

Gloucester City Council

Meeting:	Special Licensing and Enforcement Committee	Date:	11th May 2015
Subject:	Application for a Sex Establishment Licence – Alan Whitehead, Minx Club, 12 – 16 Lower Quay Street, Gloucester, GL1 2JS		
Report Of:	Gill Ragon – Public Protection		
Wards Affected:	Westgate		
Contact Officer:	Richard Barnett – Licensing and Enforcement Officer		
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Appendices:	1. Application form		
	2. Location plan of premises		
	3. Police Objections		
	4. Premises Licence		
	5. Sex Establishment Policy Sexual Entertainment Venue Standard conditions		
	6. Email from Mr Whitehead		

FOR GENERAL RELEASE

1.0 Purpose of Report

- 1.1 The Licensing and Enforcement Committee are asked to consider and determine an application for a Sex Establishment Licence by Alan Whitehead at Minx Club, 12-16 Lower Quay Street to use the premises as a Sexual Entertainment Venue. A copy of the application is attached in **Appendix 1**.

2.0 Recommendations

- 2.1 The Licensing and Enforcement Committee is asked to consider the application and any relevant representations and to determine one of the following options:-
1. To grant the Sex Establishment Licence application to use the premise as a Sexual Entertainment Venue as applied for;
 2. To grant the Sex Establishment Licence application to use the premise as a Sexual Entertainment Venue subject to additional conditions; or
 3. To refuse the Sex Establishment Licence application.

3.0 Background

- 3.1 The Council adopted the provisions of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, as amended by the Policing and Crime Act 2009, with effect in February 2011.
- 3.2 This enabled the Council to regulate premises used as Sexual Entertainment Venues in the same way that it already regulates other Sex Establishments (sex shops and sex cinemas).
- 3.3 Apart from the use of this Primary Legislation Gloucester City Council decided to adopt a Sex Establishment Policy.
- 3.4 In determining an application relating to a Sex Establishment Licence the Council will assess the application on its merits having regard to the content of the Policy, the relevant legislation and any relevant guidance that may be issued. Within this Policy are Standard Conditions for Sexual Entertainment Venues. The Sex Establishment Policy and Conditions are attached at **Appendix 5**
- 3.5 The Policy states that all applications for the grant of a new Sex Establishment Licence will need to be referred to the Licensing and Enforcement Committee for their determination.
- 3.6 Members when determining the Sex Establishment Licence will need to take into account the criteria as set out in paragraphs 4.1 and 4.2 of the Sex Establishments Policy and any objections that are received.
- 3.7 A Licence is usually granted for a period of 12 months but can be shorter if deemed appropriate.
- 3.8 Minx Club already benefits from a Premise Licence issued under the Licensing Act 2003, which authorises the use of the premises for the sale of alcohol, regulated entertainment and the provision of late night refreshment. A copy of the current premises licence can be seen attached at **Appendix 4**.

4.0 The Application

- 4.1 An application for a Sex Establishment Licence has been received in respect of Minx Club, 12 – 16 Lower Quay Street, Gloucester, GL1 2JS. The applicant for the licence is Mr. Alan Whitehead. The applicant has applied for a licence to use the premises as a Sexual Entertainment Venue on:

Monday to Wednesday 10:00 to 02:00.

Thursday to Saturday 10:00 to 04:00.

Sunday 10:00 to 02:00.

A copy of the application form submitted can be seen at **Appendix 1**. A plan showing the location of the premises can be seen at **Appendix 2**.

5.0 Representations

- 5.1 In determining the application, the Committee must have due regard to any observations made by the Chief Officer of the Police and any other comments made by anybody else.
- 5.2 The Committee is to note in particular that any objection should relate to either the mandatory or discretionary grounds for refusal set out below.
- 5.3 Objections made on moral grounds or values are not relevant to either the mandatory or discretionary grounds for refusal.
- 5.4 The 28 day consultation period during which any representations can be made in respect of the application expired on 13 April 2015. Objections has been received from the Police and the Chief Constable for Gloucestershire. These can be seen at **Appendix 3**.
- 5.5 The Chief Constable has objected to this application on the discretionary ground 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'*
- 5.6 The Police also raised concerns about the applicants address. A response from Mr Whitehead following the Police's objection can be seen at **Appendix 6** for Members to consider.

6.0 Conclusions

- 6.1 The Committee are asked to determine the application and decide whether or not to grant a licence. If the Committee decide to grant the application, Members are asked to decide what conditions (if any) to attach to the licence granted.
- 6.2 Specific Mandatory grounds for refusal of a licence are set out in Paragraph 12 (1) of Schedule 3 of the 1982 Act and in paragraph 4.1 of Gloucester City Council's Sex Establishment Policy; however, the applicant meets this criteria.
- 6.3 In accordance with Paragraph 12 (3) of Schedule 3 the 1982 Act a licence may be refused where;
 - (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) If 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 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
- (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.

6.4 A decision to refuse a licence must be relevant to one or more of the grounds in paragraph 6.2 or 6.3 above and the Committee should not consider objections that are not relevant to these grounds. In particular the Committee should not consider objections made on the basis of moral grounds or values.

6.5 When hearing an application for the grant of a sex establishment licence, the Licensing and Enforcement Committee shall have regard to the Sex Establishment Policy Statement's provisions as set out above but subject to the overriding principle that each application will be determined on its merits.

7.0 Financial Implications

7.1 There are no financial implications.

(Financial Services have been consulted in the preparation this report.)

8.0 Legal Implications

8.1 In determining an application relating to a Sex Establishment licence the Council will assess the application on its merits having regard to the content of the Sex Establishment Policy Statement, the relevant legislation and any relevant guidance that may be issued from time to time.

8.2 Where it is necessary for the Council to depart substantially from the Sex Establishment Policy Statement, clear and compelling reasons for doing so will be given. Only the Council may authorise a departure from the Policy Statement if it feels it is appropriate for a specific application.

8.3 There is no right of appeal:

- a) Against the mandatory grounds of refusal as detailed in Paragraph 12(1)(a-e) of Schedule 3 of the 1982 Act unless the applicant can prove that the ground of refusal does not apply to them, and
- b) Against the grounds as detailed in Paragraph 12(3)(c) and (d) of Schedule 3 of the 1982 Act

8.4 The grounds of refusal under Paragraph 12(3)(c) and (d) of the 1982 Act can only be challenged by the applicant by way of judicial review.

8.5 All relevant grounds for appeal, other than these detailed in paragraph 8.3 (a) and (b) above can be made to the Magistrates Court within 21 days from the date on which the person is notified in writing of the decision.

9.0 Risk & Opportunity Management Implications

9.1 The key risks arising from this relate to decisions taken by the Licensing and Enforcement Committee. Any decision made which is unreasonable or unlawful could be open to legal challenge resulting in loss of image, reputation and potential financial penalty.

9.2 If the premises operate under a licence for a sexual entertainment venue, there is an opportunity to ensure that the activities comply with an additional set of comprehensive conditions that could not be required on their Premises Licence under the Licensing Act 2003.

10.0 People Impact Assessment (PIA):

10.1 The Screening Stage considered risks to licence holders in the areas of gender, disability, age, ethnicity, religion, sexual orientation or community cohesion.

10.2 The PIA Screening Stage was completed and did not identify any potential or actual negative impact, therefore a full PIA was not required.

11.0 Other Corporate Implications

Community Safety

11.1 None

Sustainability

11.2 None

Staffing & Trade Union

11.3 None

Background Documents:

Local Government (Miscellaneous Provisions) Act 1982
Sex Establishments Policy Statement