



Committee and Date

Licensing Act Sub-Committee

13th January 2016

Item

3

Public

LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982

APPLICATION FOR A SEX ESTABLISHMENT LICENCE

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1. Summary

To consider an application for a Sex Establishment Licence for the Source Vodka Bar (First Floor) 8 Barker Street Shrewsbury SY11 1QJ, together with the representations received.

2. Recommendations

That the Sub-Committee determines the application having considered the information contained within this report, supporting documentation and having had due regard to the applicant and the parties/authorised bodies making relevant representations.

That the Sub-Committee determines the application in accordance with the options in paragraph 8.

That the Sub-Committee provides the reasons for its decision.

REPORT

3. Human Rights Act Appraisal

When making a decision consideration must be given to the applicant's rights under the European Convention on Human Rights. Article 1 of First Protocol (peaceful enjoyment of possessions) and Article 10 (freedom of expression) are rights which may be relevant. The Home Office guidance suggests that 'local authorities would be well advised to consider whether any interference with the applicant's rights under Article 10 or Article 1 Protocol 1 of the European Convention on Human Rights is necessary and proportionate for the prevention of crime and disorder, for the protection of health or morals or for the protection of the rights and freedoms of others or, in the case of Article 1, Protocol 1, can be justified in the general interest.' In addition, Article 6 will be relevant to the hearing of the case ie right to a fair hearing.

4. Financial Implications

There are no financial implications associated with this report, although there is a right of appeal on refusal on some grounds to the grant of a sexual entertainment venue licence.

5. Legal Requirements

- 5.1 On 22nd July 2010 the Council resolved that the provisions of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, as amended by Section 27 of the Policing and Crime Act 2009, be adopted and apply within the Shropshire Council area with effect from 1st September 2010.
- 5.2 “Sex Establishment” means a sex shop, a sex cinema or a sexual entertainment venue. It includes any premises, vehicle, vessel or stall used as a sex establishment but does not apply to the sale, supply or demonstration of articles which are manufactured for use primarily for the purposes of birth control or primarily relate to birth control.
- 5.3 “Sexual Entertainment Venue” means any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer. “Relevant Entertainment” means 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 the audience (whether by verbal or other means).”
- 5.4 Paragraph 12 of Schedule 3 to the 1982 Act prescribes that a licence for a sexual entertainment venue shall not be granted:
- (a) to a person under the age of 18 years; or
 - (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 authority within the last 12 months; or
 - (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.
- 5.5 Paragraph 12 of Schedule 3 also provides the authority may refuse an application on one or more of the grounds listed at (a) to (d):
- (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 or,

(c) the number of sex establishments, or of 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 consider it appropriate for that locality

(d) 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

5.6 Paragraph 8 of Schedule 3 provides that the Council is able to impose conditions and restrictions on a licence, in the form of conditions and may address such matters as:

- The hours of opening and closing
- Displays and advertisements on or in sex establishments
- The visibility of the interior of a sex establishment to passers-by
- Any change of use from one kind of sex establishment to another.

Conditions should not duplicate requirements or prohibitions imposed under the Regulatory Reform (Fire Safety) Order 2005. The Home Office Guidance (paragraph 3.42) advises that in cases where a sexual entertainment venue also holds a licence under the Licensing Act 2003, local authorities should avoid duplicating licence conditions and should ensure that conditions imposed on each licence are relevant to the activities authorised by that licence.

5.7 On 27th February 2014 the Council adopted a policy in relation to the licensing of sex establishments, effective from 1st April 2014 (the "Policy").

6. Background

6.1 An application for a Sex Establishment Licence was submitted by Mr Michael Page for the first floor of the Source Vodka Bar 8 Barker Street Shrewsbury SY11 1QJ, and was received by the Council on 23rd October 2015.

6.2 In accordance with paragraph 10(8) of Schedule 3 of the 1982 Act, a notice of the application was published in a local newspaper circulating in the Council's area within seven days of the date of the application. In addition, a site notice was displayed at the premises in accordance with paragraph 10(10).

6.3 The application is to provide 'relevant entertainment' to include lap dancing and pole dancing. The hours applied for are as follows:-

Thursday to Saturday 21:00 – 03:00

A site location plan is attached as Appendix A.

- 6.4 (1) During a site visit, the applicant has provided further details of the 'relevant entertainment' proposed. A copy of a plan of the premises is attached at Appendix B. By reference to that plan, it will be noted where the pole is proposed to be located. There will be a separate entrance to gain access to the first floor. This will not be through the normal main entrance door to Source Vodka Bar.
- (2) Door supervisors will be on duty during the times of the events, with specific details awaited, although at least 2 will be on duty at the ground floor entrance door/corridor.
- (3) 2 private booths will be available for 1 to 1 dances, with the dancer being permitted to remove her clothing. These performances will not be for public display and will take place behind a curtain.
- 6.5 A Premises Licence under the Licensing Act 2003 in relation to the premises was transferred to the applicant on 15th June 2013. A copy of the Premises Licence Summary and the conditions attached to that licence are attached at Appendix C.
- 6.6 A Sex Establishment Licence (15/02388/SEL) is currently in place for the ground floor of the premises, which licence's that part of the premises as a sexual entertainment venue on Thursdays from 21:00 until 03:00. A copy of that licence is attached at Appendix D.
- 6.6 In accordance with paragraph 10(14) of Schedule 3 to the 1982 Act, a copy of the application was sent to the Police.

7. Representations Received

- 7.1 The Council has received three representations in writing to the application during the twenty-eight day consultation period. All are deemed to be relevant, in line with paragraph 12 (3) (d) of Schedule 3 to the 1982 Act (referred to in paragraph 5.4 (d) (i) and (ii) herein).
- 7.2 Copies of the relevant representations have been provided to the applicant. The representations (one from the Police) refer to the nature of the locality in which the premises are situated and in particular the location of the Sixth Form College, Rowley's House (used by the University) and the Baptist and St Chad's Churches.
- 7.3 The Sub-Committee must always have regard to the point emphasised in the Home Office guidelines when it is stated that:- "Objections should not be based on moral grounds/values and local authorities should not consider objections that are not relevant to the grounds set out in paragraph 12 of Schedule 3 of the 1982 Act [paragraphs 5.3 and 5.4 above]."

8. Options for Consideration

8.1 The options available to the Licensing Act Sub-Committee having considered all the relevant information are as follows:

- To refuse to grant the licence
- To grant the licence with additional conditions
- To grant the licence without additional conditions

8.2 Conditions should only be imposed if considered appropriate and necessary. A set of conditions which may be considered appropriate and necessary is contained in the Policy. If other law already places certain statutory responsibilities on premises, it would not be appropriate to impose similar duties.

8.3 With the exception of a decision to refuse an application on a ground specified in paragraph 12(3) (c) or (d) of Schedule 3 to the 1982 Act (referred to in paragraph 5.4 (c) and (d) herein) the applicant may appeal against the decision made to the Magistrates' Court within 21 days of the date on which they were notified.

9. Standard of Decision Making

9.1 In accordance with paragraph 10(18) of Schedule 3 of the 1982 Act, in considering any application for the grant of a licence the Council is required to have regard to any relevant objections of which notice has been sent to it. In addition, the guidance issued by the Home Office and the Policy.

9.2 Members of the Sub-Committee should not allow themselves to predetermine the application or to be prejudiced in favour or opposed to the licence and shall only determine the application having had an opportunity to consider all relevant facts.

List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)

Application form and relevant representations.
Guidance issued by the Home Office.
Shropshire Council Sex Establishment Policy.

Cabinet Member (Portfolio Holder)

Local Member

Councillor Andrew Bannerman Member for Quarry and Coton Hill

Appendices

Appendix A – Location Plan
Appendix B – Proposed Plan of Premises
Appendix C – Premises Licence Summary and conditions
Appendix D – Sex Establishment Licence 15/02388/SEL