

Licensing and Regulatory Sub-Committee



Forest Heath
District Council

Title of Report:	Application for the Renewal of a Sex Establishment Licence (Sexual Entertainment Venue – Heaven Awaits Ltd)
Report No:	LSC/FH/18/005
Report to and date/s:	Licensing and Regulatory Sub-Committee – 14 November 2018
Portfolio holder:	Councillor Lance Stanbury Portfolio Holder for Planning and Growth Tel: 07970 947704 Email: lance.stanbury@forest-heath.gov.uk
Lead officer:	Sheila Gowans Licensing Officer Tel: 01638 719364 Email: sheila.gowans@westsuffolk.gov.uk
Purpose of report:	To determine the application.
Recommendation:	<p>It is recommended that, having considered all relevant facts, with due regard to the application, the representations received and the Councils' Sex Establishment Licensing Policy, to resolve either to:</p> <ul style="list-style-type: none"> (1) Grant the renewal of the licence as applied for incorporating the standard conditions; or (2) Grant the renewal of the licence as applied for incorporating the standard conditions and continue to approve the current signage in accordance with condition 20(iii) and the amendment to Part V condition 13; or (3) Refuse the application in its entirety.

Key Decision:	<i>Is this a Key Decision and, if so, under which definition?</i> No, it is not a Key Decision - <input checked="" type="checkbox"/>		
Consultation:	See number 7 below		
Alternative option(s):	N/A – the Council is duty bound to determine the application		
Implications:			
Are there any financial implications? <i>If yes, please give details</i>		Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> See number 8 below	
Are there any staffing implications? <i>If yes, please give details</i>		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
Are there any ICT implications? <i>If yes, please give details</i>		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
Are there any legal and/or policy implications? <i>If yes, please give details</i>		Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> See number 9 below	
Are there any equality implications? <i>If yes, please give details</i>		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
Risk/opportunity assessment:		<i>(potential hazards or opportunities affecting corporate, service or project objectives)</i>	
Risk area	Inherent level of risk (before controls)	Controls	Residual risk (after controls)
Any decision reached which is not in accordance with the Acts and policy may be considered ultra vires and could be subject to an application for Judicial Review	Medium	The Members should have regard to it's Sex Establishment Licensing Policy and the associated legislation.	Low
Ward(s) affected:		All Saints directly and possibly neighbouring Wards.	
Background papers:		The Local Government (Miscellaneous Provisions) Act 1982. http://www.legislation.gov.uk/ukpga/1982/30 Forest Heath District Councils Sex Establishment Licensing Policy (May 2013). http://www.westsuffolk.gov.uk/Business/Regulation_and_Licensing/Licensing/upload/FHDC_Sex_Establishment_Licensing_Policy_2013.pdf	
Documents attached:		<i>(Please list any appendices.)</i> Appendix 1 – Application Appendix 2 – Policy Appendix 3 – Representation Appendix 4 – Representation Appendix 5 – Representation (<i>received after the representation period for the application had expired</i>)	

1. Key issues

- 1.1 An application was received, on the 27 September 2018, from Newmarket Entertainment Ltd in respect of Heaven, 109 High Street, Newmarket, Suffolk CB8 8JH. The application seeks to renew the Sex Establishment Licence (Sexual Entertainment Venue). The premises have been trading since April 2006, and have held a Sexual Entertainment Venue (SEV) since the 1 October 2012.
- 1.2 A copy of the application can be found at **Appendix 1**. The operating schedule, plan and club rules are unchanged.
- 1.3 The licence allows the use as a sexual entertainment venue during the following Hours:

Monday to Wednesday:	10.00am to 02:00am
Thursday to Saturday:	10.00am to 03:20am
Sunday:	12.00pm to 03.00am

These times are within those currently allowed under the Licensing Act 2003 premises licence.

2. Supporting information

- 2.1 Forest Heath Council has previously adopted the provisions of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (LGMPA) in relation to the licensing of sex establishments, as amended by Section 27 Policing and Crime Act 2009. The Policing and Crime Act 2009 amended the 1982 Act, in so far as it related to the licensing of sex establishments, by adding the new category of 'sexual entertainment venue'.
- 2.2 The business currently holds a premises licence issued under the provisions of the Licensing Act 2003, which allows the sale of alcohol and regulated entertainment. The hours being applied for are within those of the existing premises licence.
- 2.3 Any SEV licence granted will be held for a period of one year and be renewable annually.
- 2.4 The Cumulative Impact policy, mentioned in the objection from Newmarket Town Council, only relates to Licensing Act applications not this renewal under the Local Government (Miscellaneous Provisions) Act 1982 as amended by section 27 of the Policing and Crime Act 2009.

3. Policy Considerations

- 3.1 The Council's current Sex Establishment Licensing Policy was revised and readopted on the 14 February 2017 and a copy can be found in **Appendix 2**. The policy sets out the general principles and criteria the Council would normally apply when making decisions on applications, providing the framework for applications, objections and the regulation of such premises.

- 3.2 The Council has a discretion to refuse to grant or renew licences for sex establishments on the grounds that the licence would be inappropriate having regard to the character of the locality or the use of premises in the vicinity.
- 3.3 The Council has not imposed a limit on the number of premises that may be licensed in any area, nor identified any exclusion zones for the purpose of applying for a sex establishment licence.
- 3.4 Each application will be treated on its own merits.

4. Standard conditions

- 4.1 The Act provides the ability for conditions to be attached to a licence. Standard conditions have been agreed as part of the Councils Sex Establishment Licensing Policy. At the applicants request, Members granted the following amendment to conditions:
- 4.2 The standard conditions for sex establishments also includes conditions relating to the external appearance:

"20...No display, advertisement, word, letter, model, sign, light, placard, board, notice, device, representation, photograph, drawing, writing or any matter or thing (whether illuminated or not) shall be exhibited so as to be visible from outside the premises except:

- i) A sign or notice no larger than A2 (420 × 594mm) in size, bearing the name of the establishment; or*
- ii) Other sign/notice required to be displayed so as to be visible from outside the premises by law, or by any condition of a licence granted by the Council.*
- iii) Such display, advertisement, word, letter, model, sign, light, placard, board, notice, device, representation, drawing, writing, or any matter or thing as shall have been approved by the Council."*

The current sign at the premises was granted dispensation from complying with the standard condition above upon renewal in 2013. In renewing the applicant is effectively seeking continued dispensation for the current sign to remain. The signs dimensions are 2300mm x 1500mm.

- 4.3 This application also seeks to keep the change to condition 13 as granted last year.
Condition 13 'At all times performers will have access to a new secure changing room situated on the ground floor 20 feet from the stage and away from public view.'
- 4.4 Where members feel necessary they may also attach any other conditions to answer any concerns that have been raised.

5. Representations

- 5.1 Representations have been received following the advertisement and consultation of this application. These representations can be found in **Appendices 3 to 5** (*it should be noted that the representation attached at Appendix 5 was received after the representation period for the application had expired*). Where the consent of the writer has not been given or is absent the names and address details have been redacted.
- 5.2 No other representations for or against the application have been received.

6. Human Rights Impact

- 6.1 A licence is to be regarded as the property of the applicant. However their right to the use of that property must also be balanced against any other public interests in this matter.
- 6.2 When making their decision Members must give consideration to the rights that applicants have under the European Convention on Human Rights. Article 1 (entitlement of every person to peaceful enjoyment of their possessions) and Article 10 (freedom of expression) are particular rights that may be relevant.
- 6.3 Members should consider whether interference with these rights is necessary and proportionate for the prevention of crime or 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, whether interference can be justified in the general interest.

7. Consultation

- 7.1 The applicant has correctly advertised the application by means of a public notice in a locally circulating newspaper and also through the posting of a notice in a convenient to read location at the premises.
- 7.2 The application has been consulted upon in accordance with paragraph 15.2 of the Councils Sex Establishment Licensing Policy.

8. Financial and resource implications

- 8.1 There is no right of appeal against a refusal to grant a licence for the reasons identified in Paragraph viii or ix in section 10.2 below. Refusal on any other grounds can be appealed to the Magistrates Court within 21 days. A decision to refuse a licence must be relevant to one or more of the above grounds and the decision must be necessary and proportionate.
- 8.2 Given the right of appeal against the decision to the Magistrates' Court, and potentially to the Crown Court, the costs of any such proceedings could be awarded against the Council if any appeals were upheld. It is felt that this is unlikely if the Council's decision was made in good faith and could be justified under our policy. There are no other cost implications.

9. Legal and policy implications

- 9.1 In considering this duty the Members should have due regard to the submissions made by the applicant and any objectors, the Local Government (Miscellaneous Provisions) Act 1982, and the Council's own Sex Establishment Licensing Policy.
- 9.2 Paragraph 12 of Schedule 3 of the 1982 Act sets out the grounds for refusing an application for the grant, renewal or transfer of a licence. A licence must not be granted:
- i) to a person under the age of 18;
 - ii) 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;
 - iii) to a person, other than a body corporate, who is not resident in a European Economic Area (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;
 - v) 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 licensed premises, vehicle, vessel or stall in respect of which the application is made, unless the refusal has been reversed on appeal;
 - vi) if the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason;
 - vii) if the licence were to be granted, renewed or transferred, the business to which it related 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;
 - viii) if 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 authority consider is appropriate for that locality;
 - ix) that the grant or 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.
- 9.3 Appropriate checks have been made and refusal on the grounds listed above cannot be used, other than those that relate to paragraph 10.2(ix); it is for Members to consider if the application is consistent with the policy under this criteria.