

**Manchester City Council
Report for Resolution**

Report to: Licensing & Appeals Subcommittee Hearing Panel – 2 March 2020

Subject: Sex Establishment Licence renewal Whiskey Down, 18-22 Lloyd Street, Manchester, M2 5WA (App ref: Sex Establishment Licence - Renewal 242639)

Report of: Head of Planning, Building Control & Licensing

Summary

Application for the renewal of a sex establishment licence.

Recommendations

That the Panel determine the application.

Wards Affected: Deansgate

Full details are in the body of the report, along with any implications for:

- Equal Opportunities Policy
 - Risk Management
 - Legal Considerations
-

Financial Consequences – Revenue - None

Financial Consequences – Capital - None

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Background documents (available for public inspection):

The following documents disclose important facts on which the report is based and have been relied upon in preparing the report. Copies of the background documents are available up to 4 years after the date of the meeting. If you would like a copy please contact one of the contact officers above.

- Manchester City Council Sex Establishment Policy Document (Revised August 2013)
- Section 10 of Manchester City Council's Statement of Licensing Policy 2016 – 2021 (pertaining to adult entertainment)
- Any further documentary submissions by any party to the hearing

1. Introduction

- 1.1 The Local Government (Miscellaneous Provisions) Act 1982 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 Local Government (Miscellaneous Provisions) Act 1982. The new powers were adopted by the Council with effect from 9 January 2011.

Sexual Entertainment Venues and Relevant Entertainment

- 1.2 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."

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

- live performances, and
- live displays of nudity.

- 1.4 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.

2. Application

- 2.1 On 08/01/2020, an application for the renewal of a sexual entertainment venue (SEV) licence was made in respect of Whiskey Down, 18-22 Lloyd Street, Manchester, M2 5WA in the Deansgate ward of Manchester.
- 2.2 A copy of the application is provided at **Appendix 1**. However, personal and commercially sensitive information has been redacted. This information will be provided by way of a separate bundle and may be considered by the Committee at the hearing under Part B. A location map and photograph of the premises is attached at **Appendix 2**.
- 2.3 The current sex establishment licence is attached at **Appendix 3**.
- 2.4 The premises is currently operating as a lap dancing premises and is licensed under the Licensing Act 2003 (licence attached at **Appendix 4**).
- 2.5 A public consultation exercise was undertaken in accordance with Schedule 3 of the 1982 Act, requiring 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.

- 2.6 Any person objecting to an application for the grant, renewal, transfer or variation of a licence under Schedule 3 shall give notice in writing of his objection to the appropriate authority, stating in general terms the grounds of the objection, not later than 28 days after the date of the application.
- 2.7 All applications for the grant, renewal, transfer or variation of a sex establishment are determined by a delegated sub-committee of the Licensing and Appeals Committee, whether or not objections to the application have been received.

3. Further documentation accompanying the application

- 3.1 At the hearing of 6 June 2019, the committee amended condition 8 Annex 1 of the SEV licence from:

a) The use of flyers and similar promotional material for the premises is prohibited

To the following:

b) The use of flyers and similar promotional material to promote SEV activities at the premises is prohibited. A sample of each flyer or similar promotional material is to be kept by the management of the premises and on request is to be made available for inspection by officers from the licensing authority or any responsible authorities.

- 3.2 Due to an administrative error, condition 8 of Annex 1 was not amended to the above condition and the licence was issued with the incorrect condition attached (see **Appendix 3** the current SEV licence)
- 3.3 The committee are requested to amend condition 8 of Annex 1 to the condition stated in section 3.1 sub section b.
- 3.4 A record of the emails confirming agreement by the applicant to the amendment of condition 8 Annex 1 is provided in **Appendix 6**.
- 3.5 The hearing notification email and the minutes of the 6 June 2019 hearing are also attached in Appendix 6.
- 3.6 The reference to timings for BH Sundays, in the email from the applicant, should be disregarded as the hearing decision notice and the minutes of the hearing both explicitly state that this has not been granted.
- 3.7 Personal information has been redacted from the Appendix 6. This information will be provided to panel members by way of a separate bundle.

4. Relevant Objections

- 4.1 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, as set out in Section 4 of this report.
- 4.2 Objections should not be based on moral grounds/values and objections that are not relevant to the grounds set out in paragraph 12 should not be considered.
- 4.3 Although the council is under a duty to consider any objections made within 28 days of the application, it has discretion to hear later objections provided the applicant is given the opportunity to deal with those objections.
- 4.4 The council shall not without the consent of the person making the objection reveal their name or address to the applicant.
- 4.5 One objection was received in respect of the application (**Appendix 5**). The personal details of the objector have been redacted.

5. Mandatory and Discretionary Grounds for Refusal of a Licence

- 5.1 Paragraph 12 of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 sets out the grounds for refusing an application for the grant, renewal, transfer or variation of a licence. A decision to refuse a licence must be relevant to one or more of the below grounds.

Mandatory Grounds

- 5.2 A licence must not be granted:
- to a person under the age of 18;
 - 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;
 - to a person, other than a body corporate, who is not 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; or
 - to a body corporate which is not incorporated in an EEA state; or
 - 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.

Discretionary Grounds

5.3 A licence may be refused where:

- the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason;
- 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;
- 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;
- that the grant or renewal of the licence would be inappropriate having regard
 - to the character of the relevant locality; or
 - to the use to which any premises in the vicinity are put; or
 - to the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.

5.4 Applications should only be refused where the Council considers it as necessary and proportionate to do so, and any decision shall be on a non-discriminatory basis.

Human Rights Act

5.5 When determining a licence application Manchester City Council will have regard to any rights the applicant may have under Article 10 (right to freedom of expression) and Article 1, Protocol 1 (protection of property) of the European Convention on Human Rights

5.6 Article 1 of Protocol 1 of the European Convention of Human Rights states:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

5.7 A licence is a possession.

5.8 When considering matters relating to the grant, revocation, renewal or refusal of licences and the placing of conditions on licences, the Committee

must consider whether the decision affects an individual, group or company's Human Rights as set out in the Convention 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. Applicant Considerations

6.1 The Council needs to be satisfied that the applicants for a sex establishment licence are suitable to operate the business by ensuring:

- that the operator is honest;
- that the operator is qualified by experience to run the type of sex establishment in question;
- that the operator understands the general conditions;
- that the operator is proposing a management structure which will deliver compliance with operating conditions e.g. though:
 - managerial competence;
 - attendance at the premises;
 - a credible management structure;
 - enforcement of rules internally, e.g. through training and monitoring
 - a viable business plan, e.g. sufficient to employ door staff and install CCTV;
 - policies for the welfare of performers (SEV only).
- that the operator can be relied upon to act in the best interests of the performers, e.g. in how they are remunerated, the facilities they enjoy, how they are protected and how and by whom their physical and psychological welfare is monitored (SEV only);
- that the operator can be relied upon to protect the public, e.g. transparent charging, freedom from solicitation;
- that the operator can show a track record of management of compliant premises, or that s/he will employ individuals who will have such a track record;

6.2 All applications will be considered but they are unlikely to be granted if the following apply:

6.2.1 The applicant has a criminal record. Offences that would be considered particularly relevant include:

- convictions for dishonesty
- violence
- sexual offences
- drugs
- public order
- people trafficking

- 6.2.2 The applicant has previously been involved in running an unlicensed sex establishment.
- 6.2.3 If the licence were to be granted, the business to which it relates would be managed by or run for the benefit of a person other than the applicant who would be refused the grant of such a licence if they made it themselves.
- 6.3 It is anticipated that these expectations would be demonstrated by the operator through their completed application form and any accompanying submissions as part of the application process. However, the Council may also take into account any oral submissions made at any hearing to determine the application.

7. Location Considerations

- 7.1 A licence can be refused if either, at the time the application, it is determined that the number of sex establishments, or sex establishments of a particular kind, in the relevant locality is equal to or exceeds the number that the authority considers appropriate for that locality; or that a sex establishment would be inappropriate having regard to the character of the relevant locality, the use to which any premises in the vicinity are put or the layout, character or condition of the premises.
- 7.2 Manchester City Council's Policy for Sex Establishments states that that areas located outside the City Centre, as defined by the Planning Department's definition of the City Centre, are not appropriate locations for sex establishments. Therefore, the policy is that the appropriate number for sex establishments outside of the City Centre is nil.
- 7.3 Within the City Centre, an appropriate number for sex establishments has not been set. Applications will be determined as they arise.
- 7.4 Sex establishments will not normally be licensed near to:
- housing;
 - schools, play areas, nurseries or children's centres;
 - family shopping or leisure areas;
 - places of worship;
 - historic buildings or tourist attractions;
 - other places where relevant entertainment takes place;
 - other sensitive uses that may be relevant e.g. women's hostel;

Where the proximity to such uses is likely to be considered by the Council to be inappropriate in having regard to the character of the relevant locality and the use to which any premises in the vicinity are put.

- 7.5 The spatial distribution of licensed premises is very relevant particularly with consideration to their impact upon the character of the locality. The Council will have regard to the uses of all other premises in the area as well as any potential adverse impact upon:

- regeneration;
- tourism;
- the retail or commercial attraction of the area;
- social issues e.g. prostitution, anti-social behaviour.

7.6 Within the city centre no licences shall be granted for premises within the following locations:

- a. parks or external areas/squares that attract large numbers of children such as, but not limited to, Castlefield Arena, Piccadilly Gardens, Albert Square, St Anne's Square, Exchange Square;
- b. entertainment centres which have children/family focussed entertainment;
- c. community buildings such as, but not limited to, places of worship, libraries, GPs surgeries;
- d. the area (framed by Deansgate to the west; Peter Street, Mount Street and Lower Mosley Street to the north; Portland Street, Oxford Street and Lower Mosley Street to the east; and Whitworth Street West to the south) as set out in Appendix A of the Council's Policy for Sex Establishments;
- e. where further sex oriented uses would change the character of an area;
- f. where further sex oriented uses would deter people from using the area comfortably/at all;
- g. where further sex oriented uses raises the fear of crime in the locality; or where such locations form part of the relevant locality.

7.7 The decision regarding what constitutes the 'relevant locality' is a matter for the Committee. However, such questions must be decided on the facts of the individual application.

7.8 The Council may also have regard to the following factors:

- any existing licensing permissions for the premises;
- any existing Planning or Regeneration policy/plan/strategy relevant to the area;
- history of complaints relevant to the premises;
- the nature of the daytime and night-time economies in the surrounding area.

7.9 This premises is located within the City Centre (see 7.3).

7.10 This premises is not located within the area set out in 7.6(d) above.

8. Licence Conditions

8.1 The Council has adopted standard conditions in respect of sexual entertainment venues, which will apply to all respective licences granted, unless such conditions have been expressly excluded or varied. These proposed standard conditions will be provided separately to the report.

8.2 However, following a hearing, the Licensing and Appeals Committee may attach such further conditions to a licence as are considered necessary and proportionate in the public interest including, but not limited to, the interest of public policy, public security, public health or the protection of the environment. This could include conditions restricting the opening and closing times of the premises.

8.3 The applicant has not requested any variations to the standard conditions apart from the correction to condition 8 of Annex 1 (see section 3)

9. Conclusion

9.1 In determining an application for a sex establishment licence, any decision to refuse an application may only be made in accordance with the mandatory and discretionary grounds for refusal as set out in Section 5 of the report.

9.2 None of the mandatory grounds for refusal are met in respect of this application.

9.3 The discretionary grounds are set out in full at 5.3.

9.4 The decision regarding what constitutes the 'relevant locality' is a matter for the Committee. However, such questions must be decided on the facts of the individual application.

9.5 When considering a particular application case law has indicated that the relevant locality does not have to be a clearly pre-defined area nor are local authorities required to be able to define its precise boundaries. Therefore, while a local authority is not prevented from defining the exact area of the relevant locality, it is equally free to conclude that it simply refers to the area which surrounds the premises specified in the application and does not require further definition. Nevertheless, a local authority's view of what constitutes a locality could be open to challenge if they took a completely unreasonable view of the area covered. Case law also indicates that a relevant locality cannot be an entire local authority area or an entire town or city.

9.6 Once the Committee has determined the relevant locality, it should seek to make an assessment of the 'character' of the relevant locality and whether it considers any sex establishments, or sex establishment of a particular kind, are appropriate for that relevant locality.

9.7 When considering the application, the Committee must have regard to:

- the Council's Policy for Sex Establishments;
- information submitted as part of the application;
- any objections received from anyone else within 28 days of the application

- 9.8 Members may also take into account any oral submissions made at any hearing to determine the application. Additionally, the Committee may have regard to any objections received after 28 days of the application.
- 9.9 Applications should only be refused where the Council considers it as necessary and proportionate to do so, and any decision shall be on a non-discriminatory basis.
- 9.10 Where the Committee has decided to grant a licence, it may impose terms, conditions and restrictions on that licence, either in the form of conditions specific to the individual licence under paragraph 8 of Schedule 3 or standard conditions made by the Council under paragraph 13 of Schedule 3.
- 9.11 The Council has adopted Standard Conditions applicable to Sexual Entertainment Venues.
- 9.12 Any licence granted shall be subject to those Standard Conditions, save for where they have been expressly excluded or varied by the Committee.