

Report to: Environment & Safety Committee

Date of Meeting: 25th March 2020

Report Title: Licensed Sexual Entertainment Venue Renewal. Objections Received

Report By: Mike Hepworth, Assistant Director Environment & Place

Purpose of Report

To consider objections received for the renewal of an existing licenced Sexual Entertainment Venue.

Recommendation(s)

1. Members instructions requested

Reasons for Recommendations

Sexual Entertainment Venues (SEV) are licensed under the Local Government (Miscellaneous Provisions) Act 1982 as amended by Policing and Crime Act 2009.

The licences for such premises are issued annually and must be advertised for renewal, any objections received must be considered by the Environment & Safety Committee before the licence is renewed.

The operator of an existing premise can appeal any decision made by the committee at such a hearing.

Introduction

History

1. Sex Establishments have been licensed by the authority for many years as a result of adopting Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982. Hastings Borough Council adopted these provisions on the 24th November 1982.
2. In November 2005 the authority implemented the responsibilities of the Licensing Act 2003, and due to an anomaly of that act there was a rise nationally in applications for lap dancing clubs. Hastings was no different and one such establishment that had been licensed for many years under the Public Entertainment Licensing Regulations became a full time lap dancing club (Club XS in Prospect Place).
3. Central Government decided that the increase in such premises would be better controlled by an amendment to the 1982 Act. They defined a new category of sex establishment to be known as a Sexual Entertainment Venue (SEV) under Section 27 of the Policing & Crime Act 2009.
4. This amendment needed to be adopted by Local Authorities if they wished to licence such establishments. They could opt out but to do so would require extensive public consultation. Hastings Borough Council decided to adopt the amendment on the 6th December 2010.
5. At that time the council had an opportunity to make a resolution setting the appropriate number of SEVs in the borough at zero. The council did not do so and as a result the existing establishment (Club XS) correctly applied and obtained the appropriate SEV licence which they continue to hold today.

Sex Establishment Policy

6. The legislation does not require local authorities to have in place a specific policy for such establishments. However due to a challenged application several years ago Councillors requested that a policy be adopted, to help make the application process more transparent to all concerned (applicants, consultees and Members) it would also give committee members more confidence in determining such applications.
7. A policy was developed in 2015 following comprehensive consultation with a range of local stake holders, the public and specialised legal advice. In that policy a series of locations across the borough were identified as being suitable for such premises. These areas are predominately industrial or commercial, it was also decided that the appropriate number of sex establishments for the borough would be set at one (1) sex shop and one(1) sexual entertainment venue.
8. This policy was not challenged and remained current until 2019, at that point it was decided to refresh the policy to ensure it reflected the current position across the borough. A new consultation was undertaken with stakeholders, members and

the public during early 2019, only two (2) representations were received (both Councillors), the new policy was placed before Cabinet and agreed in July 2019. The major change to the policy was to amend the numbers of such establishments down to only one (1) SEV. The sex shop was removed as no such premise had existed in the borough for the last four years, sales of such goods are now sourced mainly online. Attached policy Appendix A.

Renewal of existing SEV Licence

9. The licence for Club XS, our only SEV premises was due for renewal at the end of February 2020, the club correctly applied and advertised their application.
10. As a result, three objections to the renewal were received by the Licensing Department at Hastings Borough Council. These objections are based on the venue location being unacceptable and contrary to Hastings' policy, two (2) of the three (3) were using the same formatted objection.
11. The objections refer to Sec 23 and Sec 28 of the current Sex Establishment Policy, these sections refer to discretionary grounds on which any application may be refused, namely Character of the relevant locality and the use to which any premises in the vicinity are put. It also lists types of premises whose character would render an area unsuitable for a Sex Establishment Licence.
12. In addition two (2) of the objections refer to Sec 36 of the Sex Establishment Policy. This refers to the need for a premise to meet relevant planning requirements before proceeding with an application for a licence. This condition refers to new applications for licencing, in this case the relevant planning requirements were met many years ago.
13. The objectors refer to the development of the area and in specific terms the development of Rock House and the old Observer building and comment that such a premise would hinder regeneration in the area. The objections, a map of the area and photographs of the venue are attached as Appendix B.
14. The Licensing Manager has made enquiries with Rock House owners (who are also developing the old Observer Building) they have confirmed that they have no concerns over the existence of Club XS in Prospect Place.
15. In addition, enquiries have been made with Sussex Police (statutory consultee) and Hastings Borough Council's planning department, neither have any objections to the existence of the club. No indication has been received that the presence of the premises has hindered development of the area.
16. Sec 34 of our existing Sex Establishment Policy requires us to consider any registered complaints about an existing licensed venue, a search of the Council complaints database and enquiries with Sussex Police have revealed no complaints about the operation of the SEV licence since its initial issue in 2010.
17. The operator of Club XS (Mr Eldridge) has been informed of the existence of the objections (personal details not released) and he has indicated his wish to address the committee to protect his licence.

Legal Considerations

18. Article 1 of the first protocol of the Human Rights Act 1998 relates to the protection of property and the peaceful enjoyment of possessions and property. Holding a Sexual Entertainment Venue Licence is considered a possession. This is however, a qualified right and can be deprived of “in the public interest”. Interference is permissible if what is done; has it’s basis in law; is necessary in a democratic society to fulfil a pressing need or pursue a legitimate aim; is proportionate to the aims being pursued; and, is related to the prevention of crime; or, the protection of public order or health. Article 6 of the Act relates to the right to a fair and public hearing, thus Mr Eldridge must be granted such a hearing.

19. There is a right of appeal to a Magistrates court within 21 days, for the operator of the premises if they feel aggrieved by the decision of a district council. Members are reminded that they must give full written reasons for their decision.

Options

20. To consider the review application, objections received and policy. Then instruct the licensing manager to issue a licence for a further year and if deemed necessary add additional conditions to the licence.
21. To consider the review application, objections received and policy. Then instruct the Licensing Manager to refuse the renewal application.

Appeal

22. There is no right of appeal for persons who have objected to the grant/renewal of a SEV licence. There is a right of appeal to the Magistrates court for the existing operator of a licensed venue and must be made within 21 days from the date the operator is notified of the decision of the committee.
23. No appeal can be lodged if the Council decision is based on the decision that the renewal of the licence is inappropriate having regard to (1) the character of the relevant locality, (2) to the use to which any premises in the vicinity are put and (3) to the layout, character or condition of the premises in respect of which the application is made.
24. Members therefore are reminded that a written record of their decision should be made.

Timetable of Next Steps

25. Please include a list of key actions and the scheduled dates for these:

Action	Key milestone	Due date	Responsible
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		(provisional)	
Environment and safety.		25.03.2020	Committee administrators.

Wards Affected

Castle

Implications

Relevant project tools applied? No

Have you checked this report for plain English and readability? Yes

Climate change implications considered? No

Please identify if this report contains any implications for the following:

Equalities and Community Cohesiveness

Crime and Fear of Crime (Section 17) Yes

Risk Management

Environmental Issues Yes

Economic/Financial Implications Yes

Human Rights Act Yes

Organisational Consequences

Local People's Views

Anti-Poverty

Additional Information

Appendix A – Existing Sexual Entertainment Policy

Appendix B – Objections, Map of location and Photographs of Venue.

Officer to Contact

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