

Southend-on-Sea Borough Council

**Agenda
Item No.**

Report of Deputy Chief Executive (Place)

To

Licensing Committee

On

4th September 2017

Report prepared by: Mark Newton

**Entice, 3 Warrior House, 42 - 82 Southchurch Road
Southend-on-Sea, Essex, SS1 2LZ**

**Application for the Renewal and Variation 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

1. Purpose of Report

- 1.1 To consider an application by Wizard Sleeve Bars (Essex) Limited for a Sexual Entertainment Venue Licence in respect of Entice, 3 Warrior House, 42 - 82 Southchurch Road, Southend-on-Sea, Essex, SS1 2LZ.

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 should be applied to the licence, however the applicant has confirmed that the existing conditions (which include the standard ones) are to be carried forward in the renewal application.**

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 Entice, 3 Warrior House, 42 - 82 Southchurch Road, SS1 2LZ.
- 3.5 The application was given to the Licensing Authority on the 13th April 2017 and was advertised in accordance with legislative requirements (see Application procedures in section 4 below).
- 3.6 Three objections have 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 Three objections have been received. A copy of the objections 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 and basement floors (as marked on the deposited plans) to provide full or partial nudity, striptease, pole dancing and lap dancing.
 - To provide entertainment listed in a) daily from 21:00 until 03:00 the following morning and 21:00 until 04:00 the following morning on all Public and Bank

Holidays, and all Fridays, Saturdays and Sundays preceding such holidays and on the following days:

Valentine's Day, 29th February (leap year), Maundy Thursday, St. Patrick's Day, St. George's Day, Halloween (31st October), Christmas Eve, 27th & 28th December and at the commencement of British Summertime.

- c) 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 –
 - i. to the character of the relevant locality;
 - ii. to the use to which any premises in the vicinity are put;
 - iii. to 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) Performers may not stand in the lobby, reception or foyer areas or outside the premises for the purposes of greeting customers or encouraging customers to enter the venue.
- 2) The licence holder shall nominate a Duty Manager for the premises on each occasion they are open to the public and being used for the purposes of providing relevant entertainment.
- 3) The licence holder shall ensure the rota of the Duty Manager is displayed in the foyer or reception of the premises so the name can easily be viewed by Police or authorised Council officers carrying out an inspection of the premises, or otherwise by persons using the venue.
- 4) The Duty Manager shall be responsible for ensuring the premises operate in accordance with the conditions applicable to the sex establishment licence.
- 5) The Duty Manager shall remain on the premises while they are on duty save in the event of an emergency situation.
- 6) At least 2 door supervisors registered with the Security Industry Authority shall be on duty to ensure that:
 - The public entrance/exit at the premises is manned.
 - All public areas of the premises are continually monitored to ensure the Dancers and Customers Codes of Conduct and any licence conditions are being complied with.
 - Persons breaching the Customers Code of Conduct or otherwise behaving in a disorderly manner can be safely ejected from the premises.
 - Customer numbers are monitored to ensure additional door supervisors will be available on a risk assessed basis.
- 7) The licence holder shall obtain a photocopy of the passport or driving licence of each dancer that works at the premises and shall certify the copy as being a true copy by signing and dating the photocopy together with their own name and job title.
- 8) The licence holder shall undertake reasonable checks to ensure each dancer is eligible to work in the United Kingdom and shall not allow dancers ineligible to work in the UK to work at the premises.
- 9) The licence holder shall maintain written records of all dancers working at the premises. The records shall show the dancer's full name, home address, **date of birth** and a certified photocopy of their passport and the date the dancer was provided with the Dancers Code of Conduct and Disciplinary Procedure. Such records shall be produced for inspection by Police and authorised Council Officers within 24 hours of the request. Any instances of the dancer breaching the Dancers Code of Conduct shall be recorded on the dancer's record, showing the date and time of the incident and details of the breach that occurred.

- 10) Dancers under the age of eighteen shall not be permitted to work at the premises.
- 11) Dancers shall not be permitted to perform if they are clearly under the influence of alcohol or drugs.
- 12) The licence holder shall ensure that an incident log is maintained at the premises. The incident log shall, as a minimum, give details of:
 - Any ejections from the premises
 - Any refused admissions
 - Any refused sales
 - Any inappropriate behaviour by guests
 - Any failure in the CCTV system
 - Any incidents of crime or disorder
 - Any complaints made by the public, guests or dancers
- 13) The incident log shall be completed as soon as reasonably practicable after any incident has occurred. The licence holder shall ensure the incident log is checked periodically and at least at monthly intervals to ensure that staff are completing the incident log.
- 14) The incident log shall be kept in a place where it can easily be accessed by staff working at the premises and all staff shall be aware of its location and the need to complete it in the case of any of the circumstances described above in 12). The incident log shall be made available for inspection to Police or authorised Council Officers on request.
- 15) A 'Customers Code of Conduct' shall be on displayed at the entrance to the premises and within the performance areas. The customer code of conduct shall include the following:-
 - Customers shall be seated during a performance.
 - There shall be no physical contact with the performers at any time during the performance.
 - Unacceptable and inappropriate behavior will result in a customer being removed the premises.
 - Customers may only proposition the performers for a dance and not for any other sexual activity.
 - No non-prescription drugs or nitrous oxide may be brought into, or consumed on the premises.
 - No weapons or items which may be used as weapons may be brought into the premises.
 - It is a condition of entry that customers may be searched before being permitted to enter the premises.

- No photography is permitted by the use of the camera, mobile phone or other electronic device.
- 16) Searching The following policies shall be drawn up and agreed with the Police in writing:
- Misuse of Drugs
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 - Smoking
- 17) The smoking policy shall include a provision that only two staff shall be permitted to smoke outside the premises at any one time.
- 18) The licence holder shall sign-up to and participate in any town link radio system operated for the purposes of dealing with crime, disorder and nuisance within Southend Town Centre during the night time
- 19) The 'Dancers Code of Conduct' shall be displayed at the premises and made available to the dancers in their own language on request.
- 20) A female security officer shall be on duty at all times when carrying out bodily searches on female customers.
- 21) Dancers may not intentionally touch a customer during a performance.
- 22) Dancers may not permit a customer to touch them during a performance.
- 23) Dancers may not straddle the customer.
- 24) If a customer attempts to touch or speak to a dancer inappropriately, the dancer shall stop the performance and advise the customer of the rules of the Code of Conduct. If the customer persists in an inappropriate behaviour, the dancer shall stop the performance and inform premises management immediately.
- 25) Dancers may not intentionally touch the genitals, anus or breasts of another dancer, nor knowingly permit another dancer to touch their genitals, anus or breasts.
- 26) Dancers shall not solicit for gratuities or payment for sexual favours.
- 27) Dancers shall not engage in any act of prostitution, i.e. the receiving of gratuities or payment for sexual favours.
- 28) Dancers may not perform any act which simulates masturbations, oral sex or sexual intercourse, including the insertion of any object, including their own finger, into the anus or vagina.
- 29) Dancers may not touch their own breasts, anus or genitals with their fingers, lips or tongue.
- 30) Dancers may not be in the company of a customer unless it is in an area of the premises that is open to the public.

- 31) Dancers shall not perform if under the influence of alcohol or drugs
- 32) If a customer engages in acts of masturbation or other sexual behaviour, the dancer shall cease the performance immediately and inform the premises management.
- 33) Dancers shall use the dressing room facilities provided for their exclusive use to change for their performance.
- 34) Dancers shall only use the smoking area provided specifically for their use.
- 35) Dancers shall only use the sanitary facilities specifically provided for their use.
- 36) Dancers shall be clothed when not performing.
- 37) Dancers shall not leave the premises or otherwise be visible outside the premises, including for smoking breaks, unless dressed in suitable attire, e.g. outer-wear consisting of coat or top and skirt or trousers so lingerie or other performance costume is not visible. No advertising shall be displayed on dancers clothing when worn outside the premises during breaks.
- 38) Dancers shall notify management in the event of his or her spouse, civil partner, boyfriend or girlfriend being on the premises.
- 39) The Licensee shall ensure that a zero tolerance policy in respect of illegal drugs is in place. In pursuance of that policy dancers shall be subject to search and a procedure within the policy shall whereby dancers sign to confirm consent to appropriate searches being carried out.
- 40) All dancers shall comply with the dancers Code of Conduct. Any failure to adhere to the Code of Conduct shall render the dancer subject to the house Disciplinary Rules, a copy of which shall be provided to each dancer.
- 41) A suitable drugs safe/cabinet shall be fitted and any seized items shall be deposited in it. The safe shall be installed at the main entrance and only the Police shall have the access keys. Any seized items shall be placed in a clear bag with a label stating the circumstances of why it is in the safe. A corresponding book to record details of such seizures or found drugs/weapons shall be maintained. The whole of this procedure shall be covered by CCTV from seizure to deposit in safe. (With the exception of the toilets).