

Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended) - Sexual Entertainment Venues

Premises – Spearmint Rhino, 60 Brown Street, Sheffield, S1 2BS

1.0 PURPOSE OF REPORT

- 1.1 To consider an application for the renewal of a sexual entertainment venue licence made under Schedule 3, Section 10, of the Local Government (Miscellaneous Provisions) Act 1982.

2.0 THE APPLICATION

- 2.1 The applicant is Sonfield Developments Limited.
- 2.2 The application was received on 10th April 2018 and is attached to this report, labelled Appendix 'A'. Supplementary information is attached at Appendices 'B' and 'C'.

3.0 REASONS FOR REFERRAL

- 3.1 Representations concerning the application are attached at Appendix 'D'.

4.0 FURTHER INFORMATION

- 4.1 The hearing will be held in two parts in accordance with the hearing procedure, which can be found at Appendix 'G'. A departure from the procedure will only be considered at the discretion of the Chair and with full agreement of all interested parties present at the hearing.
- 4.2 Objections will be heard in part one of the hearing.
- 4.3 The applicant will be invited to present the application in part two of the hearing.
- 4.4 Copies of the invites sent to the applicant and interested parties are attached to this report labelled Appendix 'E'.

5.0 FINANCIAL IMPLICATIONS

- 5.1 There are no specific financial implications arising from this application. However, additional costs may be incurred should the matter go to appeal. In such an eventuality it may not be possible to recover all these costs. The impact of these additional costs (if any) will be kept under review and may be subject of a further report during the year.

6.0 THE LEGAL POSITION

6.1 Section 27 of the Policing and Crime Act 2009 amends Paragraph 2A of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 and introduces a new category of sex establishments called “sexual entertainment venues” which allows licensing authorities to regulate lap dancing clubs and similar venues.

6.2 Sheffield City Council has adopted the Sexual Entertainment Venue Provisions under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended by Section 27 of the Policing & Crime Act 2009 so as to have effect as from the 1st May, 2011, in relation to the whole of the Sheffield City Council area for the purposes of regulating premises deemed to be sexual entertainment venues.

6.3 Section 27 of the Policing and Crime Act 2009 amends Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 and reclassifies lap dancing clubs as sexual entertainment venues and gives local authorities in England and Wales the power to regulate such venues.

6.4 For the purposes of these new provisions “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”.

6.5 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)”.

6.6 The Licensing Authority will have regard to the [Home Office Guidance](#) when exercising its functions in order to promote best practice and consistency across England and Wales.

7.0 EQUALITY CONSIDERATION – PUBLIC SECTOR EQUALITY DUTY

7.1 The Public Sector Equality Duty was created by the Equality Act 2010, and replaces the race, disability and gender equality duties. It is supported by the specific duties contained in The Equality Act 2010 (Specific Duties) Regulations 2011.

7.2 The equality duty was developed in order to harmonise the equality duties and to extend it across the protected characteristics. It consists of a general equality duty, supported by specific duties which are imposed by secondary legislation. In summary, those subject to the equality duty must, in the exercise of their functions, have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

7.3 These are sometimes referred to as the three aims or arms of the general equality duty. The Act explains that having due regard for advancing equality involves:

- Removing or minimising disadvantages suffered by people due to their protected characteristics.
- Taking steps to meet the needs of people from protected groups where these are different from the needs of other people.
- Encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.

7.4 The Act states that meeting different needs involves taking steps to take account of disabled people's disabilities. It describes fostering good relations as tackling prejudice and promoting understanding between people from different groups. It states that compliance with the duty may involve treating some people more favorably than others.

7.5 The equality duty covers the nine protected characteristics:

- Age;
- Disability;
- gender reassignment;
- pregnancy and maternity;
- race;
- religion or belief;
- sex; and
- sexual orientation.

Public authorities also need to have due regard to the need to eliminate unlawful discrimination against someone because of their marriage or civil partnership status. This means that the first aim of the duty applies to this characteristic but that the other aims (advancing equality and fostering good relations) do not apply.

7.6 Therefore members should when making any decisions consider the above duty.

7.7 An Equality Impact Assessment has been completed and approved by the Council's Equality Team. Members should be aware that equality impact assessments are under constant review.

8.0 POLICY – SEXUAL ENTERTAINMENT VENUE POLICY CONSIDERATIONS

8.1 Members should be aware of Section 7 of the policy with regards to the Location of Licensed Premises. The Sex Establishment Policy published in January 2018 is the policy by which the application will be determined.

8.2 Members will need to consider the character of the relevant locality and have regard to, but not limited to, the following:

- (a) the fact that the premises are sited in a residential area;
- (b) the premises are sited near shops used by or directed to families or children, or on frontages frequently passed by the same;
- (c) the premises are sited near properties which are sensitive for religious purposes e.g. synagogues, churches, mosques, temples;
- (d) the premises are sited near premises or areas which are sensitive because they are frequented by children, young persons or families, including but not

limited to educational establishments, leisure facilities such as parks, libraries or swimming pools, markets and covered markets;

- (e) the premises are sited near places and or buildings of historical/cultural interest and other tourist attractions;
- (f) the premises are sited near civic buildings.

8.3 Members should consider the use of other premises in the vicinity and have regard to, but not limited to, the following:

- (a) schools, nurseries or other premises substantially used by or for children under 18 years of age;
- (b) parks or other recreational areas designed for use by or for children under 18 years of age;
- (c) places primarily used for religious worship;
- (d) hospitals, mental health or disability centres, substance misuse treatment centres, sexual exploitation services, sexual abuse centres or similar premises;
- (e) any central gateway to the city or other city landmark, historic building or tourist attraction;
- (f) predominately residential areas;
- (g) The Cultural Hub (Millennium Galleries, Tudor Square, theatres and library)

8.4 Members will also need to consider the following factors when deciding if an application is appropriate:

- (a) any cumulative adverse impact of existing sex establishment related activities in the vicinity of the proposed premises;
- (b) proximity to areas with high levels of crime;
- (c) whether the premises has met the relevant planning requirements;
- (d) the design of the premises frontage (signage/images etc.);
- (e) any relevant representation to the application; and/or
- (f) the proposed operating hours

9.0 HEARINGS REGULATIONS

9.1 The hearing procedure is set out in Schedule 3 of the Local Government Miscellaneous Provisions Act 1982 at Section 10. A copy of the hearing procedure is attached at Appendix 'G'.

10.0 APPEALS

10.1 There is a right of appeal to the Magistrates' Court against decisions for the refusal to grant, renew, vary or transfer of a licence, the imposition of conditions and revocations may also be appealed.

10.2 Appeals must be made to the Magistrates' Court within 21 days, starting from the date the applicant is notified of the Licensing Authority's decision.

10.3 Appeals only lie against the mandatory refusals on the basis that the mandatory ground does not apply to the applicant/licence holder. Further, no appeal lies against the Licensing Authority's decision made on the discretionary grounds, namely:

- That it is inappropriate to grant or renew a licence on the grounds of the character of the locality or the number of premises in it; or
- The use of premises in the vicinity or the layout, character or condition of the premises

10.4 The only discretionary grounds which an appeal lies are those relating to the suitability of the applicant, the manager and/or the beneficiary of the operation.

10.5 There is no statutory right of appeal to the Magistrates' Court for the police or objectors.

11.0 RECOMMENDATIONS

11.1 That Members carefully consider the application and / or any representations made and take such steps as the Committee consider necessary for the promotion of the Council's Sex Establishment Policy and with regard to relevant legislation and the Home Office Guidance.

12.0 OPTIONS OPEN TO THE COMMITTEE

12.1 To grant the sexual entertainment venue licence application in the terms requested.

12.2 To grant the sexual entertainment venue licence application, with additional or amended conditions.

12.3 To defer the application.

12.4 To refuse the whole or part of the application.



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