



Report No: Public Agenda Item: **Yes**

Title: **Application for a Sexual Entertainment Venue licence Tiffany's, first floor, 17 The Strand, Torquay**

Wards Affected: **Tormohun**

To: **Licensing Sub-Committee** On: **15 September 11**

Key Decision: **No**

Change to Budget: **No** Change to Policy Framework: **No**

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1. What we are trying to achieve

- 1.1 To determine the application for a Sexual Entertainment Venue Licence at Tiffanys, 1st Floor, 17 The Strand Torquay in accordance with the Council's Statement of Policy for Sex Establishments.

2. Recommendation(s) for decision

- 2.1 It is recommend that:

The Application for a Sexual Entertainment Venue Licence be granted subject to the attachment of the standard conditions enclosed in Appendix D of the Council's Statement of Policy for Sex Establishments.

3. Key points and reasons for recommendations

- 3.1 By the provisions of the Local Government (Miscellaneous Provisions) Act 1982, Torbay Council is the Licensing Authority in respect of Sex Establishments within Torbay. Section 27 of the Policing and Crime Act 2009 amended Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 to include a new type of Sex Establishment called 'Sexual Entertainment Venues'. Torbay Council resolved to adopt Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 on the 2nd December 2010.
- 3.2 With the adoption of Schedule 3 Local Government (Miscellaneous Provisions) Act 1982, the powers found within that Schedule came into force on 7th January

2011, 28 days after the publication of the first of two public notices.

- 3.3 A “Sexual Entertainment Venue” means 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—

- (a) any live performance; or
- (b) any 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 the audience (whether by verbal or other means).

- 3.4 As part of this new responsibility a ‘Statement of Licensing Policy’ for Sex Establishments was written and was adopted on the 17th March 2011. See Appendix One.
- 3.5 This Policy covers several key points that are an important part of the delivery of this licensing regime. The first is the location where these premises can apply and maybe be granted a licence. The second is the numerical limit of premises and the third is the conditions that would apply to those types of premises.
- 3.6 In total a single objection and a petition of forty-nine signatures have been received. Of the names on the petition five were illegible and could not be confirmed by reference to the Electoral Register. All names and addresses have been removed in line with the Guidance, as the appropriate consent has not been obtained from the objector or those signing the petition.
- 3.7 The police have been consulted on this application and have responded with no objections to the licence being granted.
- 3.8 The premises have operated for a period of two years at its current location, providing adult entertainment under its existing premises licence. No issues of concern have arisen during this period from either the Police or Licensing Authorities.
- 3.9 The location is deemed appropriate in so much that it is in the centre of the area of the night time economy licensed premises and that the hours of operation being proposed are suitable for such a location. The entrance to the premises is discrete and not instantly identifiable as a Sexual Entertainment Venue.
- 3.10 Objections should not be based on moral grounds/values and local authorities should not consider objections that are not relevant to the grounds set out in paragraph 12 of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982. See Appendix Six.
- 3.11 The premises are the only Sexual Entertainment Venue in the Torbay area and as such, do not exceed the numerical limit of two set within the Council’s Statement of Policy for Sex Establishments.
- 3.12 A completed application including plan was been received and accepted by the Safety and Licensing Team, as in accordance with ‘Statement of Licensing Policy’ for Sex Establishments.

- 3.13 The premises have applied to operate Monday to Sunday 8.00 p.m. until 03.00 a.m. as a Sex Establishment (Sexual Entertainment Venue), as defined in the Council's Statement of Policy for Sex Establishments.
- 3.14 The Applicant may appeal the Committee's decision to the Magistrates Court within 21 days of receipt in writing of the Council's decision, unless the decision relates solely to the number of sex establishments in the relevant locality at the time of the application is made or 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.

Challenges on these grounds would be by way of a judicial review.

- 3.15 There are no rights of appeal for objectors unless on Mandatory Grounds, where they allege that the ground(s) did not apply to them.

For more detailed information on this proposal please refer to Appendix A.

Frances Hughes
Executive Head Community Safety

Appendix A – Supporting information to Report

A1. Introduction and history

- A1.1 By the provisions of the Local Government (Miscellaneous Provisions) Act 1982, Torbay Council is the Licensing Authority in respect of Sex Establishments within Torbay.
- A1.2 Section 27 of the Policing and Crime Act 2009 amended Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, to include a new type of Sex Establishment called ‘Sexual Entertainment Venue’s. This is in addition to the two existing types of Sex Establishments, namely Sex Shops and Sex Cinemas.
- A1.3 On 28th October 1982 Torbay Council adopted Schedule 3 Local Government (Miscellaneous Provisions) Act 1982 and has licensed Sex Shops and Sex Cinemas since. On the 2nd December 2010 Torbay Council adopted, the amended Schedule 3 Local Government (Miscellaneous Provisions) Act 1982, to include Sexual Entertainment Venues.
- A1.4 A “Sexual Entertainment Venue” means 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—

- (a) any live performance; or
- (b) any 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 the audience (whether by verbal or other means).

However premises that provide this type of entertainment less frequently than once per month and therefore 11 or less times per year are not classed as Sexual Entertainment Venues for the purpose of the legislation.

- A1.5 With the adoption of Schedule 3 Local Government (Miscellaneous Provisions) Act 1982, the powers found within that Schedule come into force 28 days after the publication of the first of two public notices. These notices were published on the 10th and 17th December 2010 and therefore the adoption took effect from the 7th January 2011.
- A1.6 A ‘Statement of Licensing Policy’ for Sex Establishments was adopted on the 17th March 2011. This Policy is attached in Appendix One.
- A1.7 This Policy covers several key points that are an important part of the delivery of this licensing regime. The first is the ‘characteristics of an area’ where these types of premises could or could not operate. The second is the numerical limit which can be set for each type of premises and the third is the conditions that would apply to those types of premises.
- A1.8 Within the legislation Torbay Council can refuse an application based upon the characteristics of an area. In the Policy this is covered by paragraph 2.2 (Page 6) “Irrespective of the numerical limit, and whilst treating each application upon its own merits, the Council will not licence premises in the relevant locality to:

- (a) a residential area;
- (b) premises, areas or access routes to such premises or areas which are designed for or attract children or families, such as school, play areas, parks, children's centres, youth clubs, nurseries or leisure facilities, or any other similar establishment;
- (c) a place of public religious worship;
- (d) historic buildings, cultural attractions and tourist attractions;
- (e) educational establishments;
- (f) community facilities and public buildings;
- (g) an area with a history of social difficulties;
- (h) a gateway to an identifiable locality."

A1.9 The second key point is the numerical limits for each type of premises. In the Policy this is covered by paragraph 2.1 (Page 6), "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 purposes 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"

A1.10 An application has been made for a Sexual Entertainment Venue at the Applicant's current premises. See Appendix Two and Three. Until now this activity has been covered under the provisions of the Licensing Act 2003. This activity will continue to be licensed under the 2003 Act until the 7th January 2012, when the grant of this licence will take effect, as in accordance with the Guidance.

A1.11 The premises is the only Sexual Entertainment Venue in the Torbay area and as such, does not exceed the numerical limit of two set within the Council's Statement of Policy for Sex Establishments

A1.12 Within the Council's 'Statement of Licensing Policy for Sex Establishments Appendix D is the proposed conditions for Sex Entertainment Venues. See Appendix One.

A1.13 Consultation with the operator of Tiffany's took place during the Policy consultation period and they are happy to adopt the conditions found in Appendix D of the Policy on their licence, if granted.

A1.14 In total one objection and a petition of 49 signatures of objection has been received. Of the names on the petition five were illegible and could not be confirmed by reference to the Electoral Register. See Appendix Four and Five. All names and addresses have been removed in line with the Guidance, as the appropriate consent has not been obtained from the objector or those signing the petition.

A1.15 The police have been consulted on this application and have responded with no objections to the licence being granted.

A1.16 The premises have operated for a period of two years at its current location, providing adult entertainment under its existing premises licence. No issues have arisen during this period from either the Police or Licensing Authorities.

A1.17 Objections should not be based on moral grounds/values and local authorities should not consider objections that are not relevant to the grounds set out in paragraph 12 of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982. See Appendix Six.

A1.18 The location is deemed appropriate in so much that it is in the centre of the area of the night time economy licensed premises and that the hours of operation being proposed are suitable for such a location. The entrance to the premises is discrete and not instantly identifiable as a Sexual Entertainment Venue.

A1.19 The licence, if granted, will be for one year only and each year a renewal will need to be applied for. If objections are received in any subsequent application period, then the matter will be brought back to Licensing Committee for a decision.

A1.20 The Applicant may appeal the Committee's decision to the Magistrates Court within 21 days of receipt in writing of the Council's decision, unless the decision relates solely to the number of sex establishments in the relevant locality at the time of the application is made or 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.

Challenges on these grounds would be by way of a judicial review.

A1.21 There are no rights of appeal for objectors unless on Mandatory Grounds, where they allege that the ground(s) did not apply to them.

A2. Risk assessment of preferred option

A2.1 Outline of significant key risks

There are no risks associated with the granting of this licence. The premises have operated for two years in this location, without issues of concern to either the Local Authority or the Police

This will be an annual application which can be reviewed by the Committee as part of the renewal process, at which time any concerns can be addressed.

A3. Options

- A3.1
- (i) To refuse the application.
 - (ii) To grant a licence subject to conditions in Appendix D of the Council's 'Statement of Licensing Policy' for Sex Establishments
 - (iii) To grant a licence subject to conditions in Appendix D of the Council's 'Statement of Licensing Policy' for Sex Establishments and attach additional conditions

A4. Summary of resource implications

A4.1 There are no significant additional resource implications that will derive from granting this licence. The fees have been set to cover the costs of the work associated with Sex Establishments and any subsequent applications.

A5. What impact will there be on equalities, environmental sustainability and crime and disorder?

A5.1 There are no equalities, environmental sustainability or crime and disorder implications.

A6. Consultation and Customer Focus

A6.1 Public notices have been placed in the local paper and outside the premises, as in accordance with the Council's 'Statement of Licensing Policy' for Sex Establishments

A7. Are there any implications for other Business Units?

A7.1 There are no significant implications for other business units relating to this report.

Annexes

Appendix	1	'Statement of Licensing Policy' for Sex Establishments
Appendix	2	Application for Sexual Entertainment Venue Licence
Appendix	3	Plan with application.
Appendix	4	Petition of objection
Appendix	5	Representation of objection
Appendix	6	Schedule 3, Paragraph 12 of the Local Government (Miscellaneous Provisions) Act 1982

Documents available in members' rooms:

Sexual Entertainment Venues – Home Office Guidance for England and Wales.

Local Government (Miscellaneous Provisions) Act 1982 is available on line at:

www.opsi.gov.uk

Background Papers:

The following resources and documents were used to compile this report:

- 1 Sexual Entertainment Venues – Home Office Guidance for England and Wales
- 2 Local Government (Miscellaneous Provisions) Act 1982
- 3 Torbay Council 'Statement of Licensing Policy' for Sex Establishments