i) be replaced with the following:

“There shall be an SIA registered door person on duty from 2100 hours. There shall be two registered door staff in attendance from 2300 until close and at any other time when performance of dance is taking place.

Subject to meeting the minimum required number, the number of managers and door supervisors employed at the premises shall be based on a suitable and documented risk assessment.”

7. A copy of the location map is attached as Appendix B. A copy of the plan of the premises layout is attached as Appendix C.
8. A copy of the logo that is displayed on the premises is attached as Appendix D. Copies of the house rules and code of conduct for dancers are attached as Appendices E and F respectively. Some additional information from the applicant is at Appendix G which details in full the variation sought.
9. Observations and objections
10. In considering this application the Council must have regard to any observations submitted to them by the Chief Officer of Police and any objections of which notice has been sent to them under paragraph 15 of the adopted legislation. Paragraph 15 provides that:

“Any person objecting to an application for the grant, renewal or transfer of a licence under this Schedule shall give notice in writing of his objection to the appropriate authority stating in general terms the grounds of the objection, not later than 28 days after the date of the application.”

11. The application was made on the 2 November 2016 and a public consultation period of 28 days has been allowed. The application was advertised via the Council’s website, at the premises and in a locally circulating newspaper. The last date for objections was 30 November 2016. No objections were received within this period.

12. Late Objections

It used to be thought that the legal position was that objections could not be received and considered after the statutory deadline in consultation, but case law has now clarified the position that there is discretion to take late objections into account. A late objector cannot require that their objection be taken into account however they do acquire the anonymity that objections properly made would receive. If any late objections were to come forward a copy would be provided to the applicant so that they would be able to make representations regarding whether or not the sub-committee should exercise its discretion to consider them.

No objections have been received outside of this period.

13. Observations of the Licensing Enforcement Team

Since the last grant of the licence, the conduct of the licence has been as follows. Licensing Enforcement officers visited the premises in conjunction with Avon and Somerset Constabulary on 21 October 2016.

A number of issues were identified in respect of compliance with the premises licence issued under Licensing Act 2003.

Annex 3, condition 2 states:

Subject to meeting the minimum required number, the number of managers and door supervisors deployed at the premises shall be based on a suitable and documented risk assessment.

The risk assessment required under this condition could not be produced.

Annex 3, condition 75e) states:

A member of staff technically able to operate the CCTV system shall be available during all licensable hours and shall comply with any reasonable request of an authorised officer of the Licensing Authority or the Police to view any CCTV 'footage' that has been recorded. The premises licence holder shall ensure that a member of staff shall be technically able to reproduce CCTV images into a removable format and that such format shall be produced within 24 hours following any request from an authorised officer of the Licensing Authority or the Police.

Mr Dulmeer, the manager on the evening, was not able to operate the CCTV system.

A number of issues were identified in respect of compliance with the licence issued under the Local Government (Miscellaneous Provisions) Act 1982 to permit relevant entertainment.

Annex 1, Condition H states:

H. No person shall be employed or shall perform at the premises who has unspent convictions for any Relevant Offence;

Annex 1, Condition T states:

T. (i) Performers may perform only in accordance with written contracts, which define their rights and obligations, including terms as to the nature of their performance and payment. No deduction shall be made from such payment unless permitted by the contract, and no deduction by way of penalty shall be permitted;

(ii) No relevant entertainment shall be provided by any performer unless sufficient checks have been made of documents evidencing the performer's age, identity and right to work in the United Kingdom;

(iii) Copies of all documents referred to in (i) and (ii) above shall be retained for not less than 12 months after the last provision of Relevant Entertainment by the said Performer and shall be produced to an authorised officer of the Council or a Constable upon request at any reasonable time.

Officers were concerned that the above conditions were not being complied with, specifically in respect of the maintenance of documentation relating to performers at the premises who were on duty, detailing their age, identity, right to work in the UK checks and checks regarding unspent convictions.

Condition 2.6 states:

2.6 The premises licence holder shall ensure that the Digi lock code, which permits access

to the staff area be changed immediately and the code be kept secure and in particular not be accessible to customers or other persons not permitted access. In the event of the code being disclosed or any suspicion that the code has been disclosed to a party not authorised to possess it, the code shall be changed immediately.

Upon checking this area of the premises officers found the door to the performers changing room was open and unlocked. The digi lock on the door was not in use. This presents a security issue for the performers, as any person could have gained access to the changing area, or office area.

Licensing Enforcement officers conducted a further visit to the premises in conjunction with Avon and Somerset Constabulary on 25 February 2017.

It appeared from this visit that the management had taken steps to address the issues highlighted on the previous visit, namely that the digi lock was being employed on the door to the changing area, Mr Dulmeer was able to use and operate the CCTV system, and an updated disclaimer form for staff had been implemented. However, whilst undertaking checks on this visit officers identified further issues.

Condition 2.3 states:

2.3 (i) Any times relevant entertainment is authorised to take place there shall be minimum of three door supervisors in attendance excluding the Manager. The door supervisor on the First Floor shall not be engaged in other duties.

At the time of the visit it appeared that only two door supervisors were present on the premises, in breach of the above condition. The manager, Mr Dulmeer, advised officers that there were in fact three door supervisors but that one had lost his Security Industry Authority (SIA) identification card. Officers spoke with the individual identified as the third door supervisor, and made further checks upon returning to the office. It was established that he was not registered with the SIA, and his role that evening was as a barman.

Annex 3, condition 43 of the premises licence issued under Licensing Act 2003 states:

43 The striptease entertainment shall be given only by the performers and no audience participation will be permitted.

Annex 3, condition 48 of the premises licence states:

48 There shall be no physical contact between customer and the performer before, during or after the performance other than the placing of notes by the customer in a garter worn by the performer for that purpose.

Officers performed a check of the CCTV at the time of the visit, at which time they became aware of an event taking place live on the stage. Officers witnessed a male customer sat on a chair on the stage, surrounded by three female performers. He was being hit around the neck with his belt, and having ice cubes put down his underwear. One of the performers was lying across his lap.

Recordings were requested of the CCTV for this time period, of the stage specifically, and additional CCTV of the other areas of the premises including the booths, to check for further compliance. Upon viewing the CCTV officers determined that no other dances recorded during this time breached any conditions regarding contact between performer and customer.

Further examination of the CCTV footage revealed that two performers were smoking inside of the corroder, next to the fire exit. This is an offence under the Health Act 2006.

Additionally during the visit officers noted that the shower facility in the dancers changing room was dirty, and the tray did not appear to have been cleaned for some time. Officers tried to operate the shower, but it did not work, and appeared to have been inoperable for some time.

Officers feel that the management at the premises show a continued disregard in respect of compliance with both the premises licences in force for these premises, and consistently fail to manage the premises in accordance with the conditions.

Officers are particularly concerned at the apparent attempt to cover up non-compliance by using a barman as a substitute for a third doorman, and providing officers with false information regarding the registration of the barman with the SIA. Additionally officers are concerned that the facilities for performers were on one visit unsecured, and that the shower facilities were unclean, showing little consideration for the welfare of the performers at the premises.

Officers advise that members should give strong consideration to the views of the Police and Licensing Enforcement officers in respect of the visits to this premises, and renewal and variation of the licence.

14. Observations of the Chief Officer of Police.

The Chief Officer of Police's representative has made comments on this application which are attached at Appendix H.

15. Equalities Impact Assessment

(a) Before making a decision, section 149 of the Equality Act 2010 requires that each decision-maker considers the need to promote equality for persons with the following "protected characteristics": age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation. Each decision-maker must, therefore, have due regard to the need to:

- i) Eliminate discrimination, harassment, victimisation and any other conduct prohibited under the Equality Act 2010.
- ii) Advance equality of opportunity between persons who share a relevant protected characteristic and those do not share it. This involves having due regard, in particular, to the need to:
 - remove or minimise disadvantage suffered by persons who share a relevant protected characteristic.
 - take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of people who do not share it (in relation to disabled people, this includes, in particular, steps to take account of disabled persons' disabilities);
 - encourage persons who share a protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

iii) Foster good relations between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to tackle prejudice and promote understanding.

(b) This duty places an obligation on the Licensing Committee to ensure that the need to promote equality is taken into consideration with regard to every aspect of its decision making. This will include the circumstances of each individual application, the findings of fact once the application has been considered, including the taking into account of any objections and any response the applicant may choose to make.

(c) The following paragraphs identify issues that may be considered relevant to the determination of the application. It is not intended to be an exhaustive list but aims to highlight issues that are anticipated to arise in applications for SEV licences, although it should be born in mind that each application must be considered on its own merits.

(d) Suitability of the applicant

The SEV Policy sets out a number of discretionary grounds under which a licence can be refused. The application process requires details of any convictions held by the applicant to be made known to the Licensing authority. This requirement is particularly relevant as it is imperative that the licence holder is a suitable person to hold such a licence. Should any SEV licence be granted a set of robust conditions will cover all aspects of the operation, including the protection of workers providing any activity allowed under the licence. In addition to convictions it is equally important to consider whether the applicant has committed any relevant offences, for example breaches of any conditions on licences held under similar regulatory regimes. The applicant's experience is also an important factor as the committee needs to be satisfied of the person's ability to ensure the safety and wellbeing of performers, employees and members of the public. The committee also need to be confident of the applicant's ability to understand and adhere to any conditions imposed should any licence be granted.

(e) Character of the locality

This venue is located on West Street in the area of the city known as Old Market. Members should consider, on the basis of the application before them, whether this is remains a suitable operation at this particular location. Factors to take into consideration could include the impact of the proposal on persons with protected characteristics who may be in the vicinity of the premises bearing in mind the high footfall at this location.

(f) The Premises

Members will have had the opportunity to visit the premises and view plans of the layout. The type of operation undertaken at the premises can reasonably be described as a lap dancing club and it would not be unreasonable to assume that the performers at the premises will generally be women. Members are therefore required to have due regard to the duties described above. In particular members should be satisfied that the layout of the premises provides a high level of safety for performers. Consideration should be given to CCTV coverage of the premises

including the quality of the images and the monitoring arrangements. Of equal importance is the external appearance of the premises. Members need to be satisfied that any frontages are appropriate and do not undermine the duty to foster good relations between persons who share a relevant characteristic and those who do not.

16. Mandatory Grounds of Refusal

A licence shall not be granted:

- (a) to a person under the age of 18; or
- (b) to a person who is disqualified by reason of prior revocation of a licence;
- (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 4 July 2011;
- (d) to a body corporate which is not incorporated in an EEA state, or
- (e) to a person who had, 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.

17. These are mandatory refusal grounds. Having considered the information provided through the application process your officers advise that none of these grounds appear to apply in this case. Members should therefore focus their considerations on whether any of the discretionary grounds for refusal arise in respect of this application. These are dealt with in turn in the following paragraphs.

18. Discretionary Grounds of Refusal, paragraph 12(2)(a):

The Council may refuse the grant of a licence on one or more of four statutory grounds which are referred to in the following paragraphs:

Grounds a) and b):

- (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 was to be granted 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 of such a licence if he made the application himself.

19. The Council's policy identifies a number of factors that the Council may take into account in considering the suitability of such persons, these are set out on page 6 of the policy under the heading 'Discretionary grounds a) and b)' as follows:

In considering the suitability of those persons referred to in (a) and (b) above the factors the Council may take into account include:

- relevant experience;
- relevant criminal convictions;
- whether the person has committed relevant offences;
- relevant observations or findings by public authorities, including licensing authorities, in connection with the conduct of the person or their ability to manage and control premises;
- relevant findings by courts and tribunals in connection with the treatment of protected groups (within the meaning of the Equalities Act 2010)
- information germane to the person's ability to, among other things:
 - ensure the safety and wellbeing of performers;
 - ensure the proper protection of the public;

- ensure the suitability of employees, performers and others using the venue;
- prevent performance by or for those who may thereby be harmed, including minors;
- understand and adhere to conditions imposed on any licence granted and ensure they are observed by others on the premises;
- engage constructively with the Council and other relevant regulators

20. The application process requires applicants to provide comprehensive information about any convictions and a range of other information that may be relevant to consideration of grounds A and B. In regard to this applicant there is no evidence of convictions deemed to be unspent under the Rehabilitation Of Offenders Act, cautions, discrimination cases or pending allegations at the date the application was made that would cast any doubt on the suitability of the applicant to hold the licence by reason of having been convicted of an offence or for any other reason.

21. Ground c)

That the number of sex establishments, or sex establishments of a particular kind, in the relevant locality at the time of the application is determined is equal to or exceeds the number which the authority considers is appropriate for that locality.

22. The Licensing Committee has previously found that the relevant locality for the purpose of the Jack of Diamonds premises is the Old Market locality. The full Licensing Committee has adopted policy on behalf of the Council for the Old Market locality under which the appropriate number of sex establishments, or of sex establishments of a particular kind, for the Old Market locality, is:

- Sex shops – 2
- Sex cinemas – 0
- Sexual entertainment venues (SEV) – 1

There is currently one licensed SEV in the Old Market locality of which this is the renewal and variation application. Therefore if the sub-committee follows the Councils policy this ground for refusal would not arise.

23. Ground d)

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, vehicle, vessel or stall in respect of which the application is made.

24. Ground d)(i)

That the grant or renewal of the licence would be inappropriate having regard to the character of the relevant locality.

At first glance this ground might appear to be a repetition of ground c) but the committee is reminded that whilst ground c) decisions concern sex establishments, or sex establishments of a particular kind, generally, ground d) is concerned with appropriateness of granting the particular licence applied for having regard to the relevant locality.

Accordingly, simply because ground c) does not apply to a particular application, it does not follow that ground d)(i) cannot arise. This is because, if granting what is sought in this particular application were considered to be inappropriate having regard to the character of the relevant locality, then this ground may be relied upon to found refusal notwithstanding that other types of relevant entertainment, or premises of a different appearance, or in a different part of the relevant locality etc. may not be deemed to be inappropriate in that same locality.

In other words the test in d)(i) is focussed on the particular application and its appropriateness in the locality.

25. The adopted policy expects the character of the locality to be considered and the following factors to be taken into account:

- (i) the size and appearance of the premises
- (ii) their proximity to places where the public congregate for purposes other than use of the premises, such as bus stops and taxi ranks.
- (iii) the nature and style of the relevant entertainment that is proposed
- (iv) the nature of the clientele it is likely to attract and their number
- (v) the duration of the proposed licence / activity
- (vi) the manner in which the relevant entertainment is likely to be managed
- (vii) the risk of nuisance to others engaged in legitimate activity
- (viii) the proposed hours of operation

26. Ground d)(ii).

The use to which other premises in the vicinity are put.

Members will note that this ground refers to vicinity and not locality. Members will have conducted a site visit prior to considering this report and have the benefit of that together with information in this report and their own local knowledge to help in the consideration of the factors the policy expects to be taken into account in considering this ground, as follows:

Whether premises in the vicinity are put to any of the following uses:

- (i) Residential, in particular homes occupied by families
- (ii) leisure,
- (iii) educational establishments
- (iv) churches and other places of worship
- (v) family friendly facilities
- (vi) other sex orientated / adult premises (whether or not they are licensed / licensable)
- (vii) youth clubs
- (viii) women's refuges
- (ix) community centres
- (x) parks and other open spaces
- (xi) swimming pools
- (xii) public transport.

27. Ground d)(iii).

That the grant of the licence would be inappropriate having regard to the layout, character or condition of the premises in respect of which the application is made.

The policy expects the following to be taken into account:

- (i) Whether the premises are fit for the purpose proposed
- (ii) their planning status
- (iii) the general appearance to others using the locality
- (iv) whether premises are self-contained
- (v) means of access and egress, whether shared with other building users (if any)
- (vi) accessibility
- (vii) sight lines
- (viii) 'hidden' areas and other places where effective monitoring may be hampered
- (ix) standard decoration and 'fit out'
- (x) visibility from the street
- (xi) facilities for smokers
- (xii) facilities for performers (changing, washing, wc, smoking areas, etc) and whether they are adequately separated from those provided for customers.

APPENDICES

- Appendix A Current Sexual Entertainment Venue Licence
- Appendix B Locality map
- Appendix C Plan of premises
- Appendix D Applicant logo to be displayed on the exterior of the premises
- Appendix E House rules
- Appendix F Code of conduct for dancers
- Appendix G Additional information from applicant
- Appendix H Comments from the Chief Officer of Police

RECOMMENDED:

1. That the sub-committee determine the application after affording a hearing to the applicant.

LEGAL IMPLICATIONS

The relevant key statutory provisions are reflected in the main body of the report.

1. The sub-committee should consider whether or not any of the grounds for refusal arise in this case. The report accurately sets out those grounds. It will be a matter of fact and judgement in respect of each ground whether they may be applied in the particular application under consideration. Where a discretionary ground is judged to apply in this application the sub-committee must consider whether or not to exercise its discretion to rely upon that ground (or grounds) to refuse the application. The applicant must be given the opportunity to persuade the subcommittee either that the ground is not available in the particular circumstances of this case or, even if it is, that the council ought not to rely upon it to decide to refuse this application.
2. Subject to acting within the statutory constraints referred to in this report and subject to adherence to the Council's own procedure rules the sub-committee is able to set its own procedure for the conduct of the meeting. As the report makes clear in considering the application the subcommittee must have regard to any observations submitted to the Council by the Chief Officer of Police. The legislation does not impose any time limit on the ability of the Chief Officer to make observations and the Chief Officer of Police is not limited to objecting.
3. The sub-committee must also have regard to any objections of which notice has been sent to the Council under paragraph 8(15) of the Third Schedule to the 1982 Act. The Act requires that an opportunity of appearing before and being heard by a committee or sub-

committee must be afforded to an applicant before refusing to renew a licence. There is no requirement to allow objectors to be heard although this may be permitted. Case law makes it clear that in exercising discretion to afford objectors a hearing the Council must consider the risk of unfairness to the applicant. The meeting should be conducted as a hearing of the applicant's case for the grant of a licence and not as an adversarial contest between the opposing views of the applicants and the objectors. If hearing from objectors the committee must ensure that the applicant's opportunity to deploy all appropriate arguments to the committee remains unimpeded.

It is recommended that before the meeting gets underway the committee chair should set out the arrangements for enabling objectors to address the meeting and for affording a hearing to the applicants. Standing orders should be suspended for this part of the meeting to facilitate this.

4. Case law establishes that an applicant cannot expect that a licence will automatically be renewed. Within the constraints of the grounds for refusal there is a wide margin of discretion. Subject to the obligation to give adequate reasons and to have due regard to its earlier decisions, this subcommittee is entitled to take a fresh look and is not bound in any way by the views of earlier subcommittees. In order for adequate reasons to be given, among other things, they must be intelligible and rational, that is to say properly relevant to the ground or grounds relied upon for refusal. Guidance on the general principles applying will be available to the subcommittee throughout the hearing and during deliberations.

5. The Council is under a duty in section 149 of the Equality Act 2010 to have due regard to the matters set out in relation to equalities when exercising the function of determining this renewal application. Accordingly Members must have due regard to the need to –

- eliminate discrimination, harassment, victimisation and any other conduct prohibited in relevant equalities legislation;
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- foster good relations between persons who share a relevant characteristic and persons who do not share it.

The protected characteristics are set out in the report

5. Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to –

- (a) Remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
- (b) Take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it
- (c) Encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

6. There is no prescribed manner in which the equality duty must be exercised. However, the Council must have adequate evidence to inform its decision making. This can be in various forms, including engagement with the public and interest groups and by gathering details, statistics impact assessments and similar documentary evidence relevant to the statutory function engaged in this regulatory process.

Michael Bonnicks
Legal Officer, Community Litigation Regulatory Team
For Service Director – Legal Services

LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985

Background papers: Application and supporting documents.

**Contact Officer: Abigail Holman, Senior Licensing Officer
Neighbourhoods and City Development
Telephone: 01173574900**