

EXETER CITY COUNCIL

LICENSING COMMITTEE

26 FEBRUARY 2014

**LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982
SCHEDULE 3
APPLICATION FOR THE GRANT OF A SEX ENTERTAINMENT VENUE
LICENCE**

1. PURPOSE OF REPORT

- 1.1 To refer an 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 is the Managing Director of the Applicant company. The Applicant is represented by Kitsons Solicitors of Torquay. David Campbell, Barrister is instructed from that firm.

2. BACKGROUND

- 2.1 Schedule 3 Local Government (Miscellaneous Provisions) Act 1982 (the 1982 Act) was amended by section 27 Policing and Crime Act 2009 to allow the regulation of lap dancing and other sexual entertainment venues as a separate category of sex establishments.
- 2.2 The Council adopted the amended provisions of Schedule 3 of the 1982 Act on 24 July 2012 and they came in to force in Exeter on 3 September 2012. The Council adopted a new policy for the licensing of all sex establishments on 23 July 2013, ("SE Policy")
- 2.3 A sexual entertainment venue is, "any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer unless an exemption applies." Relevant entertainment is live performances and live displays of nudity and must be of such a nature that, ignoring financial gain, they must reasonably be assumed to be provided solely or principally for the purposes of sexually stimulating any member of the audience whether by verbal or other means.
- 2.4 There are currently no licensed SEVs in Exeter. Transitional provisions allowed existing premises to continue to operate under the previous regime of the Licensing Act 2003 for up to one year after the coming in to force of the amended legislation at which point they were required to make application for an SEV licence. Provided application was received within the year, such premises were permitted to operate pending determination of the application and any appeal arising. These provisions apply in respect of Eden Lounge.

3. THE APPLICATION

- 3.1. The Applicant submitted the application on 2 September 2013. The application is attached at **Appendix A**.
- 3.2. The only form of relevant entertainment proposed is private dancing (involving live nudity and a solely or principally for the purpose of stimulating any member of an audience). The premises has the facility for pole dancing but that does not involve relevant entertainment (there is no live nudity involved nor is it considered to be solely or principally for the purpose of stimulating any member of the audience).
- 3.3. The application is accompanied by a location plan of the premises (**Appendix B**), a layout plan of the premises (**Appendix C**) and Operation and Background supporting documentation (**Appendix D**).
- 3.4. The area consists of a mix of commercial and residential uses with predominantly the commercial uses falling within A1 use (shops) A3 (Restaurants and café) A4 (drinking establishments) and A5 (Hot food takeaways) on the ground floor with residential uses above.
- 3.5. The area to be licensed is on the first floor only. This is accessed via a discrete entrance to that area of the premises.
- 3.6. The proposed hours for opening at the premises are:
 - 21:00 hrs until 02:30 hrs Monday to Saturday
 - 21:00 hrs until 02:00 hrs Sunday
- 3.7. The application has been advertised in the prescribed manner:
 - Outside of the premises on a yellow notice which was displayed for 21 days from 2 September 2013
 - Express and Echo on 5 September 2013
 - Exeter City Council's website from 3 September 2013.
- 3.8. The application has undergone the statutory consultation process.
- 3.9. Devon and Cornwall Police have been notified of this application as is required by the legislation.
- 3.10. Council officers carried out an inspection of the premises on Friday 6 December 2013 accompanied by Diane Scullion and the proprietor's solicitor.

4. OBJECTIONS

- 4.1 The relevant legislation provides for any person objecting to an application to give notice in writing of his objection no later than 28 days after the date of application.
- 4.2 The 1982 Act imposes no pre-qualifications on who may object to an application nor is there any constraint on the grounds upon which objections can be made.

- 4.3. No objections were received from Devon and Cornwall Police concerning this application. One public objection was received on 18 September 2013 with regard to this application. This is shown as **Appendix E**.

5. COMPLIANCE

- 5.1 On Friday 6 December 2013, officers conducted an interview with the applicant Kyriacos Kimitri to assess suitability. The questions posed and answers to these questions can be found at **Appendix F**.
- 5.2 On the same date the officer's also conducted a compliance visit of the Eden Lounge for the purpose of checking compliance under the policy to which the application has been made. The questions posed and answers to these questions can be found at **Appendix G**.
- 5.3 The compliance visit found that most areas complied with the Sex Establishment Licensing Policy, including an effective CCTV system covering all public areas, an effective record keeping system of staff training, rotas and refusal of entry. In addition signage was clearly displayed showing House Rules and pricing and staff are clearly identified by their uniform containing the word 'Staff' on the back.
- 5.4 There are clear House Rules and procedures in place to ensure that no physical contact takes place between customers and performers. Money only exchanges over the bar with customers being provided with colour coded chips in exchange for the level of performance required. A clear distance is provided between performers and dancers when a performance is taking place, with customers having to sit on their hands and a dedicated member of staff monitoring the CCTV to ensure that no misdemeanours take place.
- 5.4 Appendix 3(8) of the policy states that 'private booths shall not be installed or used for sexual entertainment at any time.' The policy defines a 'private booth' as 'a room, cubicle or other area used for private performance to individual paying customer or group of customers, other than where the booth is fully and completely open on one side so that activities within it may at all times be readily supervised from a main gangway through the premises and so that at all times activities within it are recorded by fixed and dedicated CCTV cameras.'
- 5.5 The Eden Lounge consists of a number of areas which can be made private by the drawing of curtains. Whilst all of these areas do contain dedicated and fixed CCTV cameras which are recording at all times, the way that they are currently used means that the booths are not open to one side, and therefore they are considered to be private booths.
- 5.6 Appendix 3(30) of the policy requires that suitable changing, rest room, WC and shower facilities shall be provided for performers.' The compliance visit found that although the changing area was compliant with the policy with regard to size, private lockable storage, a supply of free drinking water and seating, the facility was not secure and private, nor was there a dedicated WC or shower facility provided. During the visit discussion took place regarding making the area secure and to include a

WC, which would bring about compliance with the policy. There are also plans to provide a shower facility within the changing room area.

- 5.7 Policy 10(3) states that ‘the council expects all parts of the premises to be fully accessible to disabled people.’ Appendix 3(22) goes on to state that ‘all parts of the premises which are open to the public shall be accessible to disabled people save for WC facilities where there are other WC facilities specially designated for use by disabled people.’ It is accepted that once a patron has accessed the first floor of the Eden Lounge, the majority of the area is easily accessible to disabled people, including the WC facilities. However, due to the setup of the premises, the only means of access is via a staircase which contains a 90 degree turn towards the top. During the visit this matter was discussed and it was stated that there is a disabled customer (who is a wheel-chair user) who does access the premise.
- 5.8. Officers have conducted an interview of the manager Diane Scullion to assess suitability. The questions posed and answers to these questions can be found at **Appendix H**.

6. CONSIDERATION OF APPLICATION AND DECISION MAKING FRAMEWORK

6.1. The Licensing Committee must determine whether any of the discretionary grounds for refusal exists before determining whether that its discretion to refuse the licence ought to be exercised. In so doing, consideration must be given to whether refusal could be avoided by the imposition of conditions. The Licensing Committee will also have regard to its SE Policy for the licensing of Sex Establishments.

6.2. The discretionary grounds for refusal are:

6.2.1 Unsuitability of Applicant or Manager

An applicant is deemed to be unsuitable to hold a licence by reason of having been convicted of an offence or for any other reasons, or if the licence were 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. SE Policy - Policy 5, pages 20 - 24

Guidance

The approach is purposive and the test is of unsuitability specifically to hold a licence. The concern is to establish that the applicant can be trusted to run the operation in accordance with the licence and the relevant law, that the welfare of performers in his charge will be protected, that public visiting the premises will be kept safe and that the needs of others living and working in the area will be respected. Refusal on this ground can be for any reason but the following should be considered:

- whether and why does a particular aspect make an applicant unsuitable;
- whether in the light of the applicant’s unsuitability the discretion to refuse the licence ought to be exercised; and
- issues of non-discrimination, proportionality, and necessity.

- 6.2.2. **Appropriate Number of sex establishments (including SEVs) for the Locality** - 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.

SE Policy: Policy 7, page 24: the Council's policy states that no localities have been identified in which it would be appropriate to licence an SEV. Accordingly, the appropriate number of SEVs for each and every locality in Exeter is nil. The policy is intended to be strictly applied and exceptional circumstances must be found to depart from it.

Guidance

For the policy to be overridden, the Applicant would need to demonstrate why the objectives of the Policy would be furthered or at least not undermined by allowing the exception and to identify a previously unidentified appropriate locality. The relevant locality is a question of fact to be decided on the facts of an individual application. Locality does not necessarily mean a predefined area and it is not necessary to be able to show the boundaries on a map. The Council is entitled to ask itself what local people would regard as their locality, for example a suburb of a town or estate within it, an area defined by its shopping centre, its school, its place of worship or its park, a ward within a council area.

- 6.2.3. **Inappropriate having regard to the character of the relevant locality** - this ground allows the Council to look at the character of the locality or area and consider its suitability for sex establishments. For example, the character might be mainly business (e.g. offices), education, or residential. As the character of an area changes, so might the suitability of a sex establishment to be located there (SE Policy – Policy 8, pages 24 – 25).
- 6.2.4. **Inappropriate having regard to the use to which any premises in the vicinity are put** - this ground allows consideration of whether sex establishment uses should be set alongside others such as worship, residential, educational and so forth (SE Policy – Policy 9, pages 25 – 26).
- 6.2.5. **Inappropriate having regard to the layout, character or condition of the Premises** - this ground allows the Council to focus on the premises themselves and consider whether they are appropriate to be licensed. It might take into account the quality of the premises, the possibility of supervising activities in the premises properly or accessibility issues (SE Policy – Policy 10, pages 26 – 27).

Guidance

Examples of what might be taken into account when determining “appropriateness” are:

- Gender equality - would further uses deter women from using the area comfortably or at all?
- General character of the area – family residential, family leisure or educational?
- Presence of sensitive uses such as places of worship, schools, youth clubs, community centres, women's refuges, libraries, parks or swimming pools.

- Is it a night-time leisure zone with sufficient representation of sex-oriented uses? Would the grant cause the character of the neighbourhood to change?
- Is there a caucus of feeling in the locality as revealed, for example, by a survey?
- Would further sex-oriented uses raise the fear of crime in the locality? (there must be a reasonable basis for fear and concern)
- Effects on regeneration and tourism.
- Level of genuine demand - excess supply issues.

These are intended to be examples only of the sort of matters that may be taken into account and not quoted as being specific or relevant to this application.

7. RECOMMENDATION

- 7.1 It is recommended that the Licensing Committee determine the application.

8. LIST OF APPENDICES

Appendix A	Copy of Application
Appendix B	Location Plan of Premises
Appendix C	Layout Plan of Premises
Appendix D	Operation and Background supporting documentation
Appendix E	Objection Received
Appendix F	Interview of Applicant
Appendix G	Inspection of Premises
Appendix H	Interview of Manager

Assistant Director Environment

ENVIRONMENT DIRECTORATE

Local Government (Access to Information) Act 1985 (as amended)

Background papers used in compiling this report:- None.