

BRISTOL CITY COUNCIL
LICENSING (HEARINGS) SUB- COMMITTEE
28 February 2018

Local Government (Miscellaneous Provisions) Act 1982
Report on the application for the renewal and variation of a Sexual Entertainment Venue licence made by Nightlife Bristol LTD in respect of a premises trading as Urban Tiger, 4 Broad Quay, Bristol, BS1 4DA

Report of Regulatory Services Manager

Purpose of Report

1. To seek consideration of an application for the renewal and variation of a Sexual Entertainment Venue (SEV) Licence in respect of a premises trading as Urban Tiger, 4 Broad Quay, Bristol, BS1 4DA.

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:

“Full nude lapdancing, full nude striptease, full nude live stage shows and full nude poledancing. Male and female performers involving full or partial nudity.”

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. 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.
7. 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.

8. Observations and objections

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.”

9. This application was made on the 24 August 2017. The last date for objections was 21 September 2017. A total of eight objections were received within that period and the committee must have regard to them. The Council must not disclose the identity of any objectors without their consent.

A copy of all objections, with personal details redacted where appropriate, is attached at Appendix G.

10. 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 were received outside of this period.

11. Observations of the Neighbourhood Enforcement Team.

The following information was provided by the Neighbourhood Enforcement Team Leader:

A full licence inspection of the venue was carried out on Friday 12th January 2018 by officers from Neighbourhood Enforcement. Full co-operation was provided by both door staff and managers for inspecting all areas of the premises which was found to be in general good order.

Whilst there was informative signage for customers throughout the venue, it was missing from the first floor booths & the manager was advise to rectify that at the earliest opportunity. At the time of the inspection they were unable to produce Healthy & Safety log book to show that all staff were aware of Health & Safety Policy and Risk Assessments, though this was checked the following week.

Whilst the incident log book had been signed off daily there had appeared to have been no record of any incidents for sometime. Door staff were advised that all incidents,

however minor should be recorded. CCTV was found to be in good order and a dip sample of footage was reviewed at officer's discretion of dates and times. The appropriate advice and leaflets for staff was present.

12. Observations of the Chief Officer of Police.

The Police have made comments in respect of this application which are attached at Appendix H.

13. 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 Broad Quay close to the main transport hub for the city centre and is in the heart of Bristol's night time economy which attracts higher levels of violent crime than other areas of the city. For this reason, following requests from the police due to the high levels of alcohol fuelled crime, this locality has been designated as a Cumulative Impact Area as defined within the Licensing Act statutory guidance. Members should consider, on the basis of the application before them, whether this 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.

14. 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.

15. 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.

16. 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.

17. 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

18. 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.

19. Ground 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 considers is appropriate for that locality.

20. The Licensing Committee has previously found that the relevant locality for the purpose

of the Urban Tiger premises is the City Centre locality. The full Licensing Committee has adopted policy on behalf of the Council for the City Centre locality under which the appropriate number of sex establishments, or of sex establishments of a particular kind for the City Centre locality is:

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

21. There are currently two licensed SEV's in the City Centre locality of which this renewal application is one. Therefore if the sub-committee follows the Council's policy this ground for refusal would not arise.

22. 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.

23. 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.

24. 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

25. 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.

26. 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	Objections received
Appendix H	Comment of 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 judgment 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 adequate reasons would need to be, among other things, 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.

