

LICENSING COMMITTEE

26 February 2014

Present:

Councillor Dawson (Chair)

Councillors Clark, Denham, D J Henson, Macdonald, Newby, Payne, Pearson, Ruffle, Shiel, Tippins and Winterbottom

Apologies:

Councillors Laws and Choules

Also present:

Assistant Director Environment, Environmental Health and Licensing Manager, Licensing Solicitor, Solicitor and Democratic Services Officer (Committees) (SLS)

1 **Minutes**

The minutes of the meeting held on 19 November 2013 were taken as read and signed by the Chair as a correct record.

2 **Declarations of Interest**

No declarations of discloseable pecuniary interest were made by Members.

LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982

3 **Application for the Grant of a Sex Entertainment Venue Licence - EX4 - Eden Lounge, 162-163 Fore Street, Exeter**

At 6.15pm Councillor Macdonald withdrew from the meeting.

The Assistant Director Environment and Licensing Solicitor presented the report on the application by Valley Wood Resources Ltd (the Applicant) in respect of the premises Eden Lounge at 162-163 Fore Street, Exeter for the grant of a licence for a sexual entertainment venue (SEV) under the provisions of the above legislation. Kyriacos Kimitri, the Managing Director of the Applicant company was not in attendance. The Applicant was represented by Kitsons Solicitors of Torquay, and David Campbell, Barrister was instructed to attend from that firm.

An objector also attended the meeting.

The Notice of Determination is attached.

RESOLVED that, an exception to the Exeter City Council Policy on Sex Establishment Licences is found, in that there is a locality in Exeter, in which it would be appropriate to licence a Sex Entertainment Venue, and that this premises falls within this one such locality, consent for the application be granted subject to the conditions set out in the Notice of Determination.

The meeting commenced at 5.55 pm and closed at 9.30 pm

Chair

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Minute Item 3

**EXETER CITY COUNCIL (Licensing Authority)
LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982, Schedule 3**

NOTICE OF DETERMINATION

Application under Local Government (Miscellaneous Provisions) Act 1982, Schedule 3 for a Sex Establishment Licence for a Sexual Entertainment Venue in respect of the premises known as Eden Lounge, 162-163 Fore Street Exeter ('the Premises').

Decision of the Licensing Committee sitting at the Civic Centre, Exeter on Wednesday 26 February 2014 at 1730hrs.

In attendance:

Cllr Dawson (Chairman), Cllr Denham, Cllr Henson, Cllr Newby, Cllr Payne, Cllr Clark, Cllr Pearson, Cllr Ruffle, Cllr Shiel, Cllr Tippins, Cllr Winterbottom, Cllr Macdonald.

The Assistant Director Environment Robert Norley (RN), Environmental Health and Licensing Manager Simon Lane (SL), the Licensing Solicitor Elaine Kale (EK), Solicitor Matthew Hall (MH) and Democratic Services Officer (Committees) Sharon Sissons.

The hearing commenced at 1755hrs and closed at 2125hrs.

In attendance for the Applicant are David Campbell (DC) Barrister from Kitsons Solicitors, Diane Scullion (DS) manager of the Eden Lounge, Phil Stickly (PS) a customer. The objector to the application was Sandra Semple (SS).

Kyriacos Kimitri, the Managing Director of the Applicant company was not in attendance.

RN presented the report on the application by Valley Wood Resources Ltd (the Applicant) in respect of the Premises.

EK advised the Licensing Committee that in order for the decision making process to be transparent any bias must be declared at this stage. The Committee was adjourned for Members to take advice.

The Licensing Committee resumed and Cllr Macdonald excused herself from the meeting and left.

Representations

SS raised the following objections. She lives in a flat near to the Premises which is near to two churches, one of which is the Mint Methodist Church, which has a wide range of events including evening activities for children. The entrance to the Premises is on a narrow pavement, which sometimes forces passers-by to cross the road. Recently there was a police presence searching people outside the Premises. DC later explained that this was a routine check agreed to by the management of the Premises.

The Premises are near family venues such as the Bike Shed Theatre and the Picture House cinema. SS noted that she is not against the night time economy and she and other residents actively take part in it going out for meals and entertainment in the

city. SS made it clear in her opinion the locality of the premises was not appropriate for a Sexual Entertainment Venue and it will have a detrimental affect on the Western Quarter of the city. This would not add to the character of Fore Street, which is a thriving specialist shopping area with cafes and artist studios such as Spacex and the historic Tuckers Hall.

SS referred to the case of Thompson R v Oxford City Council [2014] EWCA Civ 94 stating 'a Council has a wide discretion in the assessment of whether the grant or renewal of a licence would be appropriate having regard to the character of the locality'.

DC asked SS if she could distinguish between customers going to the Premises and other venues in the area and SS acknowledged that this may be difficult.

PS spoke in favour of the application as a wheel chair user having visited the venue about twice a year. He stated he is made to feel very welcome. The employees are helpful and he is carried into the Premises by the door staff. In response to a question from Cllr Dawson, PS stated he always arranges to attend in advance, but he still thinks he would receive the same service even if he did not call in advance. The issue of fire evacuation was raised and PS was not familiar with the process, DS however, undertook to inform him of the evacuation procedure in place at the Premises.

DC set out the Applicant's representations. He referred to the suitability of the Applicant stating there is no evidence to suggest that the Applicant was unsuitable. On the issues of vicinity and locality, he referred to the Home Office Guidance on Sexual Entertainment Venues and case law. DC stated the Licensing Committee has discretion to depart from its current policy. DC invited the Licensing Committee to grant the application subject to a condition to ensure the layout of booths is to the satisfaction of the Licensing Authority.

DC stated the Premises has operated since 2009, without any concerns being raised by the Police. There are no objections raised by the Police to this application and only one objection from a local resident. The Premises are not intimidating in appearance and not near any schools. The Licence expires after one year therefore the Applicant is essentially on annual probation. The little attention paid to the venue is a testament to the way it operates.

DC stated there is no nudity outside of a private booth, which is in a cordoned off area, and acknowledged the requirements of the Environmental Health Officers regarding the supervision of the private booths. There is zero tolerance policy for any transgressions of the rules by performers and customers. Private dances are purchased by way of tokens obtained at the bar, so there is no cash changing hands between customers and performers. DS monitors the dances and pays the performers.

In respect of vicinity, DC agreed there was a church nearby, but that the Premises operate late hours which commence at 9pm. DC emphasised that the Applicant's clientele are different from those attending the pubs and clubs and are more likely to behave appropriately.

DC presented the management documentation of the Premises and explained this is supplemented by the knowledge of DS.

DC stated save for the issue regarding the booths currently at the Premises, this Application is well within the power of the Licensing Committee to grant. Without a

licence the Eden Lounge will have to close and therefore business and jobs will be lost. DC explained because of the cost of installing showering facilities for performers, they would not be installed until such time as the Premises had been granted the Licence.

In response to a question from SS, DS stated that the house rules have changed from those presented, which contain some older rules that no longer apply and have evolved over time.

In response to questions from Councillors:-

DC confirmed he invited the Licensing Committee to grant the licence amended to exclude Mondays and Tuesdays. The disqualification of Kyriacos Kimitri as a Director of another company in 2002 was for nothing untoward and unconnected with this application.

DS explained she managed the performers together with an experienced dancer who was called a 'house mum'. All performers had to be over 18, and they were in fact mostly mid to late twenties. All deficiencies in the fire risk assessment included in the Applicant's bundle have been rectified. Performers were offered appropriate transport arrangements to and from their place of work, including being accompanied by door staff to vehicles. The CCTV cameras covered all of the activities and were monitored by appropriately trained and checked staff. There are separate smoking areas for customers and performers. Any disabled access would be risk assessed at the time as the nature of the Premises as a listed building restricted certain access.

Closing submissions reiterated the submissions already made and DC added comments in relation to the petition filed by customers.

The Decision

In determining this application, the Licensing Committee considered all the relevant evidence and information presented to it both written and oral, and took account of all the matters it is bound to take account of, in particular the following:-

- . Local Government (Miscellaneous Provisions) Act 1982
- . Exeter City Council Sex Establishment Policy July 2013 (the Policy)
- . Sexual Entertainment Venue Home Office Guidance
- . The Human Rights Act 1998
- . any equality and diversity considerations

The Licensing Committee granted consent to the application for the opening hours as amended at the hearing, subject to the conditions set out below as an exception to its Policy. The reason for this decision is that the Premises had previously been operated without complaint, and there was no evidence to show that it had a negative impact on the city centre in terms of the character of the locality.

The application was granted as amended for opening hours as follows:-

Wednesday	2100hrs to 0230hrs
Thursday	2100hrs to 0230hrs
Friday	2100hrs to 0230hrs
Saturday	2100hrs to 0230hrs
Sunday	2100hrs to 0200hrs

Conditions

1. No nudity on the premises, other than during private dances and all of the Applicant's house rules, codes of conduct and signage in relation to the Premises must reflect this.
2. The toilet, shower and changing facilities for performers must comply with the requirements of the Licensing Authority's standard conditions to the satisfaction of the Assistant Director Environment within 3 months. In particular, this includes the installation of a stud wall to secure the performers changing facilities and the provision of a separate shower and toilet exclusively for the use of performers.
3. The private dance area must be altered so as to comply with the Licensing Authority's policy on private booths to the satisfaction of the Assistant Director Environment within 1 month.
4. A written risk assessment for disabled access identifying any action points and providing a timetable for implementation of this action to the satisfaction of the Assistant Director Environment within 1 month.
5. Smoking area arrangements to the satisfaction of the Assistant Director Environment within 1 month.

The compliance timescales set out in the conditions above shall run from the date of this Notice of Determination.

Right of Appeal

The applicant may appeal to the Magistrates Court against this decision by virtue of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 within the period of 21 days beginning with the date on which you are notified of the decision appealed against.

An appeal to the Magistrates is commenced by a notice addressed to:

The Clerk to the Justices, North and East Devon Magistrates Court Office,
Southernhay Gardens, Exeter, EX1 1UH Telephone 01392 415300

Parties are advised to contact the court office to check the form of notice required and the fee payable.

Date of notice 24th April 2014