

Sandwell Metropolitan Borough Council

Report to the Licensing Panel

19 June 2017

Renewal of Sexual Entertainment Venue Licence
Angels Gentlemen's Club, 303 High Street, West Bromwich

1. Summary Statement

- 1.1 The Policing and Crime Act 2009 ("the 2009 Act") created a new category of "sex establishment" called a "sexual entertainment venue" in Schedule 3 to the Local Government (Miscellaneous Provisions) Act, 1982 ("the 1982 Act"). This brings the licensing of lap dancing, pole dancing clubs and other similar venues under the regime set out in the 1982 Act (currently used to regulate establishments such as sex shops and sex cinemas) rather than under the Licensing Act 2003 ("the LA2003").
- 1.2 A sexual entertainment venue 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." The meaning of 'relevant entertainment' is defined as "any live performance or live display of nudity which is of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purpose 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 a private booth).
- 1.3 The powers to regulate sexual entertainment venues are not mandatory and only apply where the amendment to the 1982 Act has been specifically adopted. Where adopted, the legislation is designed to give local people a greater say over the regulation of sexual entertainment venues in licensed premises in their area by allowing for objections on wider grounds than is allowed currently under the LA2003.
- 1.4 The Council, at its meeting on 11 January 2011 therefore adopted the provisions of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 (the '1982 Act') relating to the licensing of sexual entertainment venues.
- 1.5 The Council, at its meeting on 11 June 2014 approved that the Licensing Committee would exercise the Council's functions relating to the licensing of sex establishments in accordance with the Local Government

(Miscellaneous Provisions) Act 1982 Section 2 and Schedule 3.

- 1.6 On 20 June 2014 the Licensing Committee delegated responsibility to the established Licensing Sub-Committees (referred to as Panels) for exercising the Council's functions for the licensing of sex establishments.
- 1.7 The Committee is invited to consider an application for the renewal of the sexual entertainment venue licence in respect of Angels Gentlemen's Club, 303 High Street, West Bromwich, B70 8ND.
- 1.8 The application is made by Anchor (WB) Ltd whose registered address is Somerset House, 6070 Birmingham Business Park, Birmingham, B37 7BF.
- 1.9 The licence was first granted with effect from 1 April 2012 and has been renewed each year.
- 1.10 On grant of the initial application the Committee decided to vary standard condition 45 to allow advertising by the use of vehicles.
- 1.11 The premises subject of this application is also licensed under the Licensing Act 2003 for the sale and supply of alcohol and other forms of regulated entertainment.
- 1.12 No objections have been received within the statutory time period.

2. Recommendation

- 2.1 The Committee is requested to determine the application made by Anchor (WB) Ltd for the renewal of the sexual entertainment venue licence in respect of Angels Gentlemen's Club, 303 High Street, West Bromwich.
- 2.2 If approved, the licence will run for a period of 12 months from 1 April 2017 to 31 March 2018.

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3. **Strategic Resource Implications**

- 3.1 There are no direct strategic resource implications associated with this report.

4. **Legal and Statutory Implications**

- 4.1 In January 1983 the Council resolved to adopt the provisions of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 in relation to the control of sex establishments, which included sex shops and sex cinemas.
- 4.2 Section 27 of the Policing and Crime Act 2009 introduced amendments to Schedule 3 which made available new powers relating to the control of sexual entertainment venues.
- 4.3 The Council resolved to adopt the amended provisions referred to in paragraph 4.2 above in relation to sexual entertainment venues with effect from 1 April 2011.

5. **Implications for the Council's Scorecard Priorities**

- 5.1 The licensing function specifically impacts on the following scorecard priorities:

Great Prospects – Investing in people and jobs. Licensed premises provide a proportion of employment in the Borough and, as such, they provide an important part of the Borough's economy.

Great Place – safer neighbourhoods. One of the key objectives of licensing legislation is to provide a safer neighbourhood for licensed premises to operate within and to ensure a safe environment for people attending or working within licensed premises

6. **Background Details**

- 6.1 Guidance has been issued by the Home Office which indicates that whilst local authorities should normally judge each case on its own merits, it is expected that the definition of relevant entertainment would at least include the following forms of entertainment:

- Lap dancing
- Pole dancing
- Table dancing
- Strip shows
- Peep shows
- Live sex shows

- 6.2 Although the definition of relevant entertainment makes reference to a 'live display of nudity', the Guidance indicates that the mere fact that there is a display of nudity does not mean that a sex establishment licence will necessarily be required. For example, if the display forms part of a drama or dance performance in a theatre, in most cases it cannot reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience.
- 6.3 The relevant entertainment must be provided for the financial gain of the 'organiser' or 'entertainer'. The 'organiser' means any person who is responsible for the organisation or management of the relevant entertainment or the premises at which the relevant entertainment is provided. The Home Office Guidance states that in most circumstances, this will refer to the manager of the premises, but could also refer to someone who is responsible for organising the relevant entertainment on behalf of the persons responsible for the management of the premises.
- 6.4 The Guidance indicates that the 'organiser' must be someone who is in a position of responsibility over the provision of the relevant entertainment and should not be interpreted to mean a member of staff who is merely employed to work during the provision of relevant entertainment.
- 6.5 The following are not sexual entertainment venues for the purpose of the 1982 Act and are therefore exempt from the licensing provisions:
- i) sex shops and sex cinemas;
 - ii) any premises that at the time in question:
 - has not provided relevant entertainment on more than 11 occasions within the previous 12 months;
 - no such occasion has begun within the period of one month beginning with the end of any previous occasion;
 - no such occasion has lasted for more than 24 hours;
 - iii) premises specified or described in an order made by the relevant national authority.
- 6.6 Premises which provide relevant entertainment on an infrequent basis will continue to be regulated under the LA2003, insofar as they are providing regulated entertainment under that Act. Any premises that provide relevant entertainment on more occasions, more frequently or for a longer period of time than is permitted under the exemption will be operating as a sexual entertainment venue and will have committed an offence unless they hold a sexual entertainment venue licence or the Council has waived the requirement for such a licence.

- 6.7 An applicant can apply for a waiver either as part of the application for a licence or separately. The Council can grant a waiver if they consider that to require a licence would be unreasonable or inappropriate and the waiver may last for such a period that they think fit, but it can be terminated at any time with 28 days notice.
- 6.8 In general there is discretion whether or not to grant a licence for the use of any premises, vehicle, vessel or stall to be used as a class of sex establishment.
- 6.9 A Licence cannot, however, be granted to:
- i) a person under 18;
 - ii) a person who has held a licence but has had it revoked within 12 months preceding the date of application;
 - iii) 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;
 - iv) to a body corporate which is not incorporated in an EEA State; or
 - v) a person who has within the last 12 months preceding the date of the application been refused a licence in respect of the same premises.
- 6.10 Paragraph 10 (15) of Schedule 3 of the 1982 Act gives a statutory right to any person to object to an application.
- 6.11 If objections are received then details of the objections must be provided to the applicant, although names and addresses may not be divulged without the objector's consent.
- 6.12 An applicant must be given the opportunity of appearing before the body making the decision before an application is refused.
- 6.13 An application for the grant or renewal of a licence may be refused on one or more of the following grounds:
- i) that the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason;
 - ii) that 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;
 - iii) that 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 Council considers is appropriate for that locality;

iv) that the grant or renewal of the licence would be inappropriate, having regard to:-

- the character of the relevant locality; or
- the use to which any premises in the vicinity are put; or
- the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.

- 6.14 Subject to paragraphs 6.15 and 6.16 below an applicant whose application for the grant or renewal of a licence is refused has a right of appeal to the Magistrates Court.
- 6.15 An applicant whose application for the grant or renewal of a licence is refused on any ground specified in paragraph 6.9 above does not have a right of appeal unless the applicant seeks to show that the ground did not apply to him.
- 6.16 Similarly, an applicant whose application for the grant or renewal of a licence is refused on either ground specified in paragraph 6.13 (iii) or (iv) above does not have the right to appeal the decision. In such cases the applicant can only challenge the refusal by way of judicial review.
- 6.17 The Council has prescribed Standard Conditions to be applied to licences for sex establishments, i.e. terms, conditions and restrictions on or subject to which the licences are in general to be granted, renewed or transferred.
- 6.18 A copy of the Council's standard conditions of licence is attached as **Appendix A** to this report.
- 6.19 Every Licence granted, renewed or transferred by the Council will automatically be subject to the Standard Conditions.

Source Documents

Schedule 3 to Local Government (Miscellaneous Provisions) Act 1982 (as amended);

Home Office Guidance on Sexual Entertainment Venues

Application from Anchor (WB) Ltd