

# CHESHIRE EAST COUNCIL

## GENERAL LICENSING SUB-COMMITTEE

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<b>Date of Meeting:</b>	Thursday 29 March 2012
<b>Report of:</b>	Peter Simester, Licensing Administration Officer
<b>Subject/Title:</b>	Application for a Sexual Entertainment Venue Licence Schedule 3, Local Government (Miscellaneous Provisions) Act 1982 : Manhattan, 35-37 High Street, Crewe, CW1 7BL

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### **1.0 Report Summary**

1.1 The report provides details of an application for a Sexual Entertainment Venue Licence together with information as to a representation received in relation to the application.

### **2.0 Recommendations**

2.1 The General Licensing Sub-Committee is requested to:

2.1.1 consider all of the relevant information including the submissions made both by the applicant and by objectors; and

2.1.2 determine the application for a Sexual Entertainment Venue Licence made by Mr Sylvan Austin Salmon in respect of Manhattan, 35-37 High Street, Crewe, Cheshire, CW2 7BL.

### **3.0 Reasons for Recommendations**

3.1 The General Licensing Sub-Committee has the delegated authority to determine this application in accordance with the provisions of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982.

### **4.0 Wards Affected**

4.1 Crewe Central

### **5.0 Local Ward Members**

Cllr Irene Faseyi

### **6.0 Policy Implications**

6.1 The Council has adopted the amendments to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 ('the 1982 Act') made by section 27 of the Policing and Crime Act 2009.

6.2 The Council has adopted a policy in relation to the licensing of sexual entertainment venues; a copy of this policy is attached as Appendix A.

## **7.0 Financial Implications (Authorised by the Director of Finance and Business Services)**

7.1 Not applicable.

## **8.0 Legal Implications (Authorised by the Borough Solicitor)**

8.1 On 24<sup>th</sup> February 2011 the Council resolved that the provisions of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, as amended by section 27 of the Policing and Crime Act 2009, be adopted and shall apply within the Borough of Cheshire East with effect from 4<sup>th</sup> April 2011.

8.2 'Sexual Entertainment Venue' is defined within Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended) ('the Act') as "any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer." 'Relevant Entertainment' means "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)."

8.3 Paragraph 12 of Schedule 3 to the 1982 Act prescribes that a licence for a sexual entertainment venue shall not be granted to:

(a) a person under the age of 18; or

(b) to a person who is for the time being disqualified under paragraph 17(3) of the Schedule; 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 had, within a period of twelve 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.

8.4 Paragraph 12 of Schedule 3 also provides that the authority may refuse (i) an application for the grant or renewal of a licence on one or more of the grounds listed at (a) to (d) below; and (ii) an application for a transfer on either or both of the grounds at (a) and (b):

(a) that the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason;

(b) 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;

(c) that the number of sex establishments, or of sex establishments of a particular kind, in the relevant locality at the time the application is made 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.

8.5 Paragraph 8 of Schedule 3 provides that the Council may grant a licence for the use of premises as a sex establishment 'on such terms and conditions and subject to such restrictions as may be so specified.' (subject to the requirement that conditions may not duplicate requirements or prohibition which are, or could be, imposed under the Regulatory Reform (Fire Safety) Order 2005). Paragraph 13 of Schedule 3 provides the Council with the power to prescribe standard conditions applicable to licences for sex establishments. The Council had prescribed a set of standard conditions in relation to sexual entertainment venues; these are set out within Appendix 3 of the Council's policy (attached as Appendix A to this report). Where the Council has determined a set of standard conditions, every such licence granted by the authority shall be presumed to have been granted subject to the standard conditions unless they have been expressly excluded or varied. As is recognised by the Home Office Guidance (paragraph 3.42) in cases where a sexual entertainment venue also holds a licence under the Licensing Act 2003, local authorities should avoid duplicating licence conditions and should ensure that conditions imposed on each licence are relevant to the activities authorised by that licence.

8.6 With the exception of a decision to refuse an application on a ground specified in paragraph 12(3)(c) or (d) (see paragraph 8.4 above), an applicant for the grant of a licence whose application is refused has the right to appeal the decision to a magistrates' court within twenty-one days.

8.7 In March 2010 the Home Office issued guidance in relation to sexual entertainment venues. Whilst not a statutory requirement, local authorities have been encouraged by the Home Office to have regard to the guidance when exercising their functions. Paragraph 3.53 of the guidance highlights the requirement that local authorities ensure compliance with the Provision of Services Regulations 2009 when applying the licensing provisions in Schedule 3 of the 1982 Act.

8.8 When making a decision consideration must be given to the applicant's rights under the European Convention on Human Rights. Article 1 of the First Protocol (peaceful enjoyment of possessions) and Article 10 (freedom of expression) are rights which may be relevant. The Home Office guidance suggests that 'local authorities would be well advised to consider whether any interference with the applicant's rights under Article 10 or Article 1, Protocol 1 of the European Convention on Human Rights is necessary and proportionate for the prevention of crime and disorder, for the protection of health or morals or for the protection of the rights and freedoms of others or, in the case of Article 1, Protocol 1, can be justified in the general interest.' In addition Article 6 will be relevant to the hearing of the case, i.e. right to a fair hearing.

8.9 The Council has exercised its discretion and has determined to provide the objector to the application the opportunity to speak at the hearing. Details of the objection received by the Council within the 28 day consultation period are appended at Appendix E.

## **9.0 Risk Management**

9.1 The legal risks are set out within paragraph 8.0 above.

## **10.0 Background and Options**

10.1 The application for a Sexual Entertainment Venue Licence in relation to premises known as Manhattan, 35-37 High Street, Crewe, CW2 7BL was received by the Council on 10<sup>th</sup> February 2012.

10.2 In accordance with paragraph 10(8) of Schedule 3 of the 1982 Act, a notice of the application was published in a local newspaper circulating in the Council's area within seven days of the date of the application. In addition, a site notice was displayed at the premises in accordance with paragraph 10(10).

10.3 The application is to provide the following forms of 'relevant entertainment' with full nudity, i.e. lap dancing, pole dancing and strip shows. The hours applied for are as follows:

19:00 to 05:30

Monday to Sunday

A copy of the application form is attached as Appendix B. The application was accompanied by an operating manual (club rules and conditions) in relation to the premises. A copy of is attached as Appendix C.

10.4 A Premises Licence issued under the Licensing Act 2003, in relation to the premises was granted on 30<sup>th</sup> August 2006 to permit the sale of alcohol, regulated entertainment and the provision of late night refreshment. The Premises Licence is subject to a number of conditions in relation to the provision of 'adult entertainment.' A copy of the Premises Licence Summary and the conditions attached to the licence are attached at Appendix D.

10.5 In accordance with paragraph 10(14) of Schedule 3 to the 1982 Act, a copy of the application was sent to the Police. The Police Licensing Officer acknowledged receipt of the application but does not wish to make any representations.

10.6 The Council has received one letter of objection in relation to the application within the twenty-eight day consultation period. A copy of this letter is attached as Appendix E.

10.7 In accordance with paragraph 10(18) of Schedule 3, in considering any application for the grant of a licence the Council is required to have regard to any observations submitted to it by the Police and any objections of which notice has been sent to it under sub-paragraph 10(15).

10.8 The options which are available to the General Licensing Sub-Committee when considering this application are as follows:

10.8.1 to grant the sexual entertainment venue licence subject to the standard conditions prescribed by the Council;

10.8.2 to grant the sexual entertainment venue licence subject to the standard conditions prescribed by the Council as varied by the Sub-Committee;

10.8.3 to grant the sexual entertainment venue licence subject to the standard conditions prescribed by the Council (whether varied or not) and subject to further additional express condition(s);

10.8.4 to grant the sexual entertainment venue licence subject to express condition(s) determined by the Sub-Committee (i.e. the prescribed standard conditions are expressly excluded).

10.8.5 to refuse the grant of a sexual entertainment venue licence.

## **11.0 Access to Information**

The background papers relating to this report can be inspected by contacting the report writer:

Name: Peter Simester  
Designation: Licensing Administration Officer  
Tel No: 01270 371378  
Email: peter.simester@cheshireeast.gov.uk

The Home Office Guidance "Sexual Entertainment Venues" is available on the Council's website, [www.cheshireeast.gov.uk](http://www.cheshireeast.gov.uk)

## **APPENDICES**

Appendix A:	Cheshire East Borough Council policy on the licensing of sexual entertainment venues
Appendix B:	Application form
Appendix C:	Operating manual (Club rules & conditions)
Appendix D:	Premises Licence Summary and conditions attached to Licence
Appendix E:	Letter of objection
Appendix F:	Plans of area (2 pages)