

Report of the Head of Elections, Licensing, and Registration

Report to the Licensing Sub Committee

Date: 14th March 2017

**Subject: Application for the Grant of a Sex Establishment Licence for Black Orchid
25 Crown Street, Assembly Street, Leeds LS2 7DA**

Are specific electoral Wards affected? City and Hunslet	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, name(s) of Ward(s):		
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, Access to Information Procedure Rule number: 10.4 (1, 2 & 3)		
Appendix number: B		

Summary of Main Issues

Members are requested to consider the grant of a sex establishment licence for the provision of sexual entertainment in the form of lap dancing.

This application is made by Tokyo Industries (Lincoln York Hull) Limited, for premises to operate under the name of `Black Orchid`, located at 25 Crown Street, Leeds LS2 7DA.

Recommendations

1. Members are asked to consider the application for a sex establishment licence for premises at 25 Crown Street, Leeds, LS2 7DA.
2. Members are asked to consider and if appropriate, approve the external appearance of the premises and all advertising material used to promote the business as set out at **appendix D**.
3. In considering the application Members attention is drawn to the objections received which are attached at **appendix G**.

1.0 Purpose of this Report

- 1.1 To advise Members of an application made under Section 2 and Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (the Act) for the grant of a sex establishment licence for the premises known as Black Orchid, 25 Crown Street, Leeds LS2 7DA.

2.0 Background Information

- 2.1 In 2010 the Government introduced a new category of sex establishment called a “sexual entertainment venue”. This reclassified lap dancing clubs as sexual entertainment venues and gave local authorities the power to regulate such venues. The intention was to give local people greater say over the number and location of lap dancing clubs in their area.
- 2.2 In January 2011 the Council made a resolution to adopt the provisions of Schedule 3 of the Local Government (Miscellaneous Provisions) Act as amended by the Policing and Crime Act 2009, effective from 1st October 2011. The Council adopted its first Statement of Licensing Policy for Sex Establishments in September 2011.
- 2.3 All seven premises that provided sexual entertainment in the form of lap dancing which existed at that time were granted licences that came into effect on the 1st October 2012 and expired 30th September 2013.
- 2.4 Following the issue of these licences a review of the Statement of Licensing Policy took place. A working group was set up and a new policy was approved before Executive Board on the 17th July 2013, coming into effect on the 1st September 2013.
- 2.5 The Policy set that that the appropriate number of sexual entertainment venues in the city centre is a maximum of four providing these premises are not near properties with sensitive uses or in sensitive locations.
- 2.6 At the annual renewal hearings which took place in November 2013, with the determinations being delivered in December 2013, Members refused to renew the licences of three venues in accordance with the new Statement of Licensing Policy.
- 2.7 The remaining three sexual entertainment venues have successfully renewed their licences each year.
- 2.8 The existing 3 venues are located at number 2 Sovereign Place, LS1 4SP; 5 York Place, LS1 2DR; and 10 York Place, LS1 2DR.

3.0 History of these Premises

- 3.1 The premises were previously known as the Town House, and have held a premises licence under the Licensing Act 2003 over a number of years for the provision of regulated entertainment and the sale of alcohol.
- 3.2 Since January 2008 the premises have been known as Chili Whites and operated under the premises licence between the hours of 10.00am and 06.00am Friday, Saturday and Mondays, and between the hours of 10.00am and 04.00am Tuesday, Wednesday, Thursday, and Sundays.
- 3.3 Although the premises have the benefit of a premise licence they are not currently in operation at this time and the premises remain closed.
- 3.4 This is the first application for a sex establishment licence.

4.0 The Application

- 4.1 Members are required to consider this application for the grant of a sex establishment licence to authorise the activity of sexual entertainment in the form of lap dancing.
- 4.2 The application is made by Tokyo Industries (Lincoln York Hull) Limited, c/o Kay Johnson Gee LLP, 2nd Floor, 1 City Road East, Manchester M15 4PN.
- 4.3 The application is for the premises known as `Black Orchid', 25 Crown Street Leeds, LS2 7DA.
- 4.4 The sexual entertainment venue licence is sought for the 1st and 2nd floors of the premises, having its own designated access direct from Assembly Street.
- 4.5 It is understood that the Ground floor of the premises will operate under the Licensing Act 2003 Premises Licence.
- 4.6 The current statement of licensing policy for sex establishments sets the hours of operation for sexual entertainment venues as follows:
 - 22:00hrs until 04:00hrs Sunday to Thursday
 - 22:00hrs until 05:00hrs Friday and Saturday.
- 4.7 A partial copy of the application may be found at **appendix A** to this report.
- 4.8 It should be noted that certain information submitted within the application is potentially exempt information under Access to Information Procedure Rule 10.4 (1, 2 and 3) as it includes information which relates to individuals, is likely to reveal the identity of an individual and/or relates to the business affairs of any particular person. As a consequence Members are provided with a full copy of the application contained within a separate **appendix B** and will be asked to consider exclusion of the press and public from the hearing if those matters are to be discussed.

4.9 Members will also find attached to this report at **appendix C** additional documents supplied with the application, which includes:

- Dancers Welfare Policy
- Dancers Code of Conduct
- Customers Code of Conduct
- Pricing Policy
- Trade Union Details

4.10 A consideration for Members is the external appearance and all methods of advertising (written, visual or auditory) which must not be of a sexually explicit or suggestive nature, will not contain images or text of a sexually explicit, obscene or offensive nature. Attached at **appendix D** Members will find the information supplied in this respect. Due to printing quality, original samples will be available at the meeting.

4.11 It is confirmed that the business does not intend to provide vehicles to transport customers or performers to and from the premises and therefore information relating to the licensing of such vehicles is not provided.

4.12 A map of the location of the premises can be found at **appendix E**.

4.13 A plan showing the proposed layout of the premises including stage, bars, cloakroom, WCs, performance area, dressing rooms and CCTV has been supplied and will be available at the meeting for member's consideration.

4.14 The West Yorkshire Police and all ward members have been notified of this application.

4.15 A public notice advertising the application has been displayed at the premises for a period of 21 days and published in the local press as required by the legislation.

5.0 Objections

5.1 In considering any application for the grant of a licence the authority shall have regard to any observations submitted by the chief officer of police and any other objections received.

5.2 Any objections must be provided in writing to the authority, stating in general terms the grounds, and this should be provided no later than 28 days after the date of the application.

5.3 The Act imposes no pre-qualifications on who may object to an application nor is there any constraint on the grounds upon which objections can be made. Objections may be set out in general terms.

- 5.4 However, the relevant grounds on which the authority may refuse an application are 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
- 5.5 The full options available to Members are set out at paragraph 9.1 of this report.
- 5.6 Members should note that objections may be accepted following the 28 day notice period. This is as a result of a case (*Miss Behavin' Ltd v Belfast City Council*) where the House of Lords held that while the Act required an authority to take account of objections lodged in time, it did have discretion to take into account late objections if these brought significant relevant information. At the time of writing this report all objections had been received within the notice period.
- 5.7 Parties will not be permitted to raise new matters in evidence at the hearing without the consent of all other parties.
- 5.8 The authority is in receipt of 77 objections and a petition of 200 plus signatories in opposition to this application, copies of which can be found at **appendix F**.
- 5.9 No observations have been received from West Yorkshire Police concerning this application.

6.0 Planning

- 6.1 For members information the following paragraph 7.30 of the Statement of Licensing Policy states:

In general, all premises which are the subject of an application, should have the benefit of planning permission, or be deemed permitted development. The onus will be on the applicant to demonstrate that planning permission has been granted or that the premises have the benefit of permitted development rights. Failure to do so may result in objections and the licence being refused or granted subject to conditions which take account of the planning permissions existence.

- 6.2 Following consultation, the following comment has been received from Leeds City Council's Development Department:

'The Planning Authority's position on the licensing application is that the proposal is likely to require planning permission for a material change of use from the previous bar/nightclub use to the current proposal for a lap dancing club. To date no planning application has been received'.

7.0 Statement of Licensing Policy

7.1 The current Statement of Licensing Policy for Sex Establishments (“the Policy”) was approved by Executive Board on the 17th July 2013 and came in to force on the 1st September 2013.

7.2 The Policy states that the appropriate number of sexual entertainment venues in the city centre is a maximum of four providing these premises are not near properties with sensitive uses or in sensitive locations.

7.3 The Policy states that sensitive uses are:

- Schools and other areas of education
- Play area/parks
- Youth facilities
- Residential area
- Women’s refuge facilities
- Family leisure facilities such as cinemas, theatres and concert halls
- Places of worship
- Places used for celebration or commemoration
- Cultural leisure facilities such as libraries and museums
- Retails shopping areas
- Historic buildings

7.4 The Policy provides a list of sensitive locations:

- Millennium Square, Calverley Street
- City Square
- The area around the Combined Courts
- The Headrow, Eastgate
- East Parade, Park Row
- New Briggate, Briggate
- Albion Street, Woodhouse Lane
- Merrion Centre, Merrion Street
- Boar Lane
- New Station Street, Wellington Street

7.5 The Policy includes standard conditions to be applied to all licences. Members may decide on a case by case basis whether any of the conditions may be dispensed with, added to or modified.

7.6 The standard conditions as set out in the current policy may be found at **appendix G**.

8.0 Other Matters Relevant to the Application

8.1 A sex establishment licence will remain in force for up to one year, or for a shorter period should the licensing authority think fit.

9.0 Options Available to Members

9.1 The licensing sub-committee in considering the application under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 may take any of the following steps it considers necessary:

- Grant the application as requested attaching the standard conditions.
- Grant the application whilst imposing additional conditions and/or altering the standard conditions (or altering in any way the proposed application).
- Refuse the application on the following mandatory grounds;
 - if the applicant is under the age of 18,
 - if the applicant has a disqualification following the revocation of their licence
 - if the applicant is not-resident in an EEA state,
 - if the applicant is a company not incorporated in an EEA state,
 - if the applicant 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 applicant is made, unless the refusal has been reversed on appeal.
- Refuse the application on one or more of the following discretionary grounds:
 - That the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reasons;
 - 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;
 - That the number or 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;
 - That the grant of renewal of the licence would be inappropriate, having regard:
 - To the character of the relevant locality; or
 - To the use to which any premises in the vicinity are put; or
 - To the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made

9.2 In paragraph 9.1 “the relevant locality” means:

- In relation to premises, the locality where they are situated; and
- In relation to a vehicle, vessel or stall, any locality where it is desirable to use it as a sex establishment

10.0 Recommendation

- 10.1 Members are asked to consider the application for a sex establishment licence for premises at 25 Crown Street, Leeds, LS2 7DA.
- 10.2 Members are asked to consider and if appropriate, approve the external appearance of the premises and all advertising material used to promote the business as set out at **appendix D**.
- 10.3 In considering the application Members attention is drawn to the objections received which are attached at **appendix F**.

11.0 Appendices

Appendix A	Copy of the Application
Appendix B	Exempt Information
Appendix C	Additional documents supplied with the application
Appendix D	External appearance/advertising information
Appendix E	Location map
Appendix F	Objection Letters
Appendix G	Standard Conditions

12.0 Background Papers

None