

DETERMINATION OF APPLICATION FOR RENEWAL SEXUAL ENTERTAINMENT VENUE LICENCE

Head of Service:	Rod Brown, Head of Housing & Community
Wards affected:	Town Ward;
Urgent Decision?(yes/no)	No
If yes, reason urgent decision required:	
Appendices (attached):	Appendix 1 Stir SEV licence Appendix 2 Stir application Appendix 3 Objections and representations Appendix 4 Applicant representation Appendix 5 Stir LA2003 premises licence

Summary

The Licensing Sub-Committee is asked to determine a renewal application for Sexual Entertainment Venue licence following objection.

Recommendation (s)

The Sub-Committee is asked to:

- (1) Grant the application, or**
- (2) Grant the application on such terms and conditions and subject to such restrictions as may be so specified, or**
- (3) Refuse the application.**

1 Background

- 1.1 On the 27 April 2010 Epsom & Ewell Borough Council adopted Schedule 3 of the Local Government Miscellaneous Provisions) Act 1982, as amended by section 27 of the Policing and Crime Act 2009, allowing the control of sex establishments. The regime came into effect on 1 August 2010.

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- 1.2 A premises offering adult entertainment would be required to hold a Sexual Entertainment Licence under schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended. This would apply to sex shops, sex cinemas and sexual entertainment venues.
- 1.3 A Sexual Entertainment Venue ('SEV') is defined as "any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer. 'Relevant entertainment' is defined as "any live performance or live display of nudity which is of such nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purposes of sexually stimulating any member of an audience (whether by verbal or other means)". An audience can consist of just one person (e.g. where the entertainment takes place in private booths).
- 1.4 Applicants for a sex establishment licence must give public notice of the application by publishing an advertisement in a local newspaper that is circulated in the local authority area no later than 7 days after the date the application is made.
- 1.5 Where the application relates to a premises, a notice should also be displayed on or near the premises in a place where it can be conveniently read by members of the public. The notice should be displayed for a period of 21 day beginning with the date the applications was made.
- 1.6 When considering an application for the grant, renewal or transfer of a licence the appropriate authority should have regard to any observations submitted to it by the chief officer of police and any objections that they have received from anyone else within 28 of the application.
- 1.7 Any person can object to an application but the objection should be relevant to the grounds set out below;-
 - (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;
 - (c) 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;
 - (d) that the grant or renewal of the licence would be inappropriate, having regard—
 - (i) to the character of the relevant locality; or

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(ii) to the use to which any premises in the vicinity are put; or

(iii) to the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.

1.8 Objections should not be based on moral grounds/values and local authorities should not consider objections that are not relevant to the grounds set out above.

1.9 Licences for sex establishments can be granted for up to one year.

2 Introduction

2.1 A SEV licence was granted to Stir 4 East Street, Epsom on 15 March 2011, and has been continuously licensed to date, with the licence being renewed each year. A copy of the current licence is attached at Appendix 1.

2.2 An application to renew the licence was made by Stir 777 Ltd on 9 July 2023, with the last day for objections being 6 August 2023. A copy of the application is attached as Appendix 2. Officers can confirm the application was properly advertised as required.

2.3 Where an application has been made to renew a licence before the date of expiry, it is deemed to remain in force, notwithstanding that the date has passed, until the withdrawal of the application or its determination by the appropriate authority.

3 Representations from Interested Parties

3.1 During the period for objections, four objections were received, and six representations in support. Copies these objections and representations are attached at Appendix 3.

4 Representations from the police

4.1 No objection to the application was received from the police.

5 Representation from the applicant

5.1 The applicant has provided a copy of an e-mail in relation to a Kingston Upon Thames licensing inspection of another premises licensed by the applicant as a sex establishment. A copy of this e-mail is attached as Appendix 4.

6 Policy Considerations

6.1 Epsom & Ewell Borough Council has a 'Sexual Entertainment Venue And Sex Establishment Policy'.

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- 6.2 The Home Office has published guidance on the licensing of Sexual Entertainment Venues.
- 6.3 The relevance of the objections relate to the character of the relevant locality and to the use to which any premises in the vicinity are put. Other matters that are not relevant, such as moral considerations, cannot be taken into account when determining the application. The full objections are provided so that the sub-committee can determine the relevance of the objection themselves.
- 6.4 The decision regarding what constitutes the 'character of the relevant locality' is a matter for the sub-committee. However, such questions must be decided on the facts of the individual application.
- 6.5 With reference to 1.7 (c) above, Epsom and Ewell Borough Council has not set a number for the number of sex establishments which the authority consider is appropriate for a particular locality. This would most likely require a policy decision of the Licensing and Planning Policy Committee, ratified by full Council.
- 6.6 Stir also benefits from a premises licence granted under the Licensing Act 2003, and a copy of this licence is attached as Appendix 5. Whilst this Sub-Committee has no authority to amend the premises licence, they may want to have regard so as to avoid unnecessary duplication of conditions.

7 Options

- 7.1 The following options are available:
- grant the Sexual Entertainment Venue Licence with the same licence conditions as the existing licence.
 - attach further conditions to any grant which it deems necessary, non-discriminatory and proportionate.
 - refuse the licence on one or more of the following grounds:-
 - (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 were to be granted, renewed or transferred the business to which it relates would be managed 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.
 - (c) The number of sex establishments, or sex establishments of a particular kind, in the relevant locality at the time of application is determined is equal to, or exceeds the number which the authority consider is appropriate for that locality;

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(d) 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.

Should Members be mindful to impose any conditions these need to be necessary, non-discriminatory and proportionate. In practice this means that conditions should be directed at attaining the objectives of public policy, public security, public health or the protection of the environment. Conditions should go no further than is necessary to achieve such objectives.

8 Legal Implications

8.1 In the event that the Authority refuses to renew the sex establishment licence, the applicant may appeal the decision to the Magistrates' Court within 21 days beginning with the day on which the appellant was notified by the licensing authority of the decision. However the applicant has no right of appeal if the application is refused for the reasons given in paragraph 6.1 (c) or (d) above.

8.2 An appeal can also be made against the imposition of conditions.

8.3 Magistrates' Court will hear the matter afresh and will only overturn a licensing authorities' decision if it thinks it is wrong.

8.4 This reinforces the importance of well drafted reasons for the decision as the magistrates' court is more likely to uphold a well drafted set of reasons.

8.5 **Legal Officer's comments:**

In considering this application, there are various statutory definitions concerning the licensing of sex establishments which are set out within this report to assist Members' consideration of this application.

In particular, the powers in determining licence applications in relation to sex establishments are found in Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 ('the Act') as amended.

This report indicates that the applicant has complied with the procedural requirements for advertising the application and giving notification to the police.

The Licensing Sub-Committee must determine the application on merit. No decision, opinions or factual findings must be made on "moral" grounds and

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all the facts must be considered before reaching a decision (*R v Newcastle Upon Tyne City Council, ex p The Christian Institute* [2001] LGR165).

9 Background papers

9.1 The documents referred to in compiling this report are as follows:

Previous reports:

- None

Other papers:

- [Epsom & Ewell Borough Council's Sexual Entertainment Venue And Sex Establishment Policy.](#)
- [Home Office guidance on the licensing of Sexual Entertainment Venues.](#)