

TORBAY COUNCIL

Briefing Report No:

Public Agenda Item: **Yes**

Title: Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 – An application for the Grant of a Sex Entertainment Venue Licence in respect of Within Temptation, Lower Union Lane, Torquay

Wards Affected: **Tormohun**

To: **Licensing Sub Committee**

Contact Officer: **Julie Smart**

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1. Key points and Summary

- 1.1 To consider and determine an application for a new Sex Entertainment Venue Licence under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (LG(MP)A 1982) for the above-named premises. The report sets out the application details, representations, policy and legal context along with other considerations that the Licensing Sub-Committee requires in order to determine this application.

2. Recommendations

- 2.1 That following consideration of this report, any information given orally at the hearing and/or in writing by the applicant, objectors or consultee, the Licensing Sub-Committee may determine to:
- (a) to grant the licence in full. The Committee may also determine to grant the licence in part.
 - (b) to grant of the licence in full or in part subject to standard conditions (as amended), conditions which form part of the application, conditions proposed by parties to the hearing, or any other condition the Licensing Sub-Committee considers appropriate.
 - (c) grant a Waiver.
 - (d) refuse the application.
- 2.2 Reasons for the decision must be given for inclusion in the appropriate Notices required to be served on the Applicant, Responsible Authorities and all Interested Parties, following the determination of the matter.

3. Application

- 3.1 An application has been made under Schedule 3 of the Act for a Licence to permit relevant entertainment at the premises detailed above. Details of the relevant pages of the application are shown in Appendix 1.

A brief description of the application, is as follows: -

Relevant entertainment in the form of live performances of sex and displays of nudity between the following times:

Every day of the week from 1000 to 0130 hours.

The plan accompanying the application is shown in Appendix 2.

A photograph showing the exterior of the premises is shown in Appendix 3.

Policy documents provided by Within Temptation Ltd to support the application are shown in Appendix 4.

4. Determination of Application

- 4.1 The Council as the Licensing Authority is satisfied that the Applicant has met the administrative requirements of the Act but is unable to issue the Licence as objections have been received and the application falls outside the scope of Torbay Councils Statement of Licensing Policy for Sex Establishments.

- 4.2 Paragraph 2.1 of Torbay Councils Statement of Licensing Policy for Sex Establishments (17 March 2011) states:

Torbay Council being the Licensing Authority in Torbay for the purposes of the Act recognises that it can set a quantity limit regarding the number of sex establishments in an area. For the purpose of the consultation this has been set as follows:

Sex Shops – Two (in line with the existing numerical limit)

Sex Cinemas – Nil

Sexual Entertainment Venues (Lap dancing and striptease) – Two

- 4.3 Paragraph 2.2 of the Policy indicates that irrespective of the numerical limit, the Council will treat each application on its own merits.
- 4.4 Currently there are two licensed Sexual Entertainment Venues within Torbay. These being Stage Door, 17 The Strand, Torquay, and Steamer Quay, Rock Road, Torquay. Stage Door operates as a lap dancing/striptease premises. Steamer Quay operates as a sexual encounter premises where like-minded, consenting adults meet for sexual purposes.
- 4.5 Within Temptation operates in a similar manner to Steamer Quay and has been operating as an unlicensed Sexual Entertainment Venue since July 2021.
- 4.6 Officers consider that despite the cap of two Sexual Entertainment Venue licenses within Torbay, Within Temptation should be licensed as it is in the public interest to ensure that the premises meet an appropriate standard in respect of public

safety. This would be achieved through the annual renewal application process, together with visits to ensure the mandatory conditions are being complied with.

4.7 Paragraph 3.21 of Torbay Council's Policy states

"The Licensing Authority will attach all the relevant standard conditions to any licence. The Council recognises that each application should be considered on its own merits and as such will consider any Representations about the alteration to, addition to or removal from this standard list. However, there will need to be good reason to depart from the agreed conditions found within the attached appendices C and D. This will need to be agreed by Licensing Committees. There are no standard conditions for Sex Cinemas, as the Council has a numerical limit of zero."

4.8 Appendix D refers to the standard conditions for Sexual Entertainment Venues. However many of the conditions relate to performers in respect of lap dancing and striptease and, as these forms of entertainment do not take place at this premises, these conditions are not relevant.

4.9 Representation has been received from Mrs Rachael Hind, Regulatory Services Manager, in respect of alternative proposed conditions, prepared in consultation with Devon and Cornwall Police, which are requested to be added to the licence. Mrs Hind has discussed the proposed conditions with the Applicant, who has indicated that some of the proposed conditions are acceptable to them, but they have not provided any further clarification. Mrs Hind's Representation is shown at Appendix 5.

4.10 The Licensing Sub-Committee will need to determine whether the layout, character and condition of the premises are appropriate for the grant of a Sexual Entertainment Venue Licence in line with the Council's Licensing Policy. In this regard, when determining this application, the Licensing Sub-Committee will need to take into consideration several factors, namely the locality of the venue and its surrounding premises such as schools and places of worship.

5. Relevant History

5.1 There is no history of a Sex Establishment (Sexual Entertainment Venue) Licence at this premises. However, the premises has been operating in its current format for approximately 3 years.

5.2 The premises has the benefit of a Premises Licence under the Licensing Act 2003. The Licensing Authority is satisfied that the Licensing Objectives are being met.

6. Policy Considerations

6.1 Suitability of Applicant:

Within the application, the Company Directors and Manager have stated that they have no relevant convictions and Devon and Cornwall Police have not objected to the application on the grounds that the Directors and Manager are not suitable to hold a Sex Establishment Licence.

6.2 Is the Sex Establishment Venue being carried on for the benefit of another:

The applicant has stated that the business is not carried on for the benefit of another.

6.3 Appropriate number of Sex Establishments in an Area:

Paragraph 2.1 of the Policy states that the following limits have been set:

Sex Shops – Two

Sex Cinemas – Nil

Sexual Entertainment Venues (Lap Dancing and Striptease) – Two

The granting of this application will exceed the set limit for Sexual Entertainment Venues. The Licensing Sub-Committee are invited to determine this application on its own merit and should consider diverting from the Policy if it considers that it is appropriate to grant a licence to promote public safety at the premises.

6.4 The Character of the Relevant Locality:

The premises are situated in Lower Union Lane, Torquay which comprises of commercial premises.

6.5 The use to which any premises in the vicinity are put:

Lower Union Lane, Torquay consists of the rear entrances of businesses located on Union Street, Torquay, Buzz Bing, a short stay car park, a multi-storey car park, a large commercial premises the use of which is not known, with a small number of residential premises.

The distance from Within Temptation to the closest place of worship, the Church of the Assumption of Our Lady on Abbey Road, Torquay, is approximately 160 metres.

The premises are situated approximately 320 metres from the Leonard Stock Centre, Factory Row, Torquay which has a history of social difficulties.

An EF Language School is situated at 61 Abbey Road, Torquay, directly behind Within Temptation.

Little Palms Nursery, an early years alliance setting, is situated on the 3rd Floor of Zig-Zag's Childrens Centre at 32 Market Street, Torquay, approximately 320 metres away.

There are no historical buildings, cultural/tourist attractions, community facilities, or public buildings within 300 metres of Within Temptation.

6.6 Layout, Character and Condition of the premises:

The building consists of two floors. The ground floor of the premises contains a bar, toilets, shower and changing facilities, a plunge pool and entertainment area. The first floor comprises of entertainment areas and access to a roof terrace smoking area. The entrance to the premises consists of a double door with a bell entry system. All windows are obscured so no internal view of the premises is afforded from the street. The front of the premises can be seen in the photograph at Appendix 3.

7. Objections

- 7.1 We have received two objections in respect of this application, from EF Language School, 61 Abbey Road, Torquay and from a local resident who is concerned about the proximity of Within Temptation to the language school, a nursery in Market Street, and another nursery/pre-school or childminder located at the junction of Abbey Road and Warren Hill.
- 7.2 Research of the internet by the Licensing Officer has not identified a child care business at the junction of Abbey Road and Warren Hill.
- 7.3 These objections are shown in Appendix 6.

8. Legal Implications

- 8.1 Before refusing to grant an application, the Licensing Authority shall give the applicant opportunity to appear before and of being heard by the Licensing Sub-Committee (paragraph 10(19) Schedule 3 LG(MP)A1982).
- 8.2 In considering this application, the Licensing Sub-Committee shall have regard to any observations submitted to them by the Chief Officer of Police and any objections that have been received in writing within the 28-day consultation period (paragraph 10(18) Schedule 3 LG(MP)A1982).
- 8.3 The Licensing Sub-Committee may refuse to grant a licence for the following reasons set out in (paragraph 12(3) Schedule 3 LG(MP)A1982):
 - a) That the applicant is unsuitable to hold a licence by reason of having been convicted of an offence or for any other reason;
 - b) That if the licence were to be granted the business to which it relates would be managed or carried on for the benefit of a person, other than the applicant, who would be refused the grant 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 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 of 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.

An applicant whose application for the grant or renewal of a licence is refused on either ground specified in paragraph c) or d) above shall not have the right to appeal to the Magistrate's Court

- 8.4 If the Licensing Sub-Committee determines to grant a Sexual Entertainment Venue licence, the licence will be subject to the standard conditions for Sexual Entertainment Venue licences unless the Sub-Committee determine that certain

standard conditions should be expressly excluded or varied (paragraph 13(4) Schedule 3 LG(MP)A1982).

- 8.5 Should the Licensing Sub-Committee determine to refuse the application for the grant of a licence under paragraph 12(3)(a) or (b) Schedule 3 LG(MP)A1982, the applicant may appeal to the Magistrates Court within 21 days beginning with the date on which the applicant is notified of the refusal of his application (paragraph 27(1) Schedule 3 LG(MP)A1982).

Tara Harris Divisional Director Commercial and Customer Services

Appendices

Appendix 1 Application form

Appendix 2 Plan of the Premises

Appendix 3 Photograph of front of premises

Appendix 4 Policy Documents provided by Within Temptation Ltd

Appendix 5 Conditions proposed by Mrs Rachael Hind, Regulatory Services Manager

Appendix 6 Objections to application.

Documents available in Members' rooms

None

Background Papers:

The following documents/files were used to compile this report:

Torbay Council Statement of Licensing Policy for Sex Establishments – 17 March 2011

Local Government (Miscellaneous Provisions) Act 1982

Policing and Crime Act 2009

Home Office Guidance March 2010