

REPORT TO LICENSING COMMITTEE

Date of Hearing: 12 September 2023

Report of: Service Lead – Environmental Health & Community Safety

Type of Application: Sex Entertainment Venue Application

Legislation: Local Government (Miscellaneous Provisions) Act 1982 Part II Schedule 3

Applicant: Bar Dynamics Limited (Company Number 304855016) 113 Totnes Road, Paignton, United Kingdom, TQ3 3RZ

1. What is the report about?

- 1.1 On 28 April 2023, an application for a sexual entertainment venue ('SEV') licence was received in respect of The Monkey Suit, 161 Sidwell Street, Exeter, EX4 6RH ('the Premises').
- 1.2 A copy of the application is provided at Appendix 1. A location map and photograph of the premises is attached at Appendix 2.

2. Background

- 2.1 The Local Government (Miscellaneous Provisions) Act 1982 ('the Act') provides the legislative framework in relation to the licensing of sex establishments. Section 27 of the Policing and Crime Act 2009 introduced a new category of sex establishment called a 'sexual entertainment venue', which allows local authorities to regulate lap dancing clubs and similar venues under Schedule 3 of the Act. These powers were adopted by the Council on 24th July 2012 and came into effect on 3rd September 2012.
- 2.2 Exeter City Council's Sex Establishments Licensing Policy was adopted on 23 July 2013 and is attached at Appendix 3 ('the Policy'). The Policy states that there is no locality in Exeter within 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.
- 2.3 The Premises is currently operating as a bar and restaurant and is licensed under the Licensing Act 2003 (licence attached at Appendix 4).

3. Report Details

- 3.1 The Applicant has applied for a licence to operate sexual entertainment in a room on the first floor of the Premises for the following hours:

Thurs to Sat – 21:00hrs until 04:00hrs

Sunday – 21:00hrs until 04:00hrs – Sunday opening will only take place on a Bank Holiday Weekend or when New Year's Eve falls on a Sunday.

Full details of the Applicant's proposals are set out in the application at Appendix 1.

- 3.2 The statutory consultation exercise was undertaken in accordance with Schedule 3 of the Act. This requires the publication of an advertisement in a local newspaper circulating in the appropriate authority's area not later than 7 days after the date of the application and the display of a notice for 21 days beginning with the date of the application on or near the premises and in a place where the notice can conveniently be read by the public.
- 3.3 A copy of the advertisement and display notice are attached at Appendix 5.

Representations

- 3.4 Any person can object to an application but the objection should be relevant to the grounds set out in paragraph 12 of Schedule 3 of the Act for refusing a licence. These are set out below in Section 5 of this report.
- 3.5 Three representations objecting to the application have been received and are attached at Appendix 6. Devon and Cornwall Police have been consulted on this application and have responded with no objections to the licence being granted.
- 3.6 Two representations in support of the application have been received and are attached at Appendix 7.
- 3.7 Although the Licensing Committee is under a duty to consider any objections made no later than 28 days of the application, it has discretion to hear later objections provided the Applicant is given the opportunity to deal with those objections. This was confirmed in the case *Miss Behavin' Ltd v Belfast City Council* [2007] UKHL 19 where the House of Lords held that while the Act required the authority to take into account objections lodged in time, it also had discretion to take into account late objections. At the time of writing this report only one late objection has been received in relation to the application. This is attached at Appendix 8. The Licensing Committee will have to consider whether to grant permission to any late representations.
- 3.8 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.

Interview with Applicant and Compliance Visit

- 3.9 The Principal Licensing Officer conducted an interview with the Applicant and manager to assess suitability. The questions posed and answers to these questions can be found at Appendix 9 and Appendix 10.
- 3.10 The Principal Licensing Officer also conducted a compliance visit of the Premises in order to check the current and future levels of compliance likely at the Premises. The report of this visit is attached as Appendix 11.

- 3.11 The compliance visit found that those areas proposed for the Sexual Entertainment Venue will comply with the Policy once works are completed. An additional 6 High Definition digital CCTV cameras will be installed covering all public areas. Effective systems are already in place for staff training, rotas and refusal of entry. Signage will be clearly displayed showing house rules and pricing and staff will be clearly identifiable from a staff uniform.
- 3.12 There are clear house rules and procedures being developed to ensure that no physical contact takes place between customers and performers. Money is only exchanged 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 patrons when a performance is taking place, with customers required to sit on their hands. A dedicated member of the SIA security team will monitor the CCTV to ensure performer safety is maintained and customer rules are adhered to at all times.
- 3.13 Although the Policy does not allow private booths it does permit booths 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. The proposed booths in the smaller room to be used for private dances will remain open on one side (the front) and each booth will have dedicated CCTV provision monitored by an SIA security operative that will be permanently stationed within this area at the CCTV monitoring station.
- 3.14 Standard Condition 31 of Appendix C of the Policy requires that suitable changing, rest room, WC and shower facilities shall be provided for performers. The compliance visit indicated that a dedicated performer's welfare area is being created by converting one of the residential apartments above the Premises. This area will have full kitchen facilities, toilet facilities, dedicated bathroom space and a lounge area where performers can take breaks and relax whilst on duty. Lockable storage facilities are also to be provided for performers within the space. The space can only be accessed by staff and performers and will be accessed by means of a pass-coded door lock.
- 3.15 Policy 10: Layout, Character and Condition paragraph 3 states that "the council expects all parts of the premises to be fully accessible to disabled people". Standard Condition 23 of Appendix C 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 facilities specially designated for use by persons with disabilities". There is no lift or dedicated disabled access to the first floor area. The area can only be accessed by a staircase with a 90 degree turn towards the top. The matter was discussed during the inspection visit and the toilets on the first floor are accessible as the door width will allow a wheelchair to enter. Disabled customers have accessed and used the first floor area on previous occasions with assistance from staff at the venue.

4. Policy considerations

- 4.1 The Policy sets out the Council's detailed application procedure and process for determining applications for Sex establishments. These are set out in Sections 5, 6 and 7 of the Policy which includes Policies 1-10 the headings for which are set out below;

Policy 1: Procedure for Applications

Policy 2: Procedure for Consideration of Applications

Policy 3: Mandatory Grounds for Refusal

Policy 4: Discretionary Grounds for Refusal

Policy 5: Suitability of the Applicant

Policy 6: Suitability of the Manager or Beneficiary

Policy 7: The number of sex establishments

Policy 8: Character of the Locality

Policy 9: Vicinity

Policy 10: Layout Character and Location

- 4.2 Section 8 of the Policy sets out the standard conditions to be attached to the Licence should the Licensing Committee be minded to grant the application.
- 4.3 In formulating the Policy the Council had regard to the Home Office Guidance regarding Sex Entertainment Venues.
- 4.4 The Licensing Committee may also consider other complimentary Council policies including to the Corporate Plan 2022-2026 and the Exeter Local Plan both available on the Council's website.

5. Legal considerations

- 5.1 Schedule 3 paragraph 2A of the Act states a sexual entertainment venue is defined as:

“A premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or entertainer unless an exemption applies.”

- 5.2 There are 2 categories of 'relevant entertainment':

- live performances, and
- live displays of nudity.

- 5.3 In each case, the entertainment must be of such a nature that, ignoring financial gain, it must be reasonably assumed to be provided solely or principally for the purposes of sexually stimulating any member of the audience whether by verbal or other means. An audience can consist of just one person e.g. private shows.

- 5.4 The Licensing Committee will consider the application to grant the licence under Schedule 3 of the Act and it may take such of the following steps it considers necessary:
- It may grant the application as requested and apply the standard conditions in the Policy.
 - It may grant the application whilst imposing additional conditions and/or altering the standard conditions.
 - It may refuse the application on one or more of the mandatory or discretionary grounds set out in Paragraph 12 of Schedule 3 to the Act.
- 5.5 There are five mandatory grounds for refusing a licence in Paragraph 12 of Schedule 3 to the Act which states that a licence under this Schedule shall 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 the United Kingdom or 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.
- 5.6 There are four discretionary grounds for refusing a licence. Paragraph 12 of Schedule 3 to the Act states that a licence under this Schedule may not be granted 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, transfer or variation 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.
- 5.7 Applications should only be refused where the Licensing Committee considers it as necessary and proportionate to do so, and any decision shall be on a non-discriminatory basis.

- 5.8 Prior to refusal of a licence, the Licensing Committee will consider whether the proposed reason for refusal may be avoided by the imposition of conditions.
- 5.9 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.
- 5.10 Section 149 of the Equality Act 2010 obliges public authorities in the exercise of their functions to have due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010, advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it, foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 5.11 An Equalities Impact Assessment has been undertaken by the Principal Licensing Officer and is attached as Appendix 12.
- 5.12 When determining a licence application the Licensing Committee will have regard to any rights the Applicant may have under the European Convention on Human Rights in accordance with the Human Rights Act 1998. The Licensing Committee must consider whether the decision affects an individual, group or company's Human Rights as set out in the European Convention of Human Rights and if it does, whether the interference with those rights is permissible by reason of the justifications set out in the Convention. In addition, consideration must be given to whether the interference is proportionate to the general purpose.

6. Recommendations

- 6.1 The Council's constitution and the Policy sets out that such an application should be determined by the Licensing Committee. It is therefore for the Licensing Committee to determine the application, taking into consideration the Sex Establishment Licensing Policy.
- 6.2 It is recommended that the Licensing Committee determine the application.

Service Lead – Environmental Health & Community Safety

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Local Government (Access to Information) Act 1972 (as amended)

Background papers used in compiling this report:-
None

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