

Licensing Committee

Grand Jury Room, Town Hall
21 June 2013 at 10.00am

The Licensing Committee deals with policy issues relating to licensing matters and applications and appeals concerning hackney carriage and private hire vehicles and drivers and other appeals.

Information for Members of the Public

Access to information and meetings

You have the right to attend all meetings of the Council, its Committees and Cabinet. You also have the right to see the agenda, which is usually published 5 working days before the meeting, and minutes once they are published. Dates of the meetings are available at www.colchester.gov.uk or from Democratic Services.

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The Council values contributions from members of the public. Under the Council's Have Your Say! policy you can ask questions or express a view to meetings, with the exception of Standards Committee meetings. If you wish to speak at a meeting or wish to find out more, please pick up the leaflet called "Have Your Say" at Council offices and at www.colchester.gov.uk

Private Sessions

Occasionally meetings will need to discuss issues in private. This can only happen on a limited range of issues, which are set by law. When a committee does so, you will be asked to leave the meeting.

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There is wheelchair access to the Town Hall from St Runwald Street. There is an induction loop in all the meeting rooms. If you need help with reading or understanding this document please take it to Angel Court Council offices, High Street, Colchester or telephone (01206) 282222 or textphone 18001 followed by the full number that you wish to call and we will try to provide a reading service, translation or other formats you may need.

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**COLCHESTER BOROUGH COUNCIL
LICENSING COMMITTEE
21 June 2013 at 10:00am**

Members

Chairman : Councillor Nick Cope.
Deputy Chairman : Councillor Julia Havis.
Councillors and Michael Lilley.

Substitute Members :

Agenda - Part A
(open to the public including the media)

Members of the public may wish to note that Agenda items 1 to 5 are normally brief.

Pages

1. Welcome and Announcements

(a) The Chairman to welcome members of the public and Councillors and to remind all speakers of the requirement for microphones to be used at all times.

(b) At the Chairman's discretion, to announce information on:

- action in the event of an emergency;
- mobile phones switched to silent;
- the audio-recording of meetings;
- location of toilets;
- introduction of members of the meeting.

2. Substitutions

Members may arrange for a substitute councillor to attend a meeting on their behalf, subject to prior notice being given. The attendance of substitute councillors must be recorded.

3. Urgent Items

To announce any items not on the agenda which the Chairman has agreed to consider because they are urgent and to give reasons for the urgency.

4. Have Your Say!

(a) The Chairman to invite members of the public to indicate if they wish to speak or present a petition at this meeting – either on an item on the agenda or on a general matter not on this agenda. You should

indicate your wish to speak at this point if your name has not been noted by Council staff.

(b) The Chairman to invite contributions from members of the public who wish to Have Your Say! on a general matter not on this agenda.

5. Declarations of Interest

The Chairman to invite Councillors to declare individually any interests they may have in the items on the agenda. Councillors should consult Meetings General Procedure Rule 7 for full guidance on the registration and declaration of interests. However Councillors may wish to note the following:-

- Where a Councillor has a disclosable pecuniary interest, other pecuniary interest or a non-pecuniary interest in any business of the authority and he/she is present at a meeting of the authority at which the business is considered, the Councillor must disclose to that meeting the existence and nature of that interest, whether or not such interest is registered on his/her register of Interests or if he/she has made a pending notification.
- If a Councillor has a disclosable pecuniary interest in a matter being considered at a meeting, he/she must not participate in any discussion or vote on the matter at the meeting. The Councillor must withdraw from the room where the meeting is being held unless he/she has received a dispensation from the Monitoring Officer.
- Where a Councillor has another pecuniary interest in a matter being considered at a meeting and where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the Councillor's judgment of the public interest, the Councillor must disclose the existence and nature of the interest and withdraw from the room where the meeting is being held unless he/she has received a dispensation from the Monitoring Officer.
- Failure to comply with the arrangements regarding disclosable pecuniary interests without reasonable excuse is a criminal offence, with a penalty of up to £5,000 and disqualification from office for up to 5 years.

6. Minutes

1 - 4

To confirm as a correct record the minutes of the meetings held on 30 January and 13 March 2013.

7. Transfer of Sexual Entertainment Licence // Climax 27-30 St Botolph's Street, Colchester

5 - 15

See report by the Head of Professional Services.

8. Exclusion of the public

In accordance with Section 100A(4) of the Local Government Act 1972 and in accordance with The Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 (as amended) to exclude the public, including the press, from the meeting so that any items containing exempt information (for example confidential personal, financial or legal advice), in Part B of this agenda (printed on yellow paper) can be decided. (Exempt information is defined in Section 100I and Schedule 12A of the Local Government Act 1972).

LICENSING COMMITTEE

30 JANUARY 2013

Present: - Councillors Mary Blandon, Nick Cope, Margaret Fairley-Crowe, Dave Harris, Julia Havis, Pauline Hazell, Mike Hogg, Brian Jarvis, Margaret Kimberley, Michael Lilley and Colin Mudie

17. Minutes

The minutes of the meeting held on 27 November 2012 were confirmed as a correct record.

18. Hackney Carriage // Survey of Unmet demand

The Committee considered a report by the Head of Environmental and Protective Services on the results of the survey undertaken to determine whether there was unmet demand with regard to the provision of Hackney Carriage Services within the Borough of Colchester. Mr Millership from CTS Traffic and Transport who conducted the survey attended the meeting to make a presentation on the outcome of the survey and to respond to questions from the Committee. A copy of the Survey was appended to the report.

The survey, which the Council was required by law to carry out because it restricted the Hackney Carriage numbers, was carried out between October 2012 and January 2013 with the main survey work being undertaken in November 2012. It concluded that there was no evidence of significant unmet demand for the services of Hackney Carriages in the Colchester Borough area and therefore recommended that the current limit be retained. However, in addition to the retention of the current limit it recommended that other actions be taken to ensure that passenger demand continued to be met effectively and identified these measures as maintaining the current rank outside Marks and Spencer, signing the Head Street Rank more effectively and to encourage its use, and to identify and encourage into use a third rank to replace the bus station facility which had been lost in the reconfiguration of the new bus station.

RESOLVED that-

(i) The current policy on the limitation of hackney carriage numbers be retained and other actions be taken to ensure that passenger demand continues to be met. These measures to include maintaining the current rank on the High Street outside Marks and Spencer; signing the Head Street Rank more effectively and encouraging its use; and ensuring a third rank to replace the lost and previously used bus station facility is identified and encouraged into use.

(ii) The Committee's concern be expressed to the relevant bodies at the proposed

changes to the High Street Rank without a full and comprehensive consultation exercise having been carried out and given due consideration.

LICENSING COMMITTEE

13 March 2013

Present:- Councillor Cope (Chairman)
Councillor Hogg

Substitute Member:- Councillor Jarvis for Councillor Fairley-Crowe

The Committee resolved under Section 100A of the Local Government Act 1972 to exclude the public from the meeting for the following items as it involved the likely disclosure of exempt information as defined in paragraph 1 of Schedule 12A to the Local Government Act 1972

20. Hackney Carriage/Private Hire Drivers Appeal

The Committee considered a report by the Head of Environmental and Protective Services concerning a hackney carriage/private hire driver's appeal against the Licensing and Enforcement Manager's decision to refuse to grant a hackney carriage/private hire driver's licence on the grounds that the applicant was in breach of the Council's Pre-licensing Standard 6.2(g). The Enforcement Officer presented the case followed by the appellant and then all parties withdrew for the Committee to consider the matter and make its determination.

RESOLVED that, having heard the evidence presented, the Committee determined to dismiss the appeal and uphold the decision of the Licensing and Enforcement Manager to refuse to grant a hackney carriage/private hire driver's licence on the grounds that the applicant was not considered to be a 'fit and proper person' to hold such a licence under the terms of the Local Government (Miscellaneous Provisions) Act 1976.

LICENSING COMMITTEE

13 MARCH 2013

Present: - Councillors Mary Blandon, Nick Cope, Dave Harris, Julia Havis, Pauline Hazell, Mike Hogg, Brian Jarvis, Margaret Kimberley, Michael Lilley and Colin Mudie

19. Hackney Carriage and Private Hire Licence Policy and Conditions

The Committee considered a report by the Head of Environmental and Protective Services on the new policy and revised conditions and scheme of penalty points for hackney carriage and private hire vehicles, operators and drivers. Consultation on the Policy had taken place between 27 November 2012 and 10 February 2013 the period having been extended because of the Christmas period. The consultation had included the Trade, disability groups, key responsible authorities and was also available in Angel Court and on the Council's website. All private hire operators and members of the Colchester Taxi Association had been emailed on 4 January 2013 with a summary of the key points and a link to the consultation on the Council's website. Whilst some enquiries had been made during the consultation process, no actual responses were received.

RESOLVED that—

- (i) The points awarded for offence 34, unsatisfactory behaviour or conduct of driver e.g. Abusive language etc. be changed to 6.
- (ii) The policy and revised conditions and scheme of penalty points for hackney carriage and private hire vehicles, operators and drivers be adopted in their current form as set out in the appendices to the report by the Head of Environmental and Protective Services, subject to the above amendment, and phased in over the next municipal year of 2013-14.



Licensing Sub-Committee

Item

21 April 2013

Report of	Head of Professional Services	Author	Martin Nelson ☎ 282841
Title	Application to Transfer a Sexual Entertainment Venue Licence// Climax, 27-30 St Botolph's Street, Colchester		
Wards affected	Castle		

This report seeks determination of an application to transfer a sexual entertainment venue licence under the provisions of the Local Government (Miscellaneous Provisions) Act 1982

1. Decision Required

- 1.1 To determine an application for the transfer of a Sexual Entertainment Venue Licence in respect of the premises known as Climax at 27-30 St Botolph's Street, Colchester.
- 1.2 The Licensing Sub-Committee is requested, having considered all the relevant facts, with due regard to the transfer application, the representations received, and the Council's Sex establishment Policy, to resolve either to :
 - a. Grant the transfer
 - b. Grant the transfer with additional and/or amended conditions
 - c. Refuse the application

2. Application Details

- 2.1 An application has been received from Top Drawer Entertainments Ltd to transfer to the company the sexual entertainment venue licence held by Exquisite Entertainments Ltd. A copy of the application is attached at Appendix A and a copy of the Premises licence and Management Plan to be transferred are attached at Appendix B.
- 2.2 Two valid objections had been received in respect of the application and these are shown at Appendix C. The objections centre on the suitability of the applicant to hold such a licence and manage the premises.

3. Alternative Options

- 3.1 There are no alternatives available to the Sub-Committee. Having resolved to re-adopt the legislation to provide control over sexual entertainment venues, it is necessary to determine any licence applications that fall within its scope.

4. Supporting Information

- 4.1 Colchester borough Council adopted Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 on 14 October 1982 which provided the Council with the ability to licence sex establishments. 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".

- 4.2 On 13 October 2010 the Council resolved to re-adopt Schedule 3 of the 1982 Act, as amended by the Policing and Crime Act 2009, thereby requiring all premises operating as sex establishments in the Council's area to be licensed. The definition of sex establishments now includes sexual entertainment venues and brings the entertainments of lap and pole dancing under the legislation.
- 4.3 Top Drawer Entertainment Ltd have applied for and obtained the transfer of the Premises Licence, issued under the provisions of the Licensing Act 2003, to enable it to sell alcohol and carry out regulated entertainment. This transfer application relates solely to the transfer of the sexual entertainment venue licence.

5. Policy Considerations

- 5.1 The Council's adopted Licensing Policy for Sex Establishments sets out how transfer applications will be dealt with and the relevant extracts are reproduced below:

- 10.3 An application to transfer a licence to any other person may be made.
- 10.4 Where an application for renewal or transfer of a licence is made before the expiry of the existing licence, the licence shall remain in force until such time as the application has been determined.

Appendix B - Transfer of a licence

- 13) A person may apply for transfer of a licence at any time.
- 14) The process of applying for transfer of a licence is the same as that for applying for an initial grant except that a plan of the premises is not required.

Appendix G - Refusals and revocations of licences

2. The Council may refuse-
- (a) an application for grant or renewal of a licence on one or more of the grounds shown in paragraph 3 below;
 - (b) an application for transfer of a licence on either or both of the grounds shown in paragraph 3 (a) and (b) below.
3. The grounds for refusal are-
- (a) That the applicant is unsuitable 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;

6. Licence Conditions

- 6.1 Any conditions that are imposed must be non-discriminatory, necessary, reasonable and proportionate to the application that has been submitted.

7. Consultation and Publicity Considerations

- 7.1 Under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 the only publicity or advertising requirements that are required are those to be undertaken by the applicant: to send an application to the Police; place a notice on the site; and place a

notice in a local newspaper. The applicant has complied with the requirements of the Act in relation to consultation.

8. Financial Implications

- 8.1 Given the right of appeal against the Licensing Sub-Committee's decision to the Courts, the costs of such proceedings could be awarded against the Council if an appeal was upheld. It is felt that this is unlikely if the Council's decision was made in good faith. There are no other cost implications.

9. Human Rights Implications

- 9.1 A licence is to be regarded as the property of the applicant. However, the right to the use of that property must also be balanced against any other public interests in this matter.
- 9.2 When making their decision The Sub-Committee must give consideration to the rights that the applicant has 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 might be relevant.
- 9.3 members should consider whether interference with these 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, whether interference can be justified in the general interest.

10. Health and Safety and Risk Management Implications

- 10.1 There are a number of safeguards as part of the determination process such as the rights of any interested party or responsible authority to make a representation; the requirement for any objections to be considered; and for the application to be considered on its individual merits. Additionally the SEV policy has looked at any health or risk implications and the Sub-Committee must have regard to this when considering the merits of each individual application. Any decision made therefore will have taken account of any health safety and risk management implications.

11. Recommendation

- 11.1 The Sub-Committee is requested to consider the application in the context of the suitability of the applicant, the objections received and the Council's Sexual Entertainment Venues Policy. In view of the quasi-judicial nature of the hearing, a recommendation cannot be put before the Sub-Committee. The options available are listed in paragraph 1.2 above. The grounds for refusing the application are set out in paragraph 5.1.

COLCHESTER BOROUGH COUNCIL

Local Government (Miscellaneous Provisions) Act 1982
Part II, Schedule 3

Application for grant / ~~renewal~~ / transfer / ~~variation~~ of a Sexual
Establishment Licence (Sexual Entertainment Venue/Sex Shop/Sex
Cinema)*

(*Please delete as appropriate)

Applications may be made by individuals, corporate bodies or unincorporated bodies.

1. Application is hereby made and the necessary fee enclosed for a

New Licence ()*

Transfer of Licence (X)*

Renewal of Licence ()*

Variation of Licence ()*

*Tick as appropriate

2. Name and address of premises to which this application relates.

Heaven Gentleman's Club

30a St Bolttophs Street

Colchester, Essex

CO2 7EA

If application relates to a vehicle / vessel / stall give a description and state where it is to be used as a sex establishment.

3. Full Name of Applicant.

NATALIE ADAMS

Date of Birth.

10/11/1969

Occupation (during preceding six months).

DIRECTOR

4. Address for Correspondence (If different from permanent address)

5 EDINBURGH MEWS

WATFORD

HERTS WD19 4FS

Telephone No.

01923 803707

If application is made on behalf of a corporate or unincorporated body.

5. Name of applicant body: TOP DRAWER ENTERTAINMENT LTD
- State whether a corporate or unincorporated body. CORPORATE
6. Address of registered or principal office. 5 EDINBURGH MEWS
WATFORD
HERTS WD19 4FS
7. Full names of all directors and other persons responsible for the management of the body, including if applicable the names of managers, company secretary and similar officers and the manager of the establishment.
(You will be required to complete a statutory declaration sheet for each person)
- NATALIE ADAMS
8. What hours and days do you require the licence to cover? Sunday to Thursday 12.00-0200
Friday & Saturday 1200-0300
9. What "relevant" entertainment do you wish to provide?
Lap Dancing
10. If you are seeking to vary the licence, what does the variation consist of?
N/A
11. If the premises are not open between 9.00 am and 4.00 pm, state name, address and telephone number of person responsible for keys to the premises.

12. If only part of the building is to be licensed, give details. N/A

13. Will any part of the premises be used for the exhibition of moving pictures? No
14. Does the applicant presently use the premises or the vehicle, vessel or stall as a sex establishment? No
- If not, what is the present use?

- If yes, give details of any person, other than the applicant(s) who has run the premises, vehicle, vessel or stall as a sex establishment since that date?

15. If the premises, vehicle, vessel or stall are presently used as a sex establishment, when did the use commence? December 2009

16. Give full details of the type of business to be conducted at the establishment. Lap Dancing

- 17 I declare I have checked the information given on this application and attached statutory declaration forms and to the best of my knowledge and belief it is correct.

I understand that if the above requirements have not been complied with my application may be rejected.

I understand that the information given may be used in conjunction with other authorities for the prevention and detection of fraud, and will be held on computer, subject to the Data Protection Act 1998.

I understand that it is an offence, liable on conviction to a fine not exceeding level 5 on the standard scale to make a false statement in, or in connection with, this application.

- 18 I enclose a cheque for £XXXX (please delete the amounts not applicable) being the appropriate application fee.

Date: 30/04/13 Signature: _____

RAclaus

Capacity of applicant –
~~Personal~~/Director/~~Other~~
(Please delete as appropriate).

All applicants are required to send with this application: - (a) two plans showing the area to be licensed, (b) statutory declarations in the form shown in the attached document in respect of (i) the applicant, (ii) directors of any company applying for a licence and (iii) any other person who will be responsible for the management of the licensed premises.

Return by post to: Licensing Professional Support Unit Colchester
Borough Council 33 Sheepen Road, Colchester, CO3 3WG

Return in person to Colchester Borough Council Customer Services
Centre, Angel Court, High Street, Colchester, CO1 1SP

Return by e-mail to EPS.Support@colchester.gov.uk

Return by Fax to 01206 282598

I wish to object to the transfer of the licence to Top Drawer Entertainment. This company was only formed on 20 November 2012 and has given no indication of its ability to run a Sex Establishment. It has only one Director and we have no indication of the number of staff it employs or its experience in this specialist field.

Paragraph 6.1 of the Councils policy is clear that it will consider whether the applicants are fit and proper to hold a licence and will take into account

1. The operation of existing or previous licences held by the applicant
2. Their experience and knowledge of the type of sex establishment they are applying to run
3. Whether the applicants intend to operate the premises or employ other people to do so

4. Paragraph 6.1(g) is also relevant as are the following paragraphs (h) to (k) The applicants have supplied no evidence to cover these points and therefore I believe cannot meet the Councils criteria as laid out in its policy on Licensing for Sex Establishments

Bill Frame

Councillor Castle ward

Dear Chairman and Members of the Licensing Committee

I object to the transfer of the licence to Top Drawer Entertainment Ltd on the following grounds.

The law (Local Government Misc. Provisions Act 1982 as amended) Schedule 3 para 10(3)(c) provides that an application on behalf of a body corporate shall state the full names and private addresses of the directors or other persons responsible for its management.

The Schedule goes on to provide that the licensing authority may refuse to approve a transfer to the applicant on the grounds that the applicant is unsuitable for any reason to hold the licence or that the business would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the transfer if he made the application himself.

The applicant company, which seems to be a £100 company only incorporated in November 2012, has only one director, namely Natalie Adams. The private address of Ms Adams was not given in the application; instead she gave the registered office of the company. But I am told that your officers are satisfied that it was given in a statutory declaration and that Ms Adams lives in Rickmansworth.

Rickmansworth is approximately 78 miles by road from Colchester and in my view, it is not credible that just one person who lives so far away can be responsible for managing the operations of the company here in Colchester. The hours of operation of the premises are long. Such a person is unsuitable by reason of being too far away to do the job properly.

In practice, there will have to be one or more other persons in or near Colchester who will be responsible for the management of the premises in St Botolph's Street, Colchester. Their

names and private addresses should have been disclosed so that their suitability can be considered as well.

I believe it is important that the names and private addresses in question should have been made public, because a member of the public could have valuable information amounting to a reason why the applicant's director or manager was unsuitable to hold a licence, but can only identify the relevant individual if both the name and private address are published. I am not satisfied that there has been satisfactory publication.

I understand that Ms Adams only became a director at or just before the time of signing the application form and that prior to that the sole director was Dean Justin Adams of the same address in Rickmansworth. It seems that he has another company called Worldwide Websites Ltd. The reason for his resignation as a director is not known. It would seem that the business will be carried on at least partly for the benefit of Mr Adams and therefore checks on him should have been made as well.



Colchester Borough Council

Sex Establishment Licence

Sexual Entertainment Venue

Local Government (Miscellaneous Provisions) Act 1982 Part II Schedule 3

Colchester Borough Council
Licensing Team
Rowan House
33 Sheepen Road
Colchester CO3 3WG

Licence number: 076227

PREMISES DETAILS

Heaven Gentlemen's Club
27-30 St Botolph's Street
Colchester CO2 7EA

Date Licence Granted: 5 April 2013

Date Licence Expires: 16 February 2014

Activities authorised by this licence:

Lap Dancing and Pole Dancing

The times the licence authorises the carrying out of licensable activities:

Fridays and Saturdays 12.00 to 03.00

Sundays to Thursdays 12.00 to 02.00

LICENCE HOLDERS

Licence Holder

Exquisite Enterprises Limited,
Tyrell and Co.,
Suite D, Cambs Business Park, Baberham,
Sawston, Cambridge, CB22 3JH

Registered number of holder; for example, company number(where applicable):

Gary O'Shea

Gary O'Shea – Licensing and Enforcement Manager

5 April 2013

Date of Issue

Appendix 1

Conditions attached by the Licensing Sub-Committee at the Hearing on 17 February 2012

1. That 2 members of door staff remain outside the premises and in the area for 20 minutes after its closure to monitor dispersal from the premises and to deal with any issues that may occur.

Conditions attached by the Licensing Sub-Committee at the Hearing on 5 April 2013

2. Flyers advertising the premises are not to be handed out in the Borough.

Appendix 2

1. The licence is granted subject to the provisions of the Premises Management Plan appended to the application.

e-mail: licensing.committee@colchester.gov.uk
website: www.colchester.gov.uk