



**MANCHESTER
CITY COUNCIL**

**LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982,
PART II, SCHEDULE 3**

Reference: 221634
Name: Whiskey Down
Address: 18-22 Lloyd Street, Manchester, M2 5WA
Ward: Deansgate

Hearing Date: 18/12/2018

Application Type: Sex Establishment Licence - Transfer
Name of Applicant: FAC251 Ltd
Date of application: 27/10/2018

Objections Received against the Application

No objections

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1. Introduction

1.1 The Local Government (Miscellaneous Provisions) Act 1982 provide 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 allow 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. This is an application to transfer the Sex Establishment Licence for Whiskey Down (formerly Silks), 18-22 Lloyd Street, Manchester, M2 5WA, from Elizabeth Mary Morris to FAC251 Ltd.

2.2. The licence permits lap dancing, pole dancing and striptease; all including full nudity, at the premises.

2.3. A copy of the full application is provided as a separate bundle (Annex 1).

2.4. The premises is currently operating as a lap dancing premises and is licensed under the Licensing Act 2003 (Annex 2).

3. Objections received against the Application

3.1. 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 the report.

- 3.2. 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.
- 3.3. 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.
- 3.4. The council shall not without the consent of the person making the objection reveal their name or address to the applicant.
- 3.5. No objections have been received against this application.

4. Mandatory and Discretionary Grounds for Refusal of a Licence

- 4.1. 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 or transfer of a licence. A decision to refuse a licence must be relevant to one or more of the below grounds.

Mandatory Grounds

- 4.2. A licence must 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 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.
- 4.3. None of the above mandatory grounds for refusal are met in respect of this application.

Discretionary

- 4.4. A licence may be refused 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 or transfer of such a licence if he made the application himself;
- 4.5. 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

- 4.6. 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.
- 4.7. 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.”
- 4.8. A licence is a possession.
- 4.9. 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.
- 4.10. The applicant has submitted a statement they wish to be considered in respect of this matter, which can be found before Tab 1 in their submitted application bundle (Annex 1).

5. Applicant Considerations

- 5.1. The Council needs to be satisfied that the applicants for a sex establishment licence are suitable to operate the business by ensuring:
- a) that the operator is honest;
 - b) that the operator is qualified by experience to run the type of sex establishment in question;
 - c) that the operator understands the general conditions;

- d) that the operator is proposing a management structure which will deliver compliance with operating conditions e.g. through:
 - i) managerial competence;
 - ii) attendance at the premises;
 - iii) a credible management structure;
 - iv) enforcement of rules internally, e.g. through training and monitoring
 - v) a viable business plan, e.g. sufficient to employ door staff and install CCTV;
 - vi) policies for the welfare of performers.
- e) 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;
- f) that the operator can be relied upon to protect the public, e.g. transparent charging, freedom from solicitation;
- g) 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;

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

- a) 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
- b) the applicant has previously been involved in running an unlicensed sex establishment;

- c) 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.
- 5.3. 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.

6. Conclusion

- 6.1. In determining an application for the transfer of 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 4 of the report.
- 6.2. None of the mandatory grounds have been met in respect of this application.
- 6.3. The discretionary grounds relating to the transfer of a sex establishment licence are set out at 4.4.
- 6.4. In determining the suitability of the applicant, the Committee should consider the matters set out in Section 5 of the report as well as any other matters they consider relevant.
- 6.5. 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.
- 6.6. Where the Committee are satisfied that none of the mandatory or discretionary grounds are applicable, the application to transfer the licence should be granted.