

## REPORT TO LICENSING PANEL SUB COMMITTEE

### CONSIDERATION OF THE RENEWAL OF A SEXUAL ENTERTAINMENT VENUE LICENCE UNDER SCHEDULE 3 OF THE LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982

LICENSING PANEL SUB- COMMITTEE: 7<sup>TH</sup> July 2017

OFFICER REPORTING: Steve Smith - Licensing Officer

#### A) THE APPLICATION

APPLICANT: Mr Desmond Murphy

PREMISES: Pink Gentleman's Club, Basement, Darville House, Oxford Road East, Windsor, SL4 1EF

The application is to renew the Sexual Entertainment Venue (SEV) licence for the above premises, as is required on an annual basis. An SEV is defined as "any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or entertainer". Relevant entertainment is "any live performance or 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 purposes of sexually stimulating any member of an audience (whether by verbal other means). An audience can consist of just one person (e.g. where the entertainment takes place in private booths).

The application does not propose any changes to the current hours or conditions of the licence.

#### Application history:

12.10.2011 - Application for new SEV heard by panel on 17.11.11 (licence granted)

19.01.2012 - Transfer of SEV from Annmarie Harris to Desmond Murphy

05.11.2012 – Application for the renewal of SEV ( licence granted)

28.01.2014 - Application for the renewal of SEV ( licence granted)

30.01.2015 - Application for the renewal of SEV ( licence granted)

21.01.2016 - Application for the renewal of SEV , (objections received.)

11.08.2017 Licensing Panel Sub Committee Hearing, **licence granted with following condition added:-**

*To limit the use of promotional vehicle/s for marketing purposes in Windsor (as defined by the ward boundaries for Castle Without, Clewer East, Clewer North, Clewer South, Eton & Castle and Park) the promotional vehicle/s not to be used before 23:00 and no later than 02:00 Mondays to Saturdays and not to be used for promotional purposes on Sundays.*

25.01.2017 - Application for the renewal of SEV

## **B) REPRESENTATIONS**

### **Police:**

Thames Valley Police - Thames Valley Police have no objection to this application.

RBWM received response on 27.01.2017.

### **Objections**

Objection from Ward Members, Cllr James Rankin. Objection attached.

RBWM received objection on 29.01.2017.

## **C) OBSERVATIONS**

The application is in respect of existing premises which currently has a premises licence under the Licensing Act 2003. There are no outstanding complaints in relation to the premises or either the general or specific location of the premises "vicinity". The applicant has no relevant convictions.

The Sub-Committee may under paragraph 8(1) of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 renew the licence subject to any terms & conditions and restrictions it may decide are reasonable.

The term "reasonable" is not defined or mentioned in the 1982 Act but is included to indicate that in deciding what terms are reasonable, under public law, the Sub-Committee must only take account of matters relevant to the application and ignore any that are irrelevant.

As objections have been made to the Renewal of the Licence then in line with paragraph 11 of Schedule 3 and Royal Borough's Policy a hearing is necessary before this Sub-Committee to decide whether the Licence should be renewed.

Guidance for England and Wales was published by the Home Office in March 2010. The entire Guidance should be considered as a whole, but relevant extracts, regarding the subtitled matters, is set out below as follows:

### **"Objections**

3.23:

When considering an application for the grant, renewal or transfer of a licence the appropriate authority should have regard to any observations submitted to it by the chief officer of police and any objections that they have received from anyone else within 28 of the application. Any person can object to an application but the objection should be relevant to the grounds set out in paragraph 12 for refusing a licence. 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. Objectors must give notice of their objection in writing, stating the general terms of the objection.

3.24:

Where the appropriate authority receives notice of any objection the authority shall, before considering the application, give notice in writing of the general terms of the objection to the applicant. However, the appropriate authority shall not without the consent of the person making the objection reveal their name or address to the applicant.

### **Hearings**

3.25:

Under paragraph 10(19) of Schedule 3, before refusing an application, all applicants should be given the opportunity to appear before and be heard by the local authority committee or sub-committee that is responsible for determining the application.

3.26:

Schedule 3 does not make explicit provision for objectors to be heard, but this does not mean that such hearings cannot take place. Rather, case law on this matter states that while local authorities are under no obligation to offer an oral hearing to objectors, they may do so at their discretion. Although a local authority is under a duty to consider any objections made within 28 days of the application, it has discretion to hear later objections provided the applicant is given the opportunity to deal with those objections.

### **Refusal of a Licence**

3.27:

Paragraph 12 of Schedule 3 sets out the grounds for refusing an application for the grant, renewal or transfer of a licence.

A licence must not be granted:

- (a) to a person under the age of 18;
- (b) 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;
- (c) to a person, other than a body corporate, who is not resident in an EEA State or was not so resident throughout the period of six months immediately preceding the date when the application was made; or
- (d) to a body corporate which is not incorporated in an EEA State; or
- (e) 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 premises, vehicle, vessel or stall in respect of which the application is made, unless the refusal has been reversed on appeal.

3.28:

A licence may be refused where:

- (a) the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason;
- (b) 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;
- (c) 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 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.

3.29:

A decision to refuse a licence must be relevant to one or more of the above grounds.

3.30:

When determining a licence application, the local authority must have regard to any rights the applicant may have under Article 10 (right to freedom of expression) and Article 1, Protocol 1 (protection of property) of the European Convention on Human Rights.

3.31:

The Provision of Services Regulations 2009 amended Schedule 3 to the 1982 Act to state that, if having considered an application for the grant, renewal or transfer of a licence, the appropriate authority decides to refuse it on one or more of the above grounds, it must provide the applicant with reasons for the decision in writing.

### **Relevant Locality**

3.32:

Paragraph 12(3)(c) and 12(3)(d) of Schedule 3 allow appropriate authorities to refuse applications on grounds related to an assessment of the "relevant locality". A licence can be refused if either, at the time the application is determined the number of sex establishments, or sex establishments of a particular kind, in the relevant locality is equal to or exceeds the number that the authority considers appropriate for that locality; or that a sex establishment would be inappropriate having regard to the character of the relevant locality, the use to which any premises in the vicinity are put or the layout, character or condition of the premises. Nil may be the appropriate number.

3.33:

Schedule 3 to the 1982 Act does not define "relevant locality" further than to say that:

- (a) in relation to premises, it is the locality where they are situated; and

(b) in relation to a vehicle, vessel or stall, any locality where it is desired to use it as a sex establishment.

3.34:

Clearly, the decision regarding what constitutes the 'relevant locality' is a matter for the appropriate authority. However, such questions must be decided on the facts of the individual application.

3.35:

Therefore, it is reasonable and potentially useful to future applicants, for a local authority to decide in advance of receiving any applications that certain areas are, or are not, appropriate locations for a sex establishment or a particular number of sex establishments. Nevertheless, all applications must be considered on their individual merits.

3.36:

When considering a particular application case law has indicated that the relevant locality does not have to be a clearly pre-defined area nor are local authorities required to be able to define its precise boundaries. Therefore, while a local authority is not prevented from defining the exact area of the relevant locality, it is equally free to conclude that it simply refers to the area which surrounds the premises specified in the application and does not require further definition. Nevertheless a local authority's view of what constitutes a locality could be open to challenge if they took a completely unreasonable view of the area covered, for example, by concluding that two sex establishments 200 miles away from one another were in the same locality. Case law also indicates that a relevant locality cannot be an entire local authority area or an entire town or city.

3.37:

Once the appropriate authority has determined the relevant locality, it should seek to make an assessment of the 'character' of the relevant locality and how many, if any, sex establishments, or sex establishments of a particular kind, it considers appropriate for that relevant locality.

3.38:

Section 27 amends paragraph 12(3)(c) of Schedule 3 to allow local authorities to determine an appropriate number of sex establishments of a particular kind. In practice, this means that the appropriate authority may, for example, decide that a particular locality is suitable for a sex shop but is not suitable for a sexual entertainment venue or vice versa.

### **Licence Conditions**

3.39 Once the appropriate authority has decided to grant a licence they are able to impose terms, conditions and restrictions on that licence, either in the form of conditions specific to the individual licence under paragraph 8 of Schedule 3 or standard conditions applicable to all sex establishments, or particular types of sex establishments, prescribed by regulations made by the appropriate authority under paragraph 13 of Schedule 3.

## Appeals

3.44:

In the event that the appropriate authority refuses an application for the grant, renewal or transfer of a sex establishment licence the applicant may appeal the decision in a magistrates' court, unless the application was refused under 12(3)(c) or (d), in which case the applicant can only challenge the refusal by way of judicial review."

The Sub-Committee may refuse to renew the Licence under the Grounds set out in Paragraph 12(3) of Schedule 3, namely:

- (a) the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason;
- (b) 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;
- (c) 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 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.

Particular attention should be paid to the grounds under 12(3)(c) and 12(3)(d), as these are the grounds for objection in the representations received.

**In making its decision, the Committee should have regard to the Home Office Guidance and the Council's own Licensing Policy.**

The Sub-Committee must have regard to all of the representations made and the evidence it hears.

The options available to the Sub-Committee are that it may:

- a) renew the licence, attaching any conditions they consider reasonable under paragraph 8(1) or,
- b) refuse the application under paragraph 12(2)

Where the Sub-Committee has refused to renew a licence then it is required to give written reasons for its decision to the licence holder (paragraph 11(20)).

7189048

## Royal Borough of Windsor & Maidenhead

Local Government (Miscellaneous Provisions) Act 1982 Section 3 and Schedule 3  
Application for the Grant/Renewal/Transfer/ of a Licence for a Sex Establishment

Type of Application	Grant		Renewal	<input checked="" type="checkbox"/>	Transfer	
---------------------	-------	--	---------	-------------------------------------	----------	--

1. If application is made on behalf of an individual please state:

Full Name <b>MR DESMOND MURPHY</b>					
Permanent Address <b>43 LAUGHTON ROAD, NORTHOLT, UBS SLN</b>					
Age	<b>48</b>	Date of Birth	<b>23/05/1968</b>	Place of Birth	<b>LONDON</b>

If application is made on behalf of a corporate or unincorporated body please state:

Full Name of Body					
Address of registered or principle office					

2. Give full names and private addresses of all directors or other persons responsible for management of the establishment:

Full Name <b>MR DESMOND MURPHY</b>					
Address <b>43 LAUGHTON ROAD, NORTHOLT, UBS SLN</b>					
Age	<b>48</b>	Date of Birth	<b>23/05/1968</b>	Place of Birth	<b>LONDON</b>

Full Name					
Address					
Age		Date of Birth		Place of Birth	

Full Name					
Address					
Age		Date of Birth		Place of Birth	

Full Name					
Address					
Age		Date of Birth		Place of Birth	

3. Have you any convictions recorded against you? Or if a body corporate or unincorporated body that body or any of its directors or other persons responsible for its management? If so please state:

Date of Conviction	Offence	Sentence (including suspended sentence)

Note

- 1) All five convictions must be disclosed.
- 2) Spent convictions, as defined Table 1 should not be included.

## Royal Borough of Windsor & Maidenhead

Table 1

Sentence	Becomes spent after
Imprisonment of between 6 months and 30 months	10 years
Imprisonment of up to 6 months	7 years
Borstal training	7 years
A fine or other sentence not otherwise covered in this table	5 years
Absolute discharge	6 months
Probation order, conditional discharge or bind over	1 year (or until order expires, whichever is longer)
Detention Centre Order	3 years
Remand home, attendance centre or approved school order	The period of the order and a further year after the order expires
Hospital order under the Mental Health Act	The period of the order and a further 2 years after it expires
Cashiering discharge with ignominy or dismissal with disgrace from the Armed Forces	10 years
Dismissal from Armed Forces	7 years
Detention	5 years

**Note**

- 1) A sentence of more than 2½ years imprisonment can never become spent.
- 2) If you were under 17 years of age on the date of conviction, please halve the period shown in the right hand column.

4. Have you been resident in the United Kingdom throughout a period of six months immediately preceding the date YES/NO
5. If the application is made on behalf of a body corporate is that body incorporated in the United Kingdom YES/NO N/A
6. Full address of premises desired to be used as a sex establishment

PINK, BASEMENT, DARVILLE HOUSE, OXFORD ROAD EAST, WINDSOR, SL4 1EF

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

8. During which hours do you intend to trade

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
10:00-04:00	10:00-04:00	10:00-04:00	10:00-04:00	10:00-04:00	10:00-04:00	10:00-04:00

9. Are the premises to be used as a sex shop? YES/NO  
 Are the premises to be used as a sex cinema? YES/NO  
 Are the premises to be used as a sexual entertainment venue YES/NO
10. Are you (or, if a corporate or unincorporated body, that body) disqualified from holding a licence for a sex establishment? YES/NO

Have you ever been refused a licence for a sex establishment?  
 If Yes please give details

N/A

11. I declare that I have checked the information given on this application form and to the best of my knowledge and belief it is correct.

Signed

 27/1/17  
 M. LAVELL

Licensing Team - RBWM, Town Hall, St Ives Road, Maidenhead, SL6 1RF.



# LICENCE FOR A SEXUAL ENTERTAINMENT VENUE

# SEV0001

## LOCAL AUTHORITY

Royal Borough of Windsor and Maidenhead  
Town Hall  
St Ives Road  
Maidenhead  
Berkshire  
SL6 1RF

www.rbwm.gov.uk



Royal Borough  
of Windsor &  
Maidenhead

## NAME & ADDRESS OF HOLDER OF SEXUAL ENTERTAINMENT VENUE LICENCE

**Desmond MURPHY**

43 Laughton Road Northolt UB5 5LN

## PREMISE DETAILS

**Pink**

Basement, Darville House, Oxford Road East, Windsor SL4 1EF

## PERMITTED HOURS

Monday to Sunday

**Open from**  
10:00

**Open to**  
04:00

## LICENCE DETAILS

**COMMENCES :** 07 Feb 2016

**EXPIRY :** 06 Feb 2017

## NOTES

- (1) THIS LICENCE IS SUBJECT TO THE PROVISIONS OF THE LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982, THE CONDITIONS ATTACHED TO THIS LICENCE AND ANY OTHER RELEVANT ACTS.
- (2) THIS LICENCE IS NOT TRANSFERABLE WITHOUT THE CONSENT OF THE COUNCIL

## SIGNED ON BEHALF OF THE ISSUING LICENSING AUTHORITY

**Craig Miller**  
Community Protection and Enforcement Services Lead





**CONDITIONS ATTACHED TO THE ISSUE OF  
SEV0001  
Sexual Entertainment Venue Licence  
ROYAL BOROUGH OF WINDSOR AND MAIDENHEAD**

1. To limit the use of promotional vehicle/s for marketing purposes in Windsor (as defined by the ward boundaries for Castle Without, Clewer East, Clewer North, Clewer South, Eton & Castle and Park) the promotional vehicle/s not to be used before 23:00 and no later than 02:00 Mondays to Saturdays and not to be used for promotional purposes on Sundays.
2. Whilst performing striptease the dancer may not perform any acts which by themselves or with others are, or clearly simulates masturbation, oral sex or sexual intercourse, including the insertion of any object, including their own finger into any genital opening.
3. A customer code shall be prominently displayed and clearly visible throughout the premises advising patrons of the rules of striptease at the venue. A copy of the customer code will be provided to the Police and Licensing Authority and shall not be substantially amended without the consent of the Police.
4. The premises licence holder will have an operations manual and performer code of conduct. A copy of these documents will be provided to the Police and Licensing Authority prior to opening and shall not be substantially amended without the consent of the Police.
5. Striptease performers shall be aged not less than 18 years.
6. No dancer may perform at the premises until such time as photographic proof of identity showing date of birth is provided, confirming that the dancer is aged over 18 years.
7. Whilst striptease is taking place no person under 18 years of age shall be permitted within the premises.
8. A notice shall clearly be displayed in a prominent position at the entrance of the premises stating that "no person under 18 will be admitted" so that it can be easily read by persons entering the premises.
9. Whilst performing striptease, dancers must not be able to be seen by persons outside the premises.
10. Striptease may only take place in supervised public areas of the premises or areas covered by CCTV.
11. The DPS or a nominated manager shall be present on the premises at all times whilst the striptease entertainment is taking place.
12. A nominated person shall be present to oversee the activities of striptease performers.
13. Dressing rooms will be provided for striptease performers and access to these will be restricted by management - before, during and after the entertainment.
14. Any external advertising at the premises shall be in a form acceptable to the Police and Licensing Authority.
15. There must not be any contact by the striptease performer with the patron immediately before, during and immediately after the performance of striptease except:
  - (a) The leading of a patron hand in hand to and from a chair or to and from the designated dance area.
  - (b) The simple handshake greeting.
  - (c) The placing of monetary notes or dance vouchers into the hand or garter worn by the performer.
  - (d) The customary kiss on the cheek of the patron by the dancer at the conclusion of the performance.
  - (e) If the contact is accidental.





**Royal Borough Of Windsor and Maidenhead**

© Crown copyright and database right 2016. Ordnance Survey 100018817

OS Ref: SU9676 NW      Date: 27/07/2016      Scale 1:2500 at A3 landscape

**Location plan**  
**Pinks, The Basement**  
**Darville's House**  
**Oxford Road East**  
**Windsor SL4 1EF**

This page is intentionally left blank

## Janette Brettell

---

**From:** Janette Brettell  
**Sent:** 30 January 2017 10:03  
**To:** Cllr Rankin  
**Cc:** Cllr Richards; Cllr Shelim  
**Subject:** RE: Renewal of a Sexual Entertainment Venue premises licence within your Ward.

Dear Cllr Rankin,

I acknowledge receipt of your objection, and it has been added to the casefile.

Best regards

*Janette*

Assistant Licensing Enforcement Officer  
RBWM Ext: 5851

---

**From:** Cllr Rankin  
**Sent:** 29 January 2017 11:32  
**To:** Janette Brettell  
**Cc:** Cllr Richards; Cllr Shelim  
**Subject:** RE: Renewal of a Sexual Entertainment Venue premises licence within your Ward.

Dear Janette

I would like to formally object to the Renewal of Sexual Entertainment Licence for Pink on Oxford Road East.

I object on two grounds: the character of the locality is inappropriate for a Sexual entertainment License and to protect children from harm.

### Character of the Locality

Under Section 3 Control of Sexual Entertainment, Paragraph 12, in 3di, the schedule allows an authority to reject the renewal of an SEV license if the award would be inappropriate having regard to the character of the relevant locality.

Pink is situated in the historic town centre of Windsor. Immediately off Peascod Street, this area constitutes our high street, full of historic buildings, where millions of visitors (constituting young families of residents' and tourists' alike) visit each year. I would contest that such an establishment is highly inappropriate if you assess the character of an area bursting with visitors' attractions and historic importance.

Further I would contend that the area is residential, and increasingly so (evidence attached). A large number of people reside both in Darville House directly above the premises, in Ward Royal and in flats in King Edward Court. It is inappropriate for a residential area to have in its midst a Sexual Entertainment Premises. This residential aspect of the area is also increasing; under permitted development rights, a developer can turn an office space into residential space without the planning authority objecting. In the area immediately surrounding Pinks' premises, large capacity of office space is being turned into residential accommodation under these permitted rights, and as the area becoming less business focused and more residential, the location of a Sexual Entertainment venue becoming increasingly inappropriate.

Further considering the wider area, rather than just the immediate locality, we have the historic Alexandra Gardens, a visitor attraction and play area for children and young families, and the Holy Trinity Garrison Church, a place of

worship and remembrance of our fallen servicemen and women. I would contend the considering the wider area, as well as the immediate area, would lead to a conclusion that the character of the relevant locality does not suit a SEV license being renewed.

The character of the immediate relevant locality is an historic, tourist based, family space which is increasingly residential. As such the Royal Borough should reject the application for an SEV at this premises under Paragraph 12 3di of the Schedule.

In summary I believe the application should be refused due to the character of the immediate relevant locality and its increasing residential make-up.

Cllr Jack M. Rankin  
Castle Without

Lead Member, Economic Development & Property  
Deputy Lead Member, Finance

Sent from my iPhone

---

**From:** Janette Brettell  
**Sent:** 26 January 2017 12:01  
**To:** Cllr Richards; Cllr Shelim; Cllr Rankin  
**Subject:** Renewal of a Sexual Entertainment Venue premises licence within your Ward.

**Dear Councillors,**

**I attach details of an application for a Renewal of a Sexual Entertainment Venue premises licence within your Ward.**

**Ward: Castle Without**

**Application Type: Renewal of a Sexual Entertainment Venue premises licence**

**Premises: Pink, Basement, Darville House, Oxford Road East, Windsor, SL4 1EF**

**Licence Holder: Mr Desmond Murphy C/O Pink, Basement, Darville House, Oxford Road East, Windsor, SL4 1EF**

**Applicant: Mr Desmond Murphy C/O Pink, Basement, Darville House, Oxford Road East, Windsor, SL4 1EF**

**Summary of application:**

**Renewal of a Sexual Entertainment Venue premises licence**

**All licensable activities and hours remain the same**

**Last date for representations: 21/2/2017**

**Thank you**

**Best regards**

**The Licensing Team**