

To: Licensing and Registration Sub-Committee
Date: 24 September 2012
Report of: Head of Environmental Development
Title of Report: Sexual Entertainment Venue Licence Renewal

Summary and Recommendations

Purpose of report: To inform determination of an application to renew a Sexual Entertainment Venue licence.

Approved by:

Legal: Daniel Smith

Policy Framework: A vibrant and sustainable economy.

Recommendation:

Committee is recommended, taking into account the details in this report and any representations made at this Sub-Committee meeting, to determine an application to renew a Sexual Entertainment Venue licence for the premises known as The Lodge, Oxpens Road, Oxford.

Application

1. An application has been submitted for the renewal of a licence to use the premises known as The Lodge, Oxpens Road, Oxford, as a Sexual Entertainment Venue. The applicant is Mr Alistair Lockwood Thompson.
2. The premises are currently operating as a Lap Dancing Club licensed under the Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended by Section 27 of the Policing and Crime Act 2009.
3. In order to continue to provide 'relevant entertainment' the Operators of the premises require the renewal of their Sexual Entertainment Venue Licence. A copy of the application to renew the licence can be found as **Appendix A**.
4. The proposed hours for "relevant" entertainment are:
 - 23.00 hours to 05.00 hours the following day Monday to Saturday

Legislative Background: Adoption of Provisions

5. On 19th April 2010 the Council made a Resolution to adopt Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended by Section 27 of the Policing and Crime Act 2009 so that the provisions for the control of sexual entertainment venues may be applied in Oxford.
6. These new powers took effect from 10th June 2010, and the Resolution states that Sexual Entertainment Venues are not generally appropriate near or in locations or areas containing any of the following:
 - (i) Historic buildings or tourist attractions;
 - (ii) Schools, play areas, nurseries, children's centres or similar premises;
 - (iii) Shopping complexes;
 - (iv) Residential areas;
 - (v) Places of Worship.
7. The resolution should be taken into account when considering the application. However, the Sub-Committee must also take all other relevant factors and submissions into account and determine the application in its merits.

Historical Information

8. The Operators of The Lodge previously occupied the premises known as Thirst Lodge located at Penny Farthing Place, Oxford and held adult entertainment under the provisions of the Licensing Act 2003.
9. When the Operators first applied for the grant of a Sexual Entertainment Venue licence at Penny Farthing Place, the Licensing and Registration Sub-Committee determined that the relevant location was inappropriate when considering the Resolution.
10. The Operators then obtained their current premises at Oxpens Road, Oxford and applied for a Sexual Entertainment Venue licence that was granted on 12 July 2011 following determination by the Licensing and Registration Sub-Committee.
11. Officers of the Licensing Authority carry out proactive compliance checks at all sex establishments including The Lodge. Records indicate that since the premises was granted a Sexual Entertainment Venue licence that the Operators have complied with all of the conditions attached to the licence, and that no complaints have been received regarding the operation of the premises.

Public Notice

12. The legislation sets out procedures regarding the form of application and requirements for public notices relating to the application. In addition, the Chief Officer of Police must be informed.

13. In considering the application, the Council should have regard to any objections submitted to it, in writing, by the Police or members of the public. Should the Council be minded to refuse an application it must give the applicant the opportunity of appearing before the appropriate committee to make representations.

Guidance from the Home Office issued by the Secretary of State

14. The following provisions of the Home Office Guidance issued by the Government to assist local authorities in carrying out their functions under Schedule 3 are relevant to this application. Local authorities are encouraged to have regard to the Guidance.

5. Policing and Crime Act 2009

5.1 Section 27 introduces a new category of sex establishment called 'sexual entertainment venue', which will allow local authorities to regulate lap dancing clubs and similar venues under Schedule 3.

5.2 Section 27 gives local authorities more powers to control the number and location of lap dancing clubs and similar venues in their area. These powers are not mandatory and will only apply where they are adopted by local authorities. Where adopted, these provisions will allow local authorities to refuse an application on potentially wider grounds than is permitted under the Licensing Act 2003 Act and will give local people a greater say over the regulation of lap dancing clubs and similar venues in their area.

6. Meaning of Sexual Entertainment Venue

6.1 Paragraph 2A of Schedule 3 as inserted by section 27 sets out the meaning of a 'sexual entertainment venue' and 'relevant entertainment' for the purposes of these provisions. A sexual entertainment venue is defined as "any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer."

6.2 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 (e.g. where the entertainment takes place in private booths).

6.3 While local authorities should judge each case on its merits, we would expect 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*
- Live sex shows*

6.4 *The above 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 licence premises as sexual entertainment venues shall depend on the content of the entertainment provided and not the name it is given.*

6.5 *For the purposes of these provisions a premises includes any vessel, vehicle or stall but does not include a private dwelling to which the public are not admitted.*

Nudity

6.6 *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.*

6.7 *Paragraph 2A(14) of Schedule 3 sets out the definition of a 'display of nudity'. In the case of a woman, it means exposure of her nipples, pubic area, genitals or anus and, in the case of a man; it means exposure of his pubic area, genitals or anus.*

The Organiser

6.8 *The relevant entertainment must be provided for the financial gain of the 'organiser' or 'entertainer'. The 'organiser' means any person who is responsible for the organisation or management of the relevant entertainment or the premises at which the relevant entertainment is provided. In most circumstances, this will refer to the manager of the premises, but could also refer someone who is responsible for organising the relevant entertainment on behalf of the persons responsible for the management of the premises.*

6.9 *The 'organiser' must be someone who is in a position of responsibility over the provision of the relevant entertainment and should not be interpreted to mean a member of staff who is merely employed to work during the provision of relevant entertainment. It is only necessary for one person to hold a sexual entertainment venue licence for premises, even if there is more than one person who is responsible for the organisation or management of the relevant entertainment or the premises.*

Spontaneous Entertainment

6.10 *Where activities that would otherwise be considered to involve the provision of relevant entertainment take place, but are not provided for the financial gain of the organiser or entertainer, such as a spontaneous display of nudity or a lap dance by a customer or guest, the premises will not be considered a sexual entertainment venue by virtue of those circumstances alone. This is because the relevant entertainment must be*

provided for the financial gain of the organiser or entertainer. However, it should be noted that an organiser may be considered to have provided the entertainment where he has permitted the activity to take place, whether expressly or impliedly.

7. Requirement for a Sex Establishment Licence

7.1 Any person wishing to operate a sex establishment as defined by Schedule 3 requires a sex establishment licence, unless the requirement for a licence has been waived by the appropriate authority.

7.2 An applicant can apply for a waiver either as part of the application for a licence or separately. The local authority can grant a waiver if they consider that to require a licence would be unreasonable or inappropriate. Where a waiver is granted the appropriate authority should inform the applicant that a waiver has been granted. The waiver may last for such a period that the appropriate authority think fit, but can be terminated by the appropriate authority at any time with 28 days notice.

8. Premises that are deemed to be Sexual Entertainment Venues

8.1 Paragraph 27A of Schedule 3 deems premises with licences to operate as sexual entertainment venues to be sexual entertainment venues whilst their licence remains in force, irrespective of how frequently they are or have been providing relevant entertainment. This remains the case even if premises operate within the exemption for infrequent events.

8.2 If an operator with a sexual entertainment venue licence is operating within the exemption for infrequent events and no longer wants their premises to be treated as a sexual entertainment venue (e.g. because they are no longer operating as a lap dancing club) they may write to the relevant local authority to request that their licence be cancelled. Upon receiving such a request from a licence-holder a local authority must cancel the licence in question.

9. Objections

9.1 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 of the application. Any person can object to an application but the objection should be relevant to the grounds set out in paragraph 12 for refusing a licence. 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. Objectors must give notice of their objection in writing, stating the general terms of the objection.

9.2 Where the appropriate authority receives notice of any objection the authority shall, before considering the application, give notice in writing of the general terms of the objection to the applicant. However, the appropriate authority shall not without the consent of the person making the objection reveal their name or address to the applicant.

10. Refusal of a Licence

10.1 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.*

10.2 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;*
- (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.*

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

10.4 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.

10.5 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.

11. Relevant Locality

11.1 Paragraph 12(3)(c) and 12(3)(d) of Schedule 3 allow appropriate authorities to refuse applications on grounds related to an assessment of the “relevant locality”. A licence can be refused if either, at the time the application is determined the number of sex establishments, or sex establishments of a particular kind, in the relevant locality is equal to or exceeds the number that the authority considers appropriate for that locality; or that a sex establishment would be inappropriate having regard to the character of the relevant locality, the use to which any premises in the vicinity are put or the layout, character or condition of the premises. Nil may be the appropriate number.

11.2 Schedule 3 to the 1982 Act does not define “relevant locality” further than to say that:

(a) in relation to premises, it is the locality where they are situated; and
(b) in relation to a vehicle, vessel or stall, any locality where it is desired to use it as a sex establishment.

11.3 Clearly, the decision regarding what constitutes the ‘relevant locality’ is a matter for the appropriate authority. However, such questions must be decided on the facts of the individual application.

11.4 Therefore, it is reasonable and potentially useful to future applicants, for a local authority to decide in advance of receiving any applications that certain areas are, or are not, appropriate locations for a sex establishment or a particular number of sex establishments. Nevertheless, all applications must be considered on their individual merits.

11.5 When considering a particular application case law has indicated that the relevant locality does not have to be a clearly pre-defined area nor are local authorities required to be able to define its precise boundaries. Therefore, while a local authority is not prevented from defining the exact area of the relevant locality, it is equally free to conclude that it simply refers to the area which surrounds the premises specified in the application and does not require further definition. Nevertheless a local authority’s view of what constitutes a locality could be open to challenge if they took a completely unreasonable view of the area covered, for example, by concluding that two sex establishments 200 miles away from one another were in the same locality. Case law also indicates that a relevant locality cannot be an entire local authority area or an entire town or city.

11.6 Once the appropriate authority has determined the relevant locality, it should seek to make an assessment of the ‘character’ of the relevant locality and how many, if any, sex establishments, or sex establishments of a particular kind, it considers appropriate for that relevant locality.

11.7 Section 27 amends paragraph 12(3) (c) of Schedule 3 to allow local authorities to determine an appropriate number of sex establishments of a particular kind. In practice, this means that the appropriate authority may, for example, decide that a particular locality is suitable for a sex shop but is not suitable for a sexual entertainment venue or vice versa.

12. Conditions

12.1 Once the appropriate authority has decided to grant a licence they are able to impose terms, conditions and restrictions on that licence, either in the form of conditions specific to the individual licence under paragraph 8 of Schedule 3 or standard conditions applicable to all sex establishments, or particular types of sex establishments, prescribed by regulations made by the appropriate authority under paragraph 13 of Schedule 3.

12.2 Paragraph 13 provides examples of the matters that standard conditions may address which include but are not restricted to:

- 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*

12.3 Where the appropriate authority decides to produce standard conditions under paragraph 13 they will apply to every licence granted, renewed or transferred by the authority unless they have been expressly excluded or varied.

12.4 Most sexual entertainment venues will require a 2003 Act licence as well as a sex establishment licence. Where this is the case, local authorities should avoid duplicating licence conditions and should ensure that conditions imposed on the each licence are relevant to the activities authorised by that licence. For example, conditions relating to the sale of alcohol should only appear on a premises licences or clubs premises certificate and should not be imposed on sexual entertainment venue licence. Likewise, conditions relating the provisions of relevant entertainment should appear on the sexual entertainment venue licence and not a premises licence or club premises certificate. Local authorities should also avoid imposing conditions on either licence that are contradictory.

Mandatory Grounds for Refusal

15. The legislation makes specific provisions as to whom a licence shall not be granted, for example to a person who is under the age of 18 or who has had a previous application refused within the last 12 months. Subject to any new information produced at the hearing, it does not appear that any of the mandatory grounds of refusal apply in this case.

Discretionary Grounds for Refusal

16. The Council may refuse the grant or renewal of a licence on one or more of the following grounds:
- 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/she made the application him/herself.
 - c) That 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 considers is appropriate for that locality.
 - d) That the grant of the licence would be inappropriate, having regard to:
 - (i) the character of the relevant locality; or
 - (ii) the use to which any premises in the vicinity are put; or
 - (iii) the layout, character or condition of the premises in respect of which the application is made.
17. The legislation states that “nil” may be an appropriate number for the purposes of sub-paragraph (c) above.
18. Also in sub-paragraph (c) “the relevant locality” means, in relation to the premises, “the locality where they are situated.”
19. If none of the grounds for refusal are made out the Applicant is entitled to have his application granted.

Consultations

20. When considering the application the Council must have regard to any observations or objections submitted to them by the Chief Officer of Police and any objections submitted to them by others within the 28 day period permitted for representations to be made.
21. Where relevant objections have been received the Council may convene a hearing and should invite the applicant to make representations in response to the objections.
22. Eighteen objections have been received from members of the public living in the following areas; together with two representations from Ward Councillors; these are attached (with any supporting documents submitted) as **Appendix B**.

Area/Postcode	Number of objections
Oxford OX1	5
Oxford OX2	3
Oxford OX3	3
Oxford OX4	3
Not specified	6

23. A number of written comments from members of the public have also been received in support of the application; these are attached as **Appendix C**.

24. A map detailing the location of the premises is shown as **Appendix D**.
25. The Sub-Committee is reminded of their duty under the Crime and Disorder Act 1998 to consider the crime and disorder implications of their decisions and the Authority's responsibility to co-operate in the reduction of crime and disorder in Oxford.
26. The Sub-Committee is also reminded that the Human Rights Act 1998 and European Convention on Human Rights guarantees the right to a fair hearing (Article 6). The Act and Convention also provides for the protection of property (Article 1 Protocol 1), which may include licences in existence, the protection of private and family life (Article 8) and the protection of freedom of expression (Article 10).
27. In the case of a premises which is already operating under an existing licence the Sub Committee must carefully consider the applicant's protection of property and freedom of expression rights. And, if minded to refuse an application, balance those rights against the public interest and the qualifications set out in the Convention before reaching its final decision.

Recommendation

28. The Committee is recommended, taking into account the details in this report and any representations made at this Sub-Committee meeting, to determine an application to renew a Sexual Entertainment Venue licence for the premises known as The Lodge, Oxpens Road, Oxford.

Name and contact details of author: **Allan Hibberd**
Licensing Officer
Environmental Development
Tel: 01865 252169
Email: ahibberd@oxford.gov.uk

Background papers:

- Appendix A: Application for the renewal of a Sexual Entertainment Venue Licence**
- Appendix B: Representations opposed to the application**
- Appendix C: Representations in support of the application**
- Appendix D: Location map of the premises**