

**MAIDSTONE BOROUGH COUNCIL**

**LICENSING COMMITTEE**

**9 MAY 2013**

**REPORT OF THE HEAD OF DEMOCRATIC SERVICES**

**Report prepared by Lorraine Neale**

**1. LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982, SCHEDULE 3 – RENEWAL APPLICATION FOR SEX ESTABLISHMENT LICENCE – FOR PLAYERS, GENTLEMENS’ CLUB, 57 HIGH STREET, MAIDSTONE, KENT, ME14 1SY**

**1.1 Issue for Decision**

1.1.1 To consider and determine the renewal application made on 24 March 2013 by James Elliot Pemble for a Sex Establishment Licence for a Sexual Entertainment Venue which has been made under the Local Government (Miscellaneous Provisions) Act 1982, Schedule 3 as amended by the Policing and Crime Act 2009

**1.2 Recommendation of the Head of Democratic Services**

Prior to consideration of the application

The Committee operate their discretion to have regard to early objections received prior to the making of the application being considered by this Committee. These objections were received in reponse to an identical application made on 04, March 2013, withdrawn and resubmitted to allow correction of the time period notified for objections.

Application

That the Committee consider and determine the renewal application for a sexual entertainment venue licence received from James Elliot Pemble Ltd for Players, Gentlemens’ Club, 57 High Street, Maidstone, Kent, ME14 1SY, following the tiered approach set out in the report.

**1.3 Reasons for Recommendation**

1.3.1 On 2 March 2011 the Council resolved to adopt the Local Government (Miscellaneous Provisions) Act 1982, as amended by section 27 of the

Policing and Crime Act 2009; therefore, subject to limited exceptions and exemptions, or in the absence of a waiver, premises offering relevant entertainment require a Sexual Entertainment Venue (SEV) licence to operate in Maidstone. The new powers took effect locally from the 1 May 2011.

- 1.3.2 Where a licence is granted any standard conditions adopted by the Council will automatically be imposed unless expressly excluded or varied. The Council has adopted standard conditions and a policy to facilitate consideration of applications and guidance is provided to the committee in subsequent paragraphs of this report.

Players have provided adult entertainment since the grant of their Licensing Act 2003 premise licence issued on 30 July 2007 Appendix G. Players made an application for their sexual entertainment venue licence on 28 October 2011 and no objections were received. At the meeting on 5 March 2012 Licensing Committee granted their sexual entertainment venue licence with variations to conditions 2,4,14,20 and 37, and additional Security and CCTV conditions see 1.4.3 and Appendix H, this licence came into operation on 1 May 2012.

- 1.3.3 A renewal application was received on 24 March 2013 from James Elliot Pemble for a Sexual Entertainment Venue licence in respect of Players, 57 High Street, Maidstone, Kent, ME14 1SY and a copy plus supporting documentation is attached as Appendix A.
- 1.3.4 The application is for the provision of sexual entertainment during the following hours Monday to Sunday 19:00 – 02:00 and New Years Eve 19:00 – 03:00.
- 1.3.5 The applicant is required to serve a copy of their application on the Chief Officer of Police and to give notice to other interested parties by way of a notice on site for 21 days and in the local paper once within 7 days of application. An application was made on 04, March 2013 and a notice was placed at the site on the 4 March 2013 and in Kent News, w/e 10, March 2013 but incorrectly gave the date for objections to be received by the 25 March 2013. A 21 day objection period rather than the required 28 day period. After discussion with the applicant they decided to resubmit the application and re-advertise for a correct period. A further notice was displayed on the premises from the 26 March 2013 and in the Kent on Sunday 31 March 2013 giving objectors until 24 April 2013 in this instance giving objectors 30 days to object. The applicant was advised but was happy to allow up to that date to include objections. There were 107 objections received in response to the incorrect notice. It has been agreed with the applicant's solicitor that members will be advised to accept them as early objections, to avoid any prejudice that would be caused by requiring objectors to resubmit their objections, he has no objections to this approach. A copy of the correct site notice and newspaper advertisement are

attached as Appendix B. Any objections being required by 24 April 2013

1.3.6 No observations have been received in response to the notices of application from the police in respect of either the 4 March 2013 application or the resubmitted application on 24 March 2013

1.3.7 107 letters of objection were received up to 25 March 2013, in relation to the identical application made on 04, March 2013 In summary their objections are:-

- The area is inappropriate, having regard to the character of the relevant locality and the use to which premises in the vicinity will be put. The uses referred to include; shops, Post Office, youth café, schools, churches, residences, cafes and businesses that are family orientated.
- The potential effect on crime and anti social behaviour in the area.
- That families/children walking by would be affected by the presence of an SEV.
- The premises are on a route to and from the town centre to the river, Lockmeadow and new hotels.
- the numerous bus stops where children wait after school
- That a use of this nature would not be appropriate in a town which encourages families and the creation of housing in the town.
- Refusals have been made for other similar establishments in Bank Street and Gabriel's Hill.
- recent regeneration improvements, including Jubilee Square and work due to the Lower High Street makes the area no longer appropriate for these kinds of establishments as they are not in keeping with the positive changes.
- set a nil number for such establishments in Maidstone.

Members should note that licences cannot be refused on solely moral grounds i.e. sex establishments are immoral and none should be allowed. They need to confine their considerations to matters relevant to the statutory grounds, (12.3 policy).

Copies of the objections providing full details of the comments are attached as Appendix C. Names and addresses have been redacted as no objectors have consented to their details being revealed.

1.3.8 The definition of a Sexual Entertainment Venue is any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer. An application for a licence for such a premises can only be refused on statutory grounds, some of these are mandatory grounds, see 1.3.19 and some discretionary, see 1.3.20. The Committee, therefore, have to consider only objections relevant to the statutory grounds of refusal.

1.3.9 In considering this application the Committee should have regard to:

- Schedule 3 Local Government (Miscellaneous Provisions) Act 1982, as amended by Policing and Crime Act 2009 (Appendix E)

In considering this application the Committee may be assisted by having regard to:

- The Council's Sex Establishments Policy (Appendix F)
- Home Office – Sexual Entertainment Licence – Guidance for England and Wales, (Appendix G)

1.3.10 Additionally Section 1 and Schedule 1 Parts I & II of The Human Rights Act 1998 will apply to this application:

Article 1 – Every person is entitled to the peaceful enjoyment of his or her possessions including the possession of a licence and shall not be deprived of the possession except in the public interest

Article 6 – That in the determination of civil rights and obligations everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

Article 10

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

See item 7, page 7 of the Council's 'Sex Establishments Policy.

1.3.11 The Provision of Services Regulations 2009 imposes three tests on any refusal of a licence under the Act, they must be:-

- Non discriminatory

- Necessary
- Proportionate

1.3.12 Section 17 of the Crime and Disorder Act 1998 imposes a duty on Licensing Authorities to have due regard to the likely effect of the exercise of their functions on and the need to do all they reasonably can to prevent Crime and Disorder.

1.3.13 The Equality Act 2010, Section 149 requires public authorities in the exercise of their functions to have due regard to the need to eliminate discrimination, harassment and victimisation, to advance equality of opportunity between the sexes and foster good relations between them. Consideration of this may inform Conditions. This duty also covers religious belief and disability.

1.3.14 Players situated at 57 High Street, Maidstone, Kent, ME14 1SY, holds a premises licence under the Licensing Act 2003 which was issued on 30 August 2007 and adult entertainment was covered by it. On 2 March 2011 the Council resolved to adopt the Local Government (Miscellaneous Provisions) Act 1982, as amended by section 27 of the Policing and Crime Act 2009 and the new powers took effect locally on the 1 May 2011. Players applied for a SEV on 28 October 2011 and Committee agreed at a meeting on 5 March 2012 to grant Players a SEV licence.

Players SEV licence was issued on 1 May 2012 and expires on 30 April 2013. The licence is now due for renewal. The premises has run with no issues or complaints being reported to the Licensing Department. A copy of the current premise licence is attached as Appendix G and a copy of the current SEV licence is attached as Appendix H.

1.3.15 Renewal of a licence is an occasion on which the licensing authority can revisit the principle of the licence, the legislation does not differentiate between discretion to refuse to grant and to refuse to renew a licence. Case law has confirmed that a licensing authority is entitled to refuse to renew a licence for a sex establishment on grounds under paragraph 12 (3) (d) of schedule 3 of the Local Government (Miscellaneous provisions) Act 1982, (grant or renewal would be inappropriate having regard to the character of the relevant locality or the use to which any premises in the vicinity are put etc.), despite there not having been any change of circumstances since the last grant, provided that due weight is given to the fact that the licence has been previously granted and gave rational reasons for the refusal. If, however, the decision purports to rely on a change of character of the relevant locality, if there was in fact no evidence of such a change sufficient to justify the refusal to renew the licence an appeal could be allowed.

In a further case it was found that even where during the period of a licence the holder had upgraded their shop front in keeping with the changed character of the area, and had received planning consent to do, so the authority could find it had contributed to the change in the character of the area that made the continued presence of the business inappropriate. The Court found that the Act contemplated the possibility of the circumstances changing between grant and renewal and so an existing licence holder cannot expect to be granted a licence in perpetuity for any given set of premises.

An authority can take into account changing considerations so as to refuse a licence even where the licensee has done nothing wrong.

#### 1.3.16 Extent and Nature of the Relevant Entertainment.

The application is for the provision of sexual entertainment, specifically lap dancing, pole dancing, performances of dance in a dance area and striptease. Monday to Sunday 19:00 – 02:00 and New Years Eve 19:00 – 03:00.

#### 1.3.17 Mandatory Grounds of Refusal.

Paragraph 12(1) of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 and

Section 12.1 of the Sex Establishments Policy detail the mandatory grounds for refusal of an SEV licence which are:-

- (a) to a person under the age of 18 years; or
- (b) to a person who is for the time being disqualified due to having had a previous licence revoked in the area of the appropriate authority within the last 12 months ;or
- (c) to a person, other than a body corporate, who is not resident in an EEA state or was not so resident throughout the period of six months immediately preceding the date when the application was made; or
- (d) to a body corporate which is not incorporated in an EEA state; or
- (e) to a person who has, within a period of 12 months immediately preceding the date when the application was made, been refused that grant or renewal of a licence for the premises, vehicle, vessel or stall in respect of which the application is made, unless the refusal has been reversed on appeal.

There is no evidence that any of these grounds are applicable to this application and none are raised by Police observations or representations by the objectors to this application.

### 1.3.18 Discretionary Grounds of refusal.

Paragraph 12(3) of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 and Section 12.2 of the Sex Establishments Policy detail discretionary grounds for refusal of an SEV licence.

(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 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 the locality

(d) the grant or renewal of the licence would be inappropriate, having regard:

(i) to the character of the relevant locality; or

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

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

### 1.3.19 Suitability of Applicant/ Business to be Managed or Carried on for the Benefit of a Person who Would be Refused- (paragraph 12.4 a) and b) policy).

The applicant of the premises is James Pemble.

The following are named in the application as the persons responsible for the management of the establishment.

- James Pemble (Manager, Designated Premises Supervisor and Owner) Annex A, Appendix A, in Part II, provides information on suitability.
- Rico Andreas Brandmuller (Deputy Manager) Annex A, Appendix B, in Part II, provides information on suitability.

This is an existing operation that has offered adult entertainment since 2007, there have been no issues or problems reported in relation to the premises. There is no evidence that these grounds are applicable to this application and none were raised by Police observations or representations by objectors to this application. On making enquiries with the Licensing Officer at Ashford Council we were informed that Mr Pemble has premises there and that there had been no issues or problems reported in relation to the premises. We were also advised that their licence was granted on 21 August 2012 and that the premises did open and trade but have not been trading in recent months.

1.3.20 Appropriateness of the layout, character or condition the Premises Paragraph 12(3) (d) (iii) of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 and

(paragraph 12.12 Policy).

The premises is on two levels with one main door that leads directly into the High Street with minimal signage on the street which is subject to any planning requirements and the approval of the licensing department.

The applicant has applied for lap dancing, pole dancing, performance of dance in a dance area and striptease Monday to Sunday 19:00 – 02:00 and New Years Eve 19:00 – 03:00.

The premises utilise the following documents, customer house rules, Players house rules, private dance rules, dancers welfare policy and staff training policy. These documents combined provide a sufficient management system in regard to these premises.

1.3.21 What is the Relevant Locality?

This is relevant to Paragraphs 12(3) (c) and (d) (i) of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 and Paragraphs 12.5 to 12.10 policy refer.

The building is located in Lower High Street, an area with mixed uses, see paragraphs 1.3.24 and 1.3.25 for further detail. Members should consider the locality at the time of this decision and consider the locality at the time when it is proposed the premises will be operating as an SEV. Parties at the hearing will be able to make submissions on this issue.

Locality may be a large area, probably larger than vicinity, but the locality is a matter for members and will depend on the circumstances of the case. It has been held that locality cannot be the entire administrative area and further that locality is likely to be a homogenous area. Case law has held that a whole town may be too large. There does not have to be a clearly predefined area or precise boundaries.

1.3.22 What is the Character of the Relevant Locality?



Paragraph 12(3)(d)(i) of Schedule 3 to the Local Government (Miscellaneous provisions) Act 1982 and paragraph 12.10 policy.

The area is in the Maidstone Town Centre conservation area, there are some listed building in the vicinity including 57 High Street for further details see the plan attached at Appendix I

There are no residences located immediately adjacent to the premises, but there are residential premises in the area. In general there are 6 residential properties in the High Street and 11 in Mill Street, with the nearest residence being 39 High Street which is almost opposite Players. There does not appear to be anyone in residence on the Players side of the High Street, the nearest being Mill Street where there are 11 flats and 9 residents.

There are other licensed premises, (Licensing Act 2003), in the lower end of the High Street and nearby that also form part of the night time economy, they are:-

Name of premises	Address	Opening Hours
Buddha Belly	22 – 23 High Street	Mon to Sun – 09:00 – 03:00
Kullar News	30 High Street	Mon – Sun 00:00 – 24:00
Pizza Chicken Hot 4 You	31 High Street	Mon – Sat 11.00 – 04.00 Sunday 11.00 – 23.00
Fortify Cafe	32 High Street	Mon to Sun 08:00 – 00:00
Dinos Pizza	34 High Street	Fri & Sat 11:30 – 05:00 Sun – Thurs 23:00 – 00:00
Wok Inn	38 High Street	Mon to Sun 11:00 – 05:00
Maidstone Grill	54 High Street	Mon – Sun 00:00 – 24:00
Chicago Rock	60 – 61 High Street	Mon – Sun 11:00 – 03:30
Turning Tables/Rafters	62 High Street	Sun – Wed 08:00 – 00:00 Thurs – Sat 08:00 – 04:00
Buenos Aires	63 High Street	Mon – Sat 12:00-16:00 and 18:00 -00:00 Sun 12:00 – 23:00

There are shops/businesses that operate during the day immediately around the premises. High Street is a retail thoroughfare and pedestrian street, see policy paragraph 12.13

There are bus stops located in High Street however the premises would not operate until 19:00 hours, which would be after schools finish and normal commuting times.

At 34A High Street, there is a youth café called switch which is used by young people and any local organisations involved with them. Its hours of operation are Tuesday –Friday 15:30 – 17:30 and Saturday 15:00 – 18:00, they are not open during the operational hours for Players. However, at night the premises are used as a base by Maidstones street pastors.

There is a newly established space approximately 200 – 250 metres from Players called Jubilee Square which is used for civic and community events and is used by the public as a meeting and resting place also during the summer months there are children’s funfair rides in position there. Jubilee Square and the High Street was Phase I of Maidstone Borough Council regeneration scheme and was completed in May 2012. Phase II which is scheduled to go ahead from April to October 2013 will see the lower end of the High Street undergoing regeneration which it is intended when finished will encourage public use into that area, attached is a plan showing the design of Phase II of the High Street. Appendix I

Parties at the hearing will be able to make submissions on the character of the locality and their reasons at the hearing.

#### 1.3.23 What is the vicinity and What are the Uses of Other Premises in the Vicinity?

Paragraph 12(3)(d)(ii) of schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 and paragraph 12.11 policy.

Vicinity is likely to be a narrower area than “relevant locality” and parties will be able to make representations on this issue. Paragraph 1.3.24 describes the character of the locality and here I concentrate on the uses of premises which may be relevant to members consideration if they are considered to be in the vicinity of the premises.

The nearest residential property is at 39 High Street which is opposite the premises, there are other Licensing Act 2003 premises nearby that attract a significant number of customers.

The nearest churches are Maidstone Baptist Church at the corner of Knightrider Street and Mill Lane and All Saints Church which is directly opposite on College Road (0.5 mile). There is also the United Reform in Week Street (0.3 mile) and the Life Church and Methodist Church in Brewer Street (0.3 mile).

The nearest schools are Maidstone Boys Grammar School at Barton Road (0.8mile) Invicta Girls Grammar School and Valley Park School are at Huntsman Lane (0.9 mile) Maidstone Girls Grammar School and Maplesden Noakes at Buckland Road (0.9 mile).

The nearest public recreation spaces are the Archbishop's Palace Gardens, amphitheatre by the riverside and Brenchley Gardens.

Bus stops are situated on High Street not far from the premises.

The premises are within the Maidstone conservation area and the nearest historic buildings are Archbishops Palace, All Saints Church, Carriage Museum and the Town Hall. Some of the buildings in High Street are also listed see the plan attached at Appendix I

The premises in the area mainly reflect two types of economy namely the retail outlets during the day and those establishments relevant to the night time economy. High Street is a mix of these.

#### 1.3.24 Would a Sex Establishment of this Type be Appropriate?

Would an SEV of the nature proposed be appropriate having regard to the premises, the character of the relevant locality and the use of the premises in the vicinity? Members should consider the facts that have been established from the application, representations in writing and all submissions made at the hearing and determine whether a grant in these circumstances would be appropriate.

#### 1.3.25 What is the Appropriate Number of Sex Establishments in the Relevant Locality?

Paragraph 12(3) (c) of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 and paragraph 12.4 c and 12.5 - 9 policy.

The Council has currently resolved not to determine localities and appropriate numbers of establishments in advance of applications being received. It will consider each application on its merits and determine the locality and appropriate number for all, or the relevant type of premises, at the time of deciding on the application.

At a licensing Committee meeting on 22, March 2012 the first application for Players at 57, High Street, Maidstone was considered. These premises were already in operation as a lap and pole dancing venue covered by the Licensing Act 2003 premise licence until 30, April 2011. Members at that meeting considered the relevant locality and how many sex establishments or SEVs would be appropriate, if any. They considered the relevant locality to be the High Street area between Mill Street and the bridge area, (Bishops Way/Fairmeadow). An appropriate number of one was set for sexual entertainment venues for that locality at that time.

In considering this application the relevant locality has been considered at paragraph 1.3.23 and 1.3.24 and should take into account all the circumstances at the time of this decision. The number considered appropriate, if any, at the time of this decision may be for

all sex establishments or only SEVs taking into account all the circumstances at this time.

#### 1.4 Conclusions and Options.

Members should consider all the matters set out at paragraphs 1.3.12 – 1.3.16 of this report.

##### 1.4.1 In having regard to the Councils Sex Establishments Policy (attached as appendix E) the principle is that each application will be determined on its own merit.

A licence if granted would last for one year and is subject to renewal annually.

The Committee may:

- Grant the application as applied for with Standard Conditions, or
- Grant the application as applied for with Standard Conditions and additional conditions, or
- Grant the application on varied terms, with or without additional conditions.
- Refuse the application on one or more of the statutory grounds.

##### 1.4.2 Conditions.

Under Paragraph 8 of Schedule 3 of the Act the Council may grant a Sex Establishment Licence on such terms and conditions and subject to any restrictions as may be specified and that these specific terms and conditions will be tailored for each individual premises.

##### 1.4.3 The Council has approved a set of Standard Conditions which are applicable to the type of licence that may be granted, unless, the application has requested that one or more of the Standard Conditions are removed or varied or if this appears to the Members to be necessary and proportionate in this particular case. This is a matter for the Committee to consider in their determination should they be minded to renew a licence. At the meeting on 22, March 2012 licensing Committee amended the standard conditions set out below and added the additional conditions as set out in the standard conditions for Security and CCTV:-

**2.** The name of the person responsible for the management of the sex establishment being either the Licensee or a manager approved by the Council, shall be displayed within the sex establishment throughout the period during which he is responsible for its conduct.

**4.** A notice showing the name of the person responsible for the management of the sex entertainment venue on that day to be displayed within the sex establishment throughout the period during which he is responsible for its conduct.

**14.** The licence holder shall not display outside the premises, or on any advertising material, photographs or other images that indicate and suggest striptease or similar dancing takes place on the premises and which may be offensive. Any promotional advertising in respect of the premises must have prior approval of the licensing Authority before its display/distribution.

**20.** All temporary dance booths or cubicles are covered by CCTV which will be monitored throughout all performances by an SIA registered member of staff.

**37.** During any lap dancing performance, or private dance, performers may not:

- Touch any customers with their fingers.
- Perform within 6" from any part of a patron save that they are allowed to sit on the lap of a customer provided they sit with their backs to the customer.
- Climb onto furniture provided for patrons.
- Simulate sex acts.
- Use sex articles.

## **Security**

### Condition b

Door supervisors, registered in accordance with the Security Industry Authority (SIA) shall be on duty at all times when relevant entertainment is taking place.

### Condition d

CCTV to be installed to a standard agreed by Police to cover all public areas, including all access and egress points in accordance with CCTV Code of Practice. Maintained and serviced on a regular basis and records to be kept. The system to have an incorporated recording facility and recordings to be stored for one calendar month. The CCTV system to be fully operational throughout the hours that the premises are open for licensable activity. Access of the recordings to be made available at any reasonable time to Police and Local Authority officers upon request. Staff will be fully trained in the CCTV system and there will be at least one member of staff on duty during trading hours who

is able to provide a recording of any incident in a format that can be taken away to be viewed.

There will be an opportunity at the hearing for all parties to make representations about possible conditions and the amended conditions should the licence be granted. This does not indicate that a licence will be granted.

If Members are minded to grant the application I can confirm that during the current licence period there have been no breaches of conditions of which I am aware. The authority may also amend or attach conditions on renewal, whether or not such conditions have been attached before. This may correct a previous oversight or improve previous standards.

#### 1.4.4 Policy- Locality and Numbers.

An authority may publish a policy but that cannot prevent any individual application from being considered on its merits at the time of the decision, when submissions can be made by all parties. Thus a policy predetermining localities and numbers would have to be reviewed on each application, in any event, and the circumstances of any area may change over time.

At the meeting on the 5 March 2013, when Players first made application for a Sexual Entertainment Venue Licence (SEV) the Licensing Committee decided at that time that the appropriate number of such establishments in the locality of the Lower High Street between Mill Street and the bridge area (Bishops Way/Fairmeadow) was one. The Committee should now revisit their decision and make a decision at this time. Determination will be made on individual merit of the application, at the time the application is decided

#### 1.4.5 Appeals.

A statutory right of appeal against any decision to refuse in this case, or to impose conditions, is given to the applicant, in respect of mandatory grounds of refusal only on the basis that the ground does not apply to the applicant and in respect of discretionary grounds in paragraph 12 (3) (a) and (b), (suitability of applicant, manager and beneficiary of the operation). This is to the Magistrates' Court, by way of complaint for an order, within 21 days beginning with the date the decision is notified. There is no right for other parties to appeal in this way but they can apply to the Court to be heard at any appeal. In respect refusal for grounds under paragraph 12 (3) (c) and (d) (i) – (iii) these rights do not apply. Any other appeal would be by way of judicial review.

#### 1.4.6 When Decision is Effective.

If there should be a refusal to renew on grounds under schedule 3 paragraphs 12 (3) (c) or (d) the decision takes immediate effect and the licence lapses with the decision. If there is a refusal on other grounds then the decision is not effective until the time for appeal expires and if an appeal is brought until that is abandoned or determined.

1.5 Alternative Action and why not Recommended

1.5.1 The only alternative would be to fail to consider an application made and failure to determine this application would be likely to result in legal challenge.

1.6 Impact on Corporate Objectives

1.6.1 Arriving at a carefully considered decision meets the Councils objective of corporate and customer excellence

1.7 Risk Management

1.7.1 The amendments to the legislation were introduced in order to regulate premises offering sexual entertainment. The Committee are to consider the application and decide whether or not to grant the licence. The Committee must have regard to all matters set out at paragraphs at paragraphs 1.3.911– 1.3.16 and must carefully consider the applicant’s rights balanced against the public interest. The only grounds on which a licence can be refused are set out in legislation.

1.8 Other Implications

1.	Financial	X
1.	Staffing	
2.	Legal	X
3.	Equality Impact Needs Assessment	X
4.	Environmental/Sustainable Development	
5.	Community Safety	X
6.	Human Rights Act	X
7.	Procurement	
8.	Asset Management	

- 1.8.1 **Financial** – The appropriate application fee has been paid in accordance with the Council’s fees and charges.
- 1.8.2 **Legal** – The relevant legislation is the Local Government (Miscellaneous Provisions) Act 1982, Schedule 3, as amended. Considerations are as set out in the report.
- 1.8.3 **Equality Impact Assessment** - The Equality Act 2010, Section 149 requires public authorities in the exercise of their functions to have due regard to the need to eliminate discrimination, harassment and victimisation, to advance equality of opportunity between the sexes and foster good relations between them. Consideration of this may inform Conditions. This duty also covers religious belief and disability. An assessment was made at the time at the time of the adoption of the Policy.
- 1.8.4 **Community Safety** - Section 17 of the Crime and Disorder Act 1998 gives authorities a duty to have regard to the likely effect of the exercise of their functions on the need to do all they reasonably can to prevent, crime and disorder.
- 1.8.5 **Human Rights - The** Human Rights Act 1998 should be taken into consideration when reaching a decision. The rights potentially engaged are:-

Art 10 – right to freedom of expression – the right to expression through sexual entertainment or sex articles may be included. The right is a qualified one and may be subject to conditions and restrictions as are necessary, in the interests of public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights or others etc.

Art 1, First Protocol – peaceful enjoyment of possessions. Possessions may include a premises, goodwill of a business and the benefits of an existing licence. There may be removal of possessions if the law provides for it and it is in the public interest.

Article 6 – That in the determination of civil rights and obligations everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

The Licensing Authority taking a decision need to demonstrate that these rights have been taken into account and formed part of the factors balanced in making the decision.

- 1.9 Relevant Documents  
Appendix A Application form



- Appendix B Applicants site notice and newspaper notice
- Appendix C representations from objectors.
- Appendix D Schedule 3 Local Government (Miscellaneous Provisions) Act 1982, as amended by Policing and Crime Act 2009
- Appendix E Sex Establishments Policy
- Appendix F Home Office – Sexual Entertainment Licence – Guidance for England and Wales.
- Appendix G Copy of Premises Licence
- Appendix H Copy of sexual entertainment venue licence
- Appendix I Plan of the Area showing conservation area and listed buildings & standard plan of the area
- Appendix J Drawing showing lower High Street Regeneration
- Appendix K MBC Standard conditions
- Appendix L Hearing Procedure

**IS THIS A KEY DECISION REPORT?**

Yes

No

If yes, when did it first appear in the Forward Plan?

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This is a Key Decision because: .....

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Wards/Parishes affected: .....

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