

REPORT TO LICENSING COMMITTEE

Date of Hearing:	21 July 2015
Report of:	Environmental Health and Licensing Manager
Type of Application:	Application for the renewal of a Sex Entertainment Venue Licence
Legislation:	Local Government (Miscellaneous Provisions) Act 1982 Part II Schedule 3

Is this a key decision?

No

Is this an executive or Council function?

Council devolved this function to the Licensing Committee

1. What is the report about?

- 1.1 To refer to the Licensing Committees an application Valley Wood Resources Ltd., in respect of the premises trading as the EX4 – Eden Lounge, 162-163 Fore Street, Exeter seeking the renewal of a licence to operate a Sex Entertainment Venue (SEV) under the provisions of the above legislation.

2. Recommendations:

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

3. Are there any representations?

- 3.1 The application has undergone the statutory consultation process. A total of 16 representations have been received from members of the public and a Parish Council representative. These are attached for information (Appendix B).
- 3.2 No representations have been received from Devon and Cornwall Police concerning this application, nor from any other Responsible Authority.
- 3.3 Any objection has to be submitted in writing to the authority, stating in general terms the grounds of objection. Objections should be made no later than 28 days after the date of application.
- 3.4 Members should note that objections may be accepted following the 28 day notice period. This is as a result of a case (Miss Behavin' Ltd v Belfast City Council) where the House of Lords held that while the Act required the authority to take into account of objections lodged in time, it did have discretion to take into account late objections if these brought significant relevant information. No such objections have been received at the time of writing this report.

- 3.5 Parties who have raised objection will not be permitted to raise new matters in evidence at the hearing without the consent of all other parties.
- 3.6 The 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. Report details:

- 4.1 Schedule 3 of the Policing and Crime Act 2009 inserted a new category of “sex establishment” called a “sexual entertainment venue” into Part II of the Local Government (Miscellaneous Provisions) Act 1982 (“the 1982 Act”). Thus bringing the licensing of lap dancing and pole dancing clubs and other similar venues under the regime set out in the 1982 Act (which is used to regulate establishments such as sex shops and sex cinemas) rather than under the Licensing Act 2003 (“the LA03”) as this legislation provided very little opportunity to control the type of activity provided or the proliferation of premises providing such entertainment.
- 4.2 Exeter City Council adopted the provisions of Schedule 3 of the 1982 Act in relation to the licensing of sex establishments, as amended on 23 July 2013.
- 4.3 The Council's Policy that was adopted on 23 July 2013 is that there is no locality within Exeter in which it would be appropriate to licence an SEV or a sex cinema. Accordingly, the appropriate number of these categories of sex establishments for each and every locality within Exeter is nil.
- 4.4 There are three types of Sex Establishment as defined in the 1982 Act these are sexual entertainment venues, sex cinemas and sex shops.
- 4.5 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.” The meaning of ‘relevant entertainment’ is defined as “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).”
- 4.6 Guidance issued by the Home Office over these matters indicates that whilst local authorities should judge each case on its own merits, it would be expected 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

4.7 The original licence was granted by a Licensing Committee at their meeting on 26 February 2014; this was issued to Valley Wood Resources Ltd. At that time, the Licensing Committee 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'*, (see Appendix D).

4.7.1 The area to be licensed for the purposes of this application is the first floor only. This is accessed via a discrete entrance to side area of the premises and there is no permitted link from the Eden Lounge to any other area of the premises.

4.8 The application form (Appendix A) and a copy of the advertisement posted in the newspaper (Appendix B) and at the premises (Appendix C) is attached for information.

4.9 There are no proposed changes to the operating which are:

Monday	Closed
Tuesday	Closed
Wednesday	21:00 – 02:30
Thursday	21:00 – 02:30
Friday	21:00 – 02:30
Saturday	19:30 – 02:30
Sunday	21:00 – 02:00

4.10 The premises has operated as a SEV for a year and there have been no complaints received by the Assistant Director Environment relating to the Eden Lounge.

4.11 Regular unannounced compliance checks have been conducted by Licensing Officers since the licence was granted in February 2014. There have been no instances of non-compliance observed by officers during these visits.

4.13 A number of representations make reference to sexual assault and abuse. Enquiries have been made with Devon and Cornwall Police who have said that they have no concerns regarding the running of Eden Lounge since the original licence was issued and that no instances of sexual assault or abuse have been directly linked to the Eden Lounge.

4.14 Questions have been raised by a respondent over account submissions to Companies House; this advises that the applicant company and existing licence holder, Valley Wood Resources Ltd. is dormant.

4.15 There has been no change in the owner or manager since the last committee hearing. For clarity the owner and manager are responsible for all three businesses contained within the building which is covered by one licence under the Licensing Act 2003.

- 4.17 Management of entrance / exit and smokers has been an issue that the management of the premises has made a number of changes to. Performers do not smoke at the front of the premise and smokers are now managed in a specially designated smoking area that is surrounded by barriers to avoid obstruction to the highway. The premises is part of the Best Bar None Scheme which is participating in the street marshalling scheme to ensure better management of patrons as they are leaving the premise.

5. What are the legal aspects?

- 5.1 The Licensing Committee will consider the application to renew the licence under Schedule 3 of the 1982 Act and it may take such of the following steps it considers necessary.
- 5.2 It may grant the renewal application as requested and apply the standard conditions.
- 5.3 It may grant the renewal application whilst imposing additional conditions and/or altering the standard conditions. The committee will only vary or exclude the standard conditions in exceptional circumstances. In deciding whether the circumstances are exceptional, the committee will consider the purpose of the condition and whether that purpose would be advanced in equal manner if it were varied or excluded. The committee may also add conditions in individual cases where this is considered necessary and proportionate.
- 5.4 It may refuse the renewal application on the following mandatory grounds:
- a. If the applicant is under the age of 18;
 - b. The applicant if for the time being disqualified from holding a licence;
 - c. The applicant is not a body corporate and is not a 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;
 - d. The applicant is a body corporate which is not incorporated in an EEA state;
 - e. The applicant 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 It may refuse the renewal application on the following discretionary grounds:
- a. The applicant is unsuitable to hold the licence by reason of having been convicted of a criminal 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 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. (For this purpose, nil may be an appropriate number.)
 - d. 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.
- 5.6 Prior to refusal of a licence, the committee will consider whether the proposed reason for refusal may be avoided by the imposition of conditions.
- 5.7 A refusal to grant a licence may be challenged by way of appeal to the Magistrates' Court and/or an application to the High Court for judicial review.

Assistant Director Environment

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

Background papers used in compiling this report:-

Sex Establishment Licensing Policy
Licensing Committee Minutes for 26 February 2014