

# Southend-on-Sea Borough Council

**Agenda  
Item No.**

**Report of Deputy Chief Executive (Place)**

**To**

**Licensing Committee**

**On**

**4<sup>th</sup> September 2017**

Report prepared by: Mark Newton

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**The Foresters, 65 Marine Parade, Southend-on-Sea, Essex, SS1 2EN**

**Application for the Renewal of a Sexual Entertainment Venue Licence  
Local Government ( Miscellaneous Provisions) Act 1982  
as amended by the Policing and Crime Act 2009  
*A Part I Public Agenda Item***

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## **1. Purpose of Report**

- 1.1 To consider an application by Mr Lee Jonathon Phyers for a Sexual Entertainment Venue Licence in respect of The Foresters Arms Public House, 65 Marine Parade, Southend-on-Sea, Essex, SS1 2EN.

## **2. Recommendations**

- 2.1 **That the Committee determines the application.**
- 2.2 **Should the Committee decide to approve the application, then all relevant standard conditions attached to the existing licence and outlined in in Appendix 1 should be applied to the licence.**

## **3. Background**

- 3.1 On 15 December 2011 Southend Borough Council made a resolution to adopt the provisions of Schedule 3 of the Local Government (Miscellaneous Provisions Act) 1982 (LGMP) introduced by the Policing and Crime Act 2009 (PACA), that relate to the licensing of Sex Establishments, comprising of Sex shops and Sex cinemas
- 3.2 The PACA introduced a third category of Sex Establishment licence (in addition to Sex Shops and SEX cinema licences) called a Sexual Entertainment Venue (SEV). This licence covers striptease, lap/ table dancing and similar entertainment. Previously this type of entertainment was classified generally as performance of dance on Premises Licences under the Licensing Act 2003 and was not regarded as a sex establishment
- 3.3 At present there are currently six premises that hold current Sex Establishment Licences and these are as follows:-
- Cornucopia , 39 Marine Parade, SS1 (SEV licence)
  - Sunset , Lucy Road , SS1 2AU (SEV licence)

- Entice, 3 Warrior House, 42 - 82 Southchurch Road, SS1 2LZ (SEV licence)
- Foresters, 65 Marine Parade, SS1 2EN (SEV licence)
- Private Shop ,9 Alexandra Street, Southend (Sex Shop)
- Harmony, 312 London Road, Southend (Sex Shop)

3.4 The application relates to a premises known as the Foresters situated at 65 Marine Parade, Southend-on-Sea, Essex SS1 2EN.

3.5 The application was given to the Licensing Authority on the 27<sup>th</sup> February 2017 and was advertised in accordance with legislative requirements (see Application procedures in section 4 below).

3.6 One objection has been received.

3.7 The application remains opposed and is referred to the Licensing Committee for determination.

#### 4. Application Procedures

4.1 Applicants for a SEV licence are required to send a copy of the application to the Police. It is also a requirement that a public notice is displayed at the premises giving brief details of the application and giving notice that objection can be made within a 28 day period.

4.2 Additionally the applicant must publish the same information in a newspaper that circulates in the locality.

4.3 It is Council practice to facilitate negotiations between parties where representations have been made. However no request was made for such negotiation by any party

4.4 One objection has been received. A copy of the objection has been provided to the applicant and the Licensing Committee. The Act requires that the authority do not disclose details of objectors without their permission and therefore details have been redacted from the committee papers

4.5 All parties have been invited to attend the hearing

#### 5 Proposals

5.1 Details of the application can be summarised as follows:-

- To use the ground floor (as marked on the deposited plans) to provide full or partial nudity, striptease, pole dancing and table dancing.
- To provide entertainment listed in a) above on Sundays to Thursdays from 10:00 until 00:00. and on Fridays & Saturdays from 10:00 to 02:00
- The applicant has confirmed that the renewal includes all existing conditions being carried forward. **These are outlined in Appendix 1**

- 5.2 Further information is provided in the application documentation which has been copied to the Licensing Committee.

## **6. Financial Implications**

- 6.1 A fee was paid on submission of the application. An additional fee has also been paid in order for the application to proceed to a hearing by the Licensing Committee. These fees cover the cost of administration and processing of the application

## **7. Premises Licence**

- 7.1 A Premises Licence under the Licensing Act 2003 is currently held at the premises, and this permits the following activities:
- a) The sale by retail of alcohol for consumption on and off the premises.
  - b) The provision of late night refreshment.
  - c) The provision of regulated entertainment comprising live music, recorded music, performances of dance and any similar activity.
- 7.2 A copy of the Premises Licence that includes all licence conditions has been provided to the Licensing Committee.

## **8. Legal Implications**

- 8.1 Under paragraph 12(1) of schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 there are five Mandatory Grounds for refusal of a Sex Establishments licence. These are as follows:-
- a) to a person under the age of 18;
  - b) to a person who is for the time being disqualified from holding a sex establishment licence;
  - c) Is not a body corporate, and is not resident or has not been resident in an EEA state for six months immediately preceding the date of application;
  - d) The body corporate which is not incorporated in an EEA state;
  - e) Has in the period of 12 months preceding the date of application been refused the grant or renewal of a licence for the premises in respect of which the application is made, unless the application has been reversed on appeal.
- 8.2 Discretionary grounds to refuse an application are:
- a) the applicant is unsuitable to hold a licence by reason of having been convicted of an offence or for any other reason;

- b) if the licence was to be granted, 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 of such a licence if he made the application himself;
- c) the number of sex establishments, or sex establishments of a particular kind, in the relevant locality at the time the application is made is equal to or exceeds the number which the authority consider appropriate for that locality;
- d) the grant would be inappropriate, having regard to :–
  - (i) the character of the relevant locality;
  - (ii) the use to which any premises in the vicinity are put;
  - (iii) the layout, character or condition of the premises, in respect of which the application is made.

8.3 Objections relating to moral grounds are not relevant matters for the Licensing Committee to consider.

## **9. Matters for Consideration**

9.1 The Licensing Authority is obliged to hold a hearing to consider the application and opposition to it. The Authority may.

- a) Approve the application as made subject to standard and offered conditions, or
- b) Modify the application conditions put forward or add additional conditions as Licensing Committee deem appropriate
- c) Reject the whole or part of the application.

9.2 In carrying out its licensing functions, the Licensing Committee should also have regard to:

1. Its Sex Establishments Policy, and
2. The guidance issued by the Home Office

9.3 The Council has published a Sex Establishment Policy, following formal consultation. Copies of this document and Home Office guidance, have been made available to all Licensing Committee Members.

## **10. Background Papers**

10.1 Council's Sex Establishments Policy.

10.2 Home Office Guidance – Sex Entertainment Venues.

10.3 Local Government (Miscellaneous Provisions) Act 1982 – Schedule 3 as amended.

## **11. Appendices**

Appendix 1: Existing Sex Establishment Operating Conditions

## **EXISTING SEX ESTABLISHMENT OPERATING CONDITIONS**

- 1) The licensee or a responsible person nominated by them in writing, not being under a person under 21 years of age, and whose nomination has been approved in writing by the Licensing Authority, shall be in charge of and present in the premises at all times when the public are on the premises.
- 2) The person in charge shall not be engaged in any duties which will prevent them from exercising general supervision.
- 3) The licence (including a copy of the conditions attached to it) shall be exhibited at the premises in a place where it can be easily seen and read by people visiting the premises.
- 4) There shall be no noise coming from the premises which would cause people in the neighbourhood to be unreasonably disturbed.
- 5) The licensee shall take all reasonable steps to ensure that people entering or leaving the premises do not conduct themselves in such a manner so as to cause disturbance to residents or passers-by.
- 6) The business shall be carried on only in the trade name or title, and at the address, specified in the licence.
- 7) The business shall be carried on only as the type of sex entertainment venue described in the application.
- 8) Where the licensee is a corporate or unincorporated body any change of director/partner or other persons to be responsible for the management of the premises shall be notified in writing to the Licensing Authority within 14 days of such change and further information as required by the Licensing Authority shall be given in writing within 14 days of such a request being made.
- 9) The licensee shall retain control over all parts of the premises and shall not let, share, or part with possession of any part of the premises. No change of use of any part of the premises shall be made without approval of the Licensing Authority.
- 10) In the conduct of the business the licensee shall not employ any person:-
  - (a) who has been disqualified from holding a licence for a sex establishment
  - (b) who has been refused the grant or renewal of a licence for a sex establishment
  - (c) who has been the holder of a licence for a sex establishment when that licence has been revoked.
- 11) The licensee shall ensure that no employee or other person shall seek to obtain custom for the premises by means of personal solicitation within the Borough.

- 12) There shall be no distribution of leaflets or other advertising material relating to the premises.
- 13) The interior of the part of the premises where the licensable activity takes place shall not at any time be visible from the outside.
- 14) The number, size and position of the doors or openings provided for the use of the public shall be approved by the Licensing Authority and those leading to parts of the premises to which the public does not have access shall be marked 'private'.
- 15) No access shall be permitted through the premises to any unlicensed premises adjoining or adjacent save in an emergency.
- 16) Lighting in all parts of the premises both internal and external shall be as approved by the Licensing Authority and be in operation continuously during the whole of the time the premises are open to the public.
- 17) With regard to entertainment authorised under this licence there shall be no advertisement, display, sign, model or other such things shall be exhibited either at the premises or any other premises giving access to the premises so as to be visible from outside the premises except for the following:
  - (a) any notice of a size and in a form approved in writing by the Licensing Authority.
  - (b) a compulsory warning notice, of a minimum size A4, shall be displayed at the each entrance to the premises.
    - (i.) The notice for sex entertainment venues shall state:- WARNING Persons passing beyond this notice will find nudity shows which they may consider indecent. No admittance to persons under 18 years of age.
    - (ii.) The word WARNING must appear as a heading.
    - (iii.) The warning notice shall contain only the prescribed words, and no others.
    - (iv.) No pictures or other matter shall appear on the notice.
    - (v.) The notice must be placed so it is easy to read and no-one could reasonably gain access to the premises without being aware of it.
- 18) No person who is apparently under the age of 18 years, or who is known to any person connected with the licensee's business and present at the premises to be under that age, shall be admitted to or allowed to remain at the premises.
- 19) The Licensing Authority reserves the right after the grant or renewal or transfer of this licence at any time to dispense with or modify or relax any of these conditions as they may deem necessary to meet the circumstances of any particular case.
- 20) The whole of the venue, excluding performer's locker areas, shall be monitored by CCTV. This system to be installed maintained and operated as agreed with the police. The recordings are to be retained for a period of 31 days. The recordings are to be made available to the statutory authorities upon request.

- 21) The Licensee shall ensure that a Performers Code of conduct is in place that shall, as a minimum, require performers:-
- (a) be clothed when not performing
  - (b) (prior to starting work) complete and sign an appropriate form acknowledging receipt of the Performers Code of Conduct
  - (c) provide evidence by means of photographic identification in the form of a valid passport or valid driving licence that they are 18 years of age or over
  - (d) not be under the influence or appear to be under the influence of alcohol or drugs at any time whilst on the premises
  - (e) only perform in a booth allocated for that purpose by the management
  - (f) striptease performers shall remain a minimum distance of one metre from customer;
  - (g) stop dancing if a customer attempts to touch or speak to a performer inappropriately during a booth dance performance and immediately inform the management or a member of the security staff
  - (h) not sell or solicit any form of sexual favour
  - (i) notify the management in the event of his/her spouse, civil partner, girlfriend or boyfriend being on the premises.
- 22) All striptease performers shall be provided with a copy of the Performers Code of Conduct upon engagement.
- 23) Only dancers engaged by the licence holder shall be permitted to participate in striptease, no members of the audience shall be permitted to participate.
- 24) Standards of customer conduct shall as a minimum shall require the following:-
- (a) Customers shall not touch performers
  - (b) No photography (excluding the premises CCTV) is permitted
  - (c) Any breach of the code of conduct or inappropriate/unacceptable behaviour will result in customers being ejected and excluded from the premises.
- 25) The licence holder shall ensure that prior to employment, all performers provide documents proving that they are over 18 years of age. Such documents (full passport or photo ID drivers licence) are to be copied and retained on the performer employment file and be made available upon request to the Licensing Authority or Police.
- 26) All performer employment files shall be retained for a period of at least 6 months after employment is terminated (this is without prejudice to other statutory requirements for retention of records). All files are to be made available to the statutory authorities upon request if required for investigative purposes.
- 27) Where the licence holder employs performers from an agency, the performers must provide the relevant documentation as required in conditions above. Details of the agency providing the performers are to be made available to the statutory authorities upon request.

- 28) The Licence Holder will have in place suitable arrangements to ensure the safety of performers arriving or leaving the building.
- 29) The Licensee shall operate a challenge 25 policy where by any person who appears to be under the age 25 years shall be required to provide ID showing that they are at least 18 years of age. The only acceptable forms of ID shall be a UK photographic drivers licence, a passport or a 'PASS' approved ID card.
- 30) The Licensee shall ensure that they submit a variation application before carrying out any change to the structure or management of the premises.