

DECISION-MAKER:	LICENSING (GENERAL) SUB-COMMITTEE		
SUBJECT:	APPLICATION FOR VARIATION OF A SEXUAL ENTERTAINMENT VENUE (SEV) LICENCE – WIGGLE, 188 & FIRST FLOOR OF 186 ABOVE BAR STREET, SOUTHAMPTON SO14 7DW		
DATE OF DECISION:	5 FEBRUARY 2020		
REPORT OF:	SERVICE DIRECTOR – COMMUNITIES, CULTURE AND HOMES		
<u>CONTACT DETAILS</u>			
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STATEMENT OF CONFIDENTIALITY		
N/A		
BRIEF SUMMARY		
The Licensing (General) Sub-Committee is requested to determine the application for the variation of a Sexual Entertainment Venue (SEV) Licence from Sylvan Glade Limited in respect of Wiggle, 188 & First Floor of 186 Above Bar Street, Southampton, SO14 7DW.		
RECOMMENDATIONS:		
1.	(i)	For the Sub-Committee to consider and determine the application for the variation of the Sexual Entertainment licence in respect of 188 & First Floor of 186 Above Bar Street, Southampton.
REASONS FOR REPORT RECOMMENDATIONS		
2.	The determination of applications for variation of sexual entertainment licences is not delegated to officers, therefore it is for the sub-committee to consider and determine the application.	
ALTERNATIVE OPTIONS CONSIDERED AND REJECTED		
3.	None	
DETAIL (Including consultation carried out)		
4.	The Council originally adopted Schedule 3 of the 1982 Act in so far as they related to sex shops and sex cinemas in 1983 and readopted them with effect from 3 rd July 1995.	
5.	The Policing and Crime Act 2009 amended the Local Government (Miscellaneous Provisions) Act 1982 with effect from 6 th April 2010, by introducing a new category of sex establishment called Sexual entertainment venues (SEVs) enabling local licensing authorities to adopt provisions for the	

	<p>regulation of lap dancing clubs and similar venues under Schedule 3 of the 1982 Act. Previously the power was limited to sex shops and sex cinemas. On 11th July 2012, Council resolved to adopt the provisions of schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 which relate to the licensing of SEVs.</p> <p>The new regime came into force in Southampton on 20th August 2012 (known as the “first appointed day”), after which a 12 month transition period has been in effect.</p> <p>The effect of the transitional period is that existing operators, who, immediately before the first appointed day, had a Licensing Act 2003 premises licence and lawfully used the premises as a sexual entertainment venue under that licence (or were undertaking preparatory work to use the venue in that way), were allowed to continue to provide relevant entertainment until the 20th August 2013 (the “third appointed day”) or the determination of any application they have submitted before the 20th February 2013 (the “second appointed day”), whichever is later.</p> <p>After the third appointed day, the regime, and any licences granted, will be fully in force.</p> <p>The Legislation – Definitions</p> <p>Paragraph 2A of Schedule 3 as inserted by section 27 sets out the meaning of a “sexual entertainment venue” and “relevant entertainment” for the purposes of the statutory provisions.</p> <p>A sexual entertainment venue is defined as: <i>“Any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or entertainer.”</i></p> <p>Relevant entertainment is defined as: <i>“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).”</i></p> <p>It should be noted that an audience can consist of just one person e.g. when the entertainment takes place in private booths.</p> <p>Relevant entertainment is therefore different from regulated entertainment as defined in the Licensing Act 2003.</p>
6.	<p>Sylvan Glade Limited has held a sexual entertainment venue (SEV) licence in Southampton since 2nd January 2016 following a transfer application issued with delegated powers, with the licence to be renewed annually. This licence was varied and granted on 20th January 2016. The variation granted was to extend permitted hours until 0600 hours and to amend the layout of the premises.</p> <p>On 21st August 2017 an application was made by Sylvan Glade Limited to vary the Sexual Entertainment Venue licence. The application for alteration to form a new stage on the 1st floor and to form new VIP booths on the ground floor level was granted on 12th October 2017.</p>

	As of 19 th January 2019, Sylvan Glade Limited operate other Sexual Entertainment Venues in Bournemouth, Portsmouth and Weymouth.
7.	On 18 th December 2019 an application was made by Sylvan Glade Limited to vary the Sexual Entertainment Venue licence in respect of 188 Above Bar Street. The application submitted is a request to extend the licensed area and provide better seating and entertainment facilities as with the plans submitted. The Licence Holder has advised there will be no increase in capacity. A copy of the application is attached as Appendix 1 .
8.	In summary, the applicant has requested to make the following changes; <ol style="list-style-type: none"> 1. Basement – No change 2. Ground Floor – Change of layout. No extension to the licensed area. 3. First Floor – Change of layout and licensed area extended to 186 Above Bar Street in addition to the current area within 188 Above Bar Street. 4. Second Floor – This floor has not previously been licensed. A copy of the current licence is attached as Appendix 2 .
9.	The applicant has submitted plans of the proposed changes to the current layout of the venue. The current plans are attached to this report as Appendix 3 , with the proposed plans as Appendix 4 .
10.	There is no requirement under the Act to advertise a variation of the licence in a newspaper. A notice was displayed at the premises throughout the consultation period. There is no formal mechanism of consultation for this process, although a copy of the proposed variation was served on Hampshire Constabulary Force Licensing Team.
11.	The Hampshire Constabulary Force Licensing Team have not responded to this application, however responded to a variation of the Licensing Act 2003 premises licence for the premises for these amendments. An agreement was reached with reference to a condition relating to Body Worn Video recording equipment. This application was granted on 18 th January 2020. A copy of this licence is attached as Appendix 5 .
12.	The Sex Establishment licence held by Sylvan Glade Ltd is renewed annually. The current licence expires on the 29 th February 2020. A renewal application has now been received by the Licensing Authority. Previous renewal applications have been granted following no representations to the application.
13.	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.
14.	The authority may; <ul style="list-style-type: none"> • Make the variation specified in the application; or • Make such variations as they think fit; or • Refuse the application.
15.	Any person objecting to an application for the variation of a Sexual Entertainment Venue (SEV) licence is required to give notice of their objection in writing to the local authority, not later than 28 days after the date of the application. No objections were received in relation to this application within the 28 day consultation period.
16.	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.
17.	A note of the procedure that the Sub-Committee has adopted for consideration of applications of this kind is attached as Appendix 6 .
RESOURCE IMPLICATIONS	
<u>Capital/Revenue</u>	
18.	There are no financial implications.
<u>Property/Other</u>	
19.	Not applicable.
LEGAL IMPLICATIONS	
<u>Statutory power to undertake proposals in the report:</u>	
20.	<p>Paragraph 12 of Schedule 3 sets out the grounds for refusing an application for the grant, renewal or transfer of a licence.</p> <p>A licence must not be granted:</p> <p>(a) to a person under the age of 18;</p> <p>(b) to a person who is for the time being disqualified due to the person having had a previous licence revoked in the area of the appropriate authority within the last 12 months;</p> <p>(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</p> <p>(d) to a body corporate which is not incorporated in an EEA State; or</p> <p>(e) to a person who has, within a period of 12 months immediately preceding the date when the application was made, been refused the 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.</p>
21.	<p>If the Sub-Committee determines to grant a variation application, it has power to impose terms, conditions and restrictions on that licence, either in the form of conditions specific to the individual premises concerned or standard conditions applicable to all sex establishments, or particular types of sex establishments.</p> <p>Examples of the matters that standard conditions may address can include, but are not restricted to:</p> <ul style="list-style-type: none"> • The hours of opening and closing • Displays and advertisements on or in sex establishments • The visibility of the interior of a sex establishment to passers-by • Any change of use from one kind of sex establishment to another. <p>If such standard conditions are introduced by the local authority, they will apply to every licence granted, renewed or transferred by the authority unless they have been expressly excluded or varied.</p>
<u>Other Legal Implications:</u>	
22.	<p>CRIME AND DISORDER ACT 1998</p> <p>Section 17 of the Crime and Disorder Act 1998 places the Council under a duty to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area.</p>

23.	HUMAN RIGHTS ACT 1998 The Act requires UK legislation to be interpreted in a manner consistent with the European Convention on Human Rights. It is unlawful for the Council to act in a way that is incompatible (or fail to act in a way that is compatible) with the rights protected by the Act. Any action undertaken by the Council that could have an effect upon another person's Human Rights must be taken having regard to the principle of proportionality - the need to balance the rights of the individual with the rights of the community as a whole. Any action taken by the Council which affects another's rights must be no more onerous than is necessary in a democratic society. The matter set out in this report must be considered in light of the above obligations.
24.	RISK MANAGEMENT IMPLICATIONS The risk is assessed as low. There are no finance or service delivery implications. Failure to implement the appropriate conditions could impact on reputational damage.
POLICY FRAMEWORK IMPLICATIONS	
25.	The decision to determine the application in the manner set out in this report is not contrary to the council's policy framework.

KEY DECISION?	No
WARDS/COMMUNITIES AFFECTED:	N/A
<u>SUPPORTING DOCUMENTATION</u>	
Appendices	
1.	Application for the variation of SEV licence made in respect of Wiggle, 188 & First Floor of 186 Above Bar Street.
2.	A copy of the current Sexual Entertainment licence.
3.	A copy of the existing plans.
4.	A copy of the proposed plans.
5.	A copy of the Licensing Act 2003 premises licence.
6.	Procedure for hearing the application.
Documents In Members' Rooms	
1.	None
Equality Impact Assessment	
Do the implications/subject of the report require an Equality and Safety Impact Assessments (ESIA) to be carried out?	No
Privacy Impact Assessment	
Do the implications/subject of the report require a Privacy Impact Assessment (PIA) to be carried out?	No
Other Background Documents	

Equality Impact Assessment and Other Background documents available for inspection at:

Title of Background Paper(s)	Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)
1.	None