

**SUBJECT: APPLICATION FOR VARIATION OF SEXUAL ENTERTAINMENT VENUE LICENCE FOR DSIRE, 8A PARK STREET, LINCOLN, LN1 1UF**

**REPORT BY: COMMUNITIES & ENVIRONMENT**

## **1. Purpose of Report**

- 1.1 To determine an application for variation of a sex establishment licence for Dsire, 8A Park Street, Lincoln, LN1 1UF.

## **2. Background**

- 2.2 The Local Government (Miscellaneous Provisions) Act 1982 ('the 1982 Act') provides 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 allows 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 1 April 2011.
- 2.3 These premises have held a sexual entertainment venue (SEV) licence since initial application and grant in April 2012. Being renewed annually thereafter.
- 2.4 Admiral Bars (Lincoln) Ltd have held the SEV licence for the premises since April 2021 when it was simultaneously transferred and renewed, both being issued under delegated powers

## **3 The Application**

- 3.1 On 26 May 2021 an application was received from Admiral Bars (Lincoln) Ltd for a variation of their Sex Establishment Licence. The application submitted is a request for alterations to the first floor, the ground floor remains as existing. A copy of the application can be found at **Appendix A**
- 3.2 In summary the applicant has requested to make the following changes:
- Removal of bar and existing booths
  - Till point installed in first floor lobby
  - CCTV cameras to cover all performance areas
  - New VIP rooms to be created
  - Install new private booths
- 3.3 A copy of the current first floor layout can be seen at **Appendix B(i)**. The proposed layout can be found at **Appendix B(ii)**

- 3.4 The conditions attached to the licence are the standard conditions attached to a sexual entertainment venue. These can be seen at **Appendix C**.
- 3.5 The proposed variation will not affect these conditions and they remain in force.
- 3.6 All applications for the variation of a sex establishment are determined by a delegated sub-committee of the Licensing Committee, whether or not objections to the application have been received.
- 3.7 Consultation was carried out with Police, Fire, Planning, Building Control and Environmental Health departments.

#### **4. Objections**

- 4.1 No objections to the variation were received.

#### **5. Considerations**

##### **5.1 Policy and Guidance**

- 5.1.1 The 1982 Act sets out a clear procedure for making applications for the grant of a sexual entertainment venue licence, renewal of such a licence and transfer of such a licence to another person. These include:
- the content of applications
  - giving notice to the Chief Officer of Police
  - advertising applications
  - the right of those who live or carry on a business in the vicinity to object;
  - the right of the applicant to be heard by the Council's Licensing Committee; and,
  - the requirement that the Council has regard to any objections and/or any representations made by the Chief Officer Police when determining an application.
- 5.1.2 The 1982 Act also states that a person may apply to vary the terms, conditions or restrictions on which a licence is held, however, it does not specify that any part of the procedure set out in paragraph 5.1.1 applies to such an application, although it does state that a fee is payable for such an application.
- 5.1.3 The Council may establish its own procedure for determining applications to vary a licence, to date, the Council has not done so.
- 5.1.4 The councils Sex establishment policy states that all applications for the variation of a sex establishment are determined by a delegated sub-committee of the Licensing Committee, whether or not objections to the application have been received. The councils sex establishment policy can be found at **Appendix D**

- 5.1.5 In the absence of any procedure established by the Council, applications can be made without any public notification and the Act suggests they could be granted or refused without giving the applicant the opportunity of a hearing or taking account of the views of any persons who might be affected by the application. It is however, a requirement of natural justice that an applicant is given an opportunity to be heard in relation to such an application.
- 5.1.6 Paragraph 5.13 of the council's policy states:  
*The use of private booths used for performances of relevant entertainment shall not be permitted otherwise than with the prior consent of the Council having considered the number, style and construction of the booths.*
- 5.1.7 Therefore, it is necessary for this application to be decided by a sub-committee with this stipulation in mind.

## **5.2 Human Rights Act**

- 5.2.1 Article 6 – right to a fair hearing  
“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.”  
The right to engage in commercial activities is a civil right –  
*Kaplan v United Kingdom 1980*  
*Pudas v Sweden 1987*
- 5.2.2 Article 8 – right to respect for private and family life  
“1. Everyone has the right to respect for his private and family life, his home and his correspondence.  
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”  
Removal or restriction of a licence may affect a person's private life.
- 5.2.3 Article 1, Protocol 1 – peaceful enjoyment of possessions  
“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.”

The right to engage in commercial activities under the benefit of a licence or registration is a possession

*Tre Traktor Aktiebolag v Sweden 1989*

## **6. Other Considerations**

6.1 The Policing and Crime Act 2009 Act amended the Licensing Act 2003 (‘the 2003 Act’) to state that premises for which a sexual entertainment venue licence is required or held do not also require a premises licence, club premises certificate or temporary events notice in order to provide relevant sexual entertainment. This is because sexual entertainment is expressly excluded from the definition of regulated entertainment found in the 2003 Act.

6.2 However, if the premises also carry on other licensable activities (e.g. the sale of alcohol or the provision of regulated entertainment that is not relevant sexual entertainment), they are required to obtain the appropriate licence or authorisation in accordance with the 2003 Act, for those other activities, subject to any exceptions contained in that Act

6.3 These premises do currently benefit from a premises licence issued under the Licensing Act 2003. That licence was varied and granted on 12<sup>th</sup> May 2021.

6.4 The variation under the 2003 Act sought the same layout alterations as the application under the 1982 Act. It received no objections and was granted as applied for.

6.5 Therefore, should the variation be granted today then both licences would marry up. However, if the application were refused or altered in any way then a new variation application may need to be sought under the 2003 Act.

## **7. Legal**

7.1 The legal implications are as outlined in the report and an applicant for the variation of the terms, conditions or restrictions on or subject to which any such licence is held whose application is refused may appeal within twenty-one days of the giving of written notice of the grounds of the refusal, to the Magistrates' Court.

## **8. Options**

8.1 Paragraph 18 of the Local Government (Miscellaneous Provisions) Act 1982 provides that the holder of a sexual entertainment venue (SEV) licence may at any time apply for any variation of the terms, conditions or restrictions on or subject to which the licence is held.

8.2 The authority may;

- a) Make the variation specified in the application (grant the application);  
or
- b) Make such variations as they think fit; or

c) Refuse the application.

8.3 The variations that an authority may make by virtue of 8.2 (b) above include, variations involving the imposition of terms, conditions or restrictions other than those specified in the application.

8.4 No variation should be made in so far as it relates to any matter in relation to which requirements or prohibitions are or could be imposed by or under the Regulatory Reform (Fire Safety) Order 2005

8.5 The Sub-Committee is required to give reasons for its decision. Such reasons need to be clear and include an explanation of why it has reached its decision.

**9. List of associated papers**

9.1	Appendix A (i)	Application for variation
	Appendix A (ii)	Application details
	Appendix B (i)	Current first floor plan
	Appendix B (ii)	Proposed first floor plan
	Appendix C	Licence conditions
	Appendix D	Statement of Licensing Policy

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