

REPORT OF THE HEAD OF STREETSCENE

REGULATORY COMMITTEE – 15 OCTOBER 2012

LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982 APPLICATION FOR THE GRANT OF A SEX ESTABLISHMENT LICENCE

PREMISES: Privilege

APPLICANT: ETH Leisure Ltd

ADDRESS: 8-10 Crowtree Road

1.0 PURPOSE OF REPORT

- 1.1 To consider an application for the grant of a sex establishment licence for the above-mentioned premises.

2.0 DESCRIPTION OF DECISION

- 2.1 The Committee are requested to consider an application for the grant of a sex establishment licence.

3.0 INTRODUCTION/BACKGROUND

- 3.1 An application has been received for the grant of a sex establishment licence in respect of the above mentioned premises. The licence is requested between the hours of 10:00 a.m. and 04:00 a.m. every day of the week. The applicant has requested that, should the licence be granted, the Council's standard condition 13 (c) be amended so that CCTV footage must be kept for a period of 28 days rather than 31 days in order that this condition matches the condition on the applicant's premises licence issued under the Licensing Act 2003.
- 3.2 The licensing of sex establishments is governed by the Local Government (Miscellaneous Provisions) Act 1982 (the 'Act'). The Act allows the Council to license premises as a sex establishment on such terms and conditions as may be specified. The Council adopted the relevant legislation on 7 March 2011. Therefore, any person operating a sexual entertainment venue in the city after 7 March 2012 needs requires a licence.
- 3.3 A 'Sex establishment' means a sex cinema, sex shop or sexual entertainment venue. The present application is in respect of a sexual entertainment venue. The applicant wishes to provide lap dancing, pole dancing and stage strip-tease at these premises.
- 3.4 There is an exemption within the Act for premises which provide the above type of entertainment infrequently. In order to qualify for this exemption the operator would have to ensure that:

- they have provided such entertainment on no more than eleven occasions within a period of twelve months,
- on no such occasion has the entertainment lasted longer than twenty four hours; and
- there was a period of one month between occasions on which the entertainment has been provided.

4.0 CURRENT POSITION

- 4.1 Three objections to the application have been received in respect of this application and these are detailed below. Under the Act the Council cannot reveal to an applicant the name or address of any person making an objection unless they have given their consent for the Council to do so.
- 4.2 Northumbria Police have objected to the application and their objection is attached to the report as Appendix 1.
- 4.3 Cllr Kay has submitted an objection to the application and a copy of his objection is attached to the report as Appendix 2.
- 4.4 Another objection has been received in respect of this application from an objector who had not, at the time of writing, given his consent to the Council revealing his name and address to the applicant. The letter containing their objection has been redacted to omit matters not pertaining to their objection. A copy of this objection is attached to the report as Appendix 3.
- 4.5 Copies of the objections have been forwarded to the applicant and any comments received from the applicant will be reported to the Committee at the meeting.

5.0 REASONS FOR THE DECISION

- 5.1 To determine the application as required by the Local Government (Miscellaneous Provisions) Act 1982.

6.0 ALTERNATIVE OPTIONS

- 6.1 None.

7.0 RELEVANT CONSIDERATIONS

- 7.1 The Council may refuse an application for the grant of a licence on one or more of the grounds below: -
- (a) that the applicant is unsuitable to hold 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, 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 of such a licence if he made the application himself;
- (c) that the number of sex establishments in the relevant locality at the time the application is made is equal to or exceeds the number which the Council considers appropriate for that locality (which number may be 'nil'); or
- (d) that the grant or renewal of the licence would be inappropriate having regard:
 - i) to the character of the relevant locality;
 - ii) to the use to which any premises in the vicinity are put, or
 - iii) to the layout, character or condition of the premises in respect of which the application is made.

7.3 Should the Committee be minded to grant the application they are requested to attach to the subsequent licence the conditions contained in the Council's Sexual Entertainments Venue Policy which was agreed by the Regulatory Committee at their meeting on 3 October 2011. A copy of the policy is attached as Appendix 4.

8.0 GLOSSARY

8.1 None.

9.0 LIST OF APPENDICIES

9.1 Appendix 1 – Northumbria Police's objection.
 Appendix 2 – Cllr Kay's objection.
 Appendix 3 – Anonymous objection.
 Appendix 4 – Sunderland City Council's Sexual Entertainment Venue Policy

10.0 BACKGROUND PAPERS

10.1 None.

Appendix 1

NORTHUMBRIA POLICE

Total Policing



28 September 2012

Sunderland City Council
Licensing Section
Jack Crawford House
Commercial Road
Sunderland
SR2 8QR



Sunderland Area Command

Gillbridge Avenue Police Station
Gillbridge Avenue
Sunderland
SR1 3AV

Tel: 0191 563 6198
Fax: 0191 563 6198

RE: Application for grant of sex establishment licence – Privilege Functions

Northumbria Police are in receipt of the above application and wish to object on the grounds of crime and disorder, public safety and the protection of children from harm. However these objections may be withdrawn should the applicant agree to have the following conditions attached to the licence;

- 1) A CCTV system must be designed, installed and maintained in proper working order, to the satisfaction of the licensing authority and Northumbria Police. Such a system must;
 - Ensure coverage of all entrances and exits to the licensed premises both internally and externally.
 - Ensure coverage of all public areas within the premises required by the licensing authority and Northumbria Police.
 - Ensure coverage of each and every cubicle where any form of dancing takes place.
 - Provide continuous recording for each camera to the Home Office Scientific Development Branch (HOSDB) standard for identification (CCTV Operational Requirements Manual 2009 No. 28/09). Such recording must be retained for 28 days and must be supplied to an Officer of the Council or a Police Officer on request.
 - Be in operation at all times the premises are in use.
- 2) The licensee must ensure that at all times when the premises are open for sexual entertainment, there are sufficient, competent staff on duty at the premises for the purpose of fulfilling the terms and conditions of the licence and for preventing crime and disorder.
- 3) The Licensee must ensure that when the premises are open for sexual entertainment there are a minimum of 2 SIA door supervisors employed on the entrance to the premises and there must be a minimum of 2 SIA door supervisors employed within the venue.
- 4) Toughened glass or Polycarbonate drinkware must be used at all times.
- 5) It is the Licensees responsibility to ensure that all performers shall not be under the influence of alcohol or drugs, and if found to be shall not be allowed to perform.

- 6) The premises will adopt and implement a written drugs policy for staff and the public.
- 7)
 - a) A written record shall be maintained at the premises detailing the training provided to each member of staff, door supervisor and performer, in relation to performances and drugs on the premises.
 - b) The record shall be signed and dated by each person to confirm training has taken place.
 - c) The record shall be kept at the premises and be available for inspection by the Police and an authorised officer of the council on request.
- 8) A risk assessment relating to the safety of performers must be in place for the performance of any sexual entertainment in the premises. A copy of this information will be given to Northumbria Police who must be satisfied that the information is sufficient to avoid risk to the performers, written confirmation will be given by the Police to the Licensee to that effect. A record of this will be retained on the premises and be available to the Police and authorised officers of the council on request.



Sean McKenna
Chief Inspector
Sunderland Area Command
Northumbria Police

Appendix 2

27th September 2012

I am writing to oppose the granting of a Sex Establishment Licence to Privilege Functions at 6 – 10 Crowtree Road.

My objection is based on the published proposals by the council for that area of the city centre as part of the Remodelling of St Mary's Way and the critical preliminary development of the Vaux site.

In the immediate future we have a vision for this area of the city as a public open space where families can enjoy a spot of rest and relaxation in the middle of a busy city.

With the impending closure of Crowtree Lesiure Centre and other plans that are in the pipeline for the development of the former Fire Station site and for Farringdon Row, granting this licence would, in my view as a local councillor, send mixed signals to local people and potential development partners alike.

As a city council it is critical that we take all steps necessary to raise the profile and image of this area within the city centre and allowing such a licence at this time would be very much to the detriment of the exciting family oriented future this area has available to it.

Cllr I W Kay
Millfield Ward



Appendix 3



21 High Street, Yarm, Stockton-on-Tees TS15 9BW www.forths.co.uk

Sunderland City Council
City Services
Licensing Dept
PO Box 107
Civic Centre
SUNDERLAND, SR2 7DN

Telephone: 01642 784000
Fax: 01642 788500
DX: 60082 Yarm

Your Ref: Mr Iain Cavanagh
Our Ref: [REDACTED]
Please ask for: Clive Harvard
E-mail: clive.harvard@forths.co.uk
Direct Line: 01642 355593
12 September 2012

Dear Sirs

Re: Local Government (Miscellaneous Provisions) Act 1982
Privilege Bar, Crowtree Road, Sunderland

As you know we act for [REDACTED]

We are instructed [REDACTED]

[REDACTED] to make a representation against
the granting of a SEV Licence to those premises.

[REDACTED]

Our client has become aware of the fact that only very recently has Privilege Bar submitted an application for an SEV Licence. It is within our client's knowledge that the Privilege Bar has, for some years, offered adult entertainment of the type which they now seek to have licensed. and it is apparent that since your Authority adopted the new legislation these premises have been operating in an unlicensed and illegal manner [REDACTED]

[REDACTED]

DIRECTORS: HB Jenyns, RJ Ivanec BSSc

CONSULTANT SOLICITOR: Alison Skene LLB - Accredited Specialist Resolution (First for Family Law),

PROBATE & LICENSING EXECUTIVE: JC de Jersey Harvard MA (Cantab) **CONVEYANCING EXECUTIVE:** Gill Campbell

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Our client finds it galling and entirely unacceptable that [REDACTED] the Privilege Bar, despite having had exactly the same opportunity as [REDACTED] anyone else who wished to apply, for some reason chose not to apply and were able to continue to provide adult entertainment each time the City's football team had a match at a weekend, whether that was a home or away fixture.

Our client observes that not only did they not have a Licence but they were not abiding by the conditions that would have been on the Licence if they had successfully applied for one, i.e. no door staff therefore, no age checks before admission on members of the public, no dancer's rules, no customer conduct rules, no CCTV in the right places, no age or identity checks on dancers, no external advertising restrictions and a number of other infringements.

As a consequence of not having to pay £5,604.00 for a Licence and not having any conditions to abide by, Privilege Bar were able to undercut [REDACTED] pricing significantly and our client believes that their trade has actually increased as a result of their flouting the law [REDACTED]

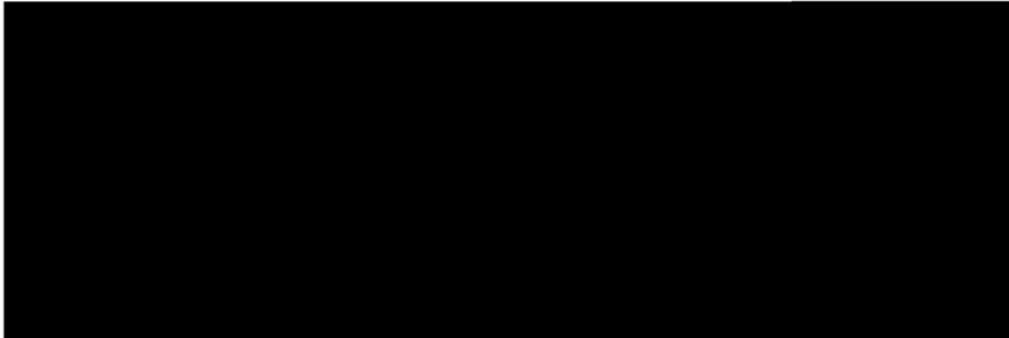
It would be no surprise to discover that they were also taking trade away from other more conventional bars on a match day.

[REDACTED] It is fully accepted that occasional accidental Licence breaches may sometimes occur but the conduct of the operators of the Privilege Bar can scarcely be seen in this light given the publicity that was attached to the introduction of the new SEV Regulations in the licensing trade. Any responsible Licensee would attempt to correct any problems as soon as they became aware of them but our client believes that this has not happened in this case and that over a period of months the operators of Privilege Bar were quite blatantly repeatedly flaunting the rules and [REDACTED] thus, over the months, to commit an extraordinary number of offences.

[REDACTED]

You were clearly aware of the nature of the adult entertainment being provided by the operators of Privilege Bar in the past, and we say this because the writer was so advised in a telephone conversation with Mr Cavanagh on 13 April 2011 when, in the course of making preliminary enquiries of your authority, the writer was told that the Privilege Bar was providing strip tease entertainment. Of course, at that time such entertainment did not require an SEV Licence.

[REDACTED]



Our client seeks an assurance from you that [REDACTED] and, as far as our client is aware, there has been no prosecution for their blatant breaches of the Licensing law, their conduct will be taken into account when considering their application.

In this connection we ask you to treat this letter as a formal representation/objection to their application for an SEV Licence under the provisions of the Local Government (Miscellaneous Provisions) Act 1982 Schedule 3 paragraph 12.(2)(a) and 12.(3)(a) namely "that the applicant is unsuitable to hold the Licence by reason of having been convicted of an offence or **for any other reason**. We are not aware of any conviction but it is our view that the conduct complained of as outlined in this letter clearly warranted a prosecution and that such conduct constitutes "any other reason" within the terms of the Act.

Our client also comments that [REDACTED] it would most certainly not be in the spirit of the legislation for your authority to grant an SEV Licence in such circumstances.

Yours faithfully

@forths solicitors

Appendix 4

Sunderland City Council

**Sexual Entertainment Venue
Licensing Policy**

Sexual Entertainment Venue Licensing Policy

1. Introduction

- 1.1 Sunderland City Council adopted Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 (the 'Act') (as amended by section 27 of the Policing and Crime Act 2009) on 7 March 2011. This allows the Council to license sexual entertainment venues. This policy indicates our approach to the enforcement of this law.
- 1.2 The Council is unable to take a moral stand in adopting this policy as we recognise that Parliament has made it potentially lawful to operate a sexual entertainment venue. It is our role as a licensing authority to administer the licensing regime in accordance with the law.
- 1.3 Both the Local Government (Miscellaneous Provisions) Act 1982 and the Policing and Crime Act 2009 can be viewed at www.legislation.gov.uk.

2. Consultation

- 2.1 We consulted on this policy between 13 June 2011 and 29 July 2011 and it was approved by our Regulatory Committee on 3 October 2011.
- 2.2 Consultation was conducted with the representatives of local residents; the statutory responsible authorities under the Licensing Act 2003; and the representatives of holders of Licensing Act 2003 premises licences and club premises certificates in the City.

3. Objectives of Policy

- 3.1 The overarching objectives of the policy are to:
 - promote the Council's visions and values;
 - protect the rights and health and safety of the general public, workers and businesses; and
 - ensure consistent and transparent decision making.
- 3.2 This document outlines the policy which will guide Sunderland City Council when considering applications for sexual entertainment venue licences under the Act.

Sexual Entertainment Venue Licensing Policy

4. Commenting on licence applications

- 4.1 Unlike some other licensing regimes (such as for alcohol, entertainment, or gambling), any persons may raise objections about sexual entertainment venue licences. The Police are a statutory consultee for all applications.
- 4.2 We may only consider representations which are relevant to the statutory grounds for refusal that are set out in the Act. These grounds are shown below in paragraphs 8.1 to 8.3.
- 4.3 We will take the following approach to deciding applications:
- each case will be decided upon its merits. The Council will not apply any rigid rules to its decision making;
 - objectors may include residents' associations, community associations and trade associations. Councillors and MPs may also raise objections. Councillors may represent interested parties, providing that they do not also sit on the Regulatory Committee determining the application in question; and
 - we will give clear reasons for our decisions.
- 4.4 We are not able to consider objections which relate to moral grounds as these are outside the scope of the Act.
- 4.5 Objections must be made in writing and submitted to the Council no later than twenty eight days after the application is submitted to the Council.
- 4.6 Objections will be considered by the Regulatory Committee. We will give both applicants and objectors an equal opportunity to state their case.
- 4.7 We request that objections:
- indicate the name and address of the person or organisation making the representation and whether they consent to their details being released to the applicant;
 - indicate the premises to which the objection relates; and
 - clearly set out the reasons for making the objections.

5. Exchange of Information

Sexual Entertainment Venue Licensing Policy

- 5.1 The Council may from time to time exercise its powers under section 115 of the Crime and Disorder Act 1998 to exchange data and information with the Police and other partners in order to fulfil its statutory duty to reduce crime, disorder, substance misuse and behaviour which adversely affects the environment and reoffending in our area.
- 5.2 The Council is under a duty to protect the public funds we administer, and to this end may use the information provided on application forms for the prevention and detection of fraud. We may also share the information with other bodies responsible for auditing or administering public funds for these purposes.
- 5.3 Details of applications and objections which are referred to the Regulatory Committee for determination will be published in reports that are made publicly available in accordance with the Local Government Act 1972 and the Freedom of Information Act 2000.
- 5.4 The names and addresses of objectors will not be disclosed to applicants or published in public reports without the consent of the person making the objection. However, such details will be made available to Councillors of the Regulatory Committee on the day of the hearing.

6. Compliance and Enforcement

- 6.1 Our approach to enforcement is set out in our Enforcement Policy which is available on request.

7. Relevant entertainment

- 7.1 A sexual entertainment venue licence is required for “any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer”.
- 7.2 ‘Relevant entertainment’ is defined as “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 purpose of sexually stimulating any member of an audience (whether by verbal or other means).” An audience may consist of just one person, e.g. in a private booth.
- 7.3 In deciding whether any entertainment is ‘relevant entertainment’ we will judge each case on its merits, but the term ‘relevant entertainment’ will generally be taken to include:
- lap dancing;

Sexual Entertainment Venue Licensing Policy

- pole dancing;
- table dancing;
- strip shows;
- peep shows; and
- live sexual shows.

Adult entertainment not classed as “relevant entertainment” may still require licensing under the Licensing Act 2003.

8. Grounds for Refusal

8.1 There are some specific grounds for refusing sexual entertainment venues which are set out in paragraph 12 of Schedule 3 to the Act. These include the situation where an applicant is unsuitable, due to his/her age, domiciliary status or previous criminal convictions.

8.2 We can also refuse applications for new or renewed licences where:

- the number of sexual entertainment venues in the relevant locality at the time the application is determined to be equal to or exceeds the number which we consider appropriate for that locality;
- the grant or renewal of the licence would be inappropriate, having regard to:
 - (i) the character of the relevant locality, or
 - (ii) the use to which any premises in the vicinity are put, or
 - (ii) to the layout, character or condition of the premises.

8.3 In considering the characteristics of a locality within which a licence is sought we shall particularly take account of the density and proximity of:

- residential accommodation;
- parks and children’s play areas;
- retail units (and their uses);
- schools;

Sexual Entertainment Venue Licensing Policy

- religious and communal buildings; and
- alcohol or entertainment licensed premises.

9. Application form

- 9.1 We have a standard application form and a model public notice, which are available upon request. The application must be accompanied by a plan of the premises which is clear and legible in all material respects and which identifies the area(s) within which relevant entertainment is to be provided.

10. Licence conditions

- 10.1 We have adopted a set of standard conditions for the operation of sexual entertainment venues. These will be added to any licence issued unless modified by the Council's Regulatory Committee. These conditions are attached as Appendix 1
- 10.2 Other conditions may be imposed upon licences by the Council where considered appropriate.

11. Fees

- 11.1 Our fees will be set each year. Details are available from our Licensing Section and on our website at www.sunderland.gov.uk. We will charge separate fees for applications for the grant, variation, renewal or transfer of licences.

12. Examples of Good Practice

- 12.1 Listed below, as examples of good practice, are methods by which the holders of sexual entertainment venue licences could comply with the requirements of various pieces of legislation. Although compliance with this good practice is not required by the 1982 Act the Council believes that the matters covered are so important that they should be brought to the attention of any person applying for a sexual entertainment venue licence.
- Adequate arrangements must exist to enable the safe evacuation of disabled people in the event of an emergency. Staff must be aware of disabilities and react according to a pre-determined plan.
 - All escape routes and exits must be kept unobstructed, in good order with non-slippery and even surfaces, free of trip hazards and clearly identified.

Sexual Entertainment Venue Licensing Policy

- All doors leading from exits into passages or to the outside of the premises shall be without locks, bolts or other fastenings, except that those doors used only for exit which shall be fitted with panic bolts and the method of opening shall be clearly indicated on the door to which it is fitted. Panic bolts shall not be secured with chains, padlocks or other locking devices when the premises are being used for the purposes of the licence.
- No person should be employed at the Licensed Premises to carry out a security activity as defined by Schedule 2 of the Private Security Industry Act 2001 unless he/she is authorised to carry out that activity by a licence granted under the Private Security Industry Act 2001; or is entitled to carry out that activity by virtue of section 4 of that Act.

APPENDIX 1

STANDARD CONDITIONS FOR SEXUAL ENTERTAINMENT VENUES

Sexual Entertainment Venue Licensing Policy

Protection of Customers

1. Entry prices and prices for compulsory purchases (such as beverages) must be clearly displayed on the exterior of the premises or at a location inside the premises where they may be seen by a potential customer prior to entering any area of the premises in respect of which any payment is required.
2. All charges for products and services must be prominently displayed within the premises.
3. The Licensee shall produce and maintain Rules of Conduct for Customers. These Rules of Conduct must contain the following:
 - a) Customers viewing a lap dance must remain seated during the entire performance of the dance;
 - b) Customers may not dance at any time in areas identified for the provision of relevant entertainment in the submitted plan of the premises;
 - c) Customers must remain clothed at all times;
 - d) No photography is permitted, during performances, including the use of mobile phones or other electronic devices for such; and
 - e) Customers may not touch any performer.
4. The Rules of Conduct shall be prominently displayed at the entrance to the premises, at each customer table and in the bar area.

Children/non-users

5. No person under the age of 18 shall be admitted to the Premises. Customers who appear to be under the age of 25 must be asked to provide either a recognised proof of age card accredited under the Proof of Age Standards Scheme (PASS), a photograph Driving Licence, a passport or official HM Forces or EU ID card bearing a photograph and date of birth. The Licensee must provide prominent notices at each entrance to the Premises to this effect.
6. Performers shall be aged not less than 18 years. The Licensee must ensure that all performers, before commencing employment at the premises, provide either a recognised proof of age card accredited under the Proof of Age Standards Scheme (PASS), a photograph Driving Licence, a passport or official HM Forces or EU ID card bearing a photograph and date of birth. The Licensee must maintain records of the names, addresses and dates of birth of performers.

Sexual Entertainment Venue Licensing Policy

7. The Licensee shall not permit the display outside of the Premises of photographs or other images which may be offensive.
8. The Licensee shall ensure that the interior of the Premises is not visible from the outside of the Premises, and that the exterior is maintained to a satisfactory level of decorum. Performers must not be visible from outside of the Premises.
9. The Licensee shall ensure that neither they nor any person promoting or providing entertainment on the Premises (nor any person acting on behalf of any such person) display or distribute any advertisement which is offensive to public sentiment.

Protection for performers/prevention of crime and disorder

10. The Licensee shall produce and maintain a Code of Conduct for Performers. This Code of Conduct must contain the following:
 - a) Performers shall only perform in areas identified for the provision of relevant entertainment in the submitted plan of the premises
 - b) Performers must remain clothed in the presence of customers except while performing in the areas identified for the provision of relevant entertainment in the submitted plan of the premises.
 - c) Performers must never be alone in the company of a customer except in an area either visible to other persons within the Premises. Compliance with this rule may be achieved by the use of continually observed Closed Circuit Television monitors.
 - d) Performers may not perform any act that simulates any sexual act.
 - e) Performers must never touch the genitals or breasts of another person or knowingly permit another person to touch their genitals or breasts.
 - f) Performers may not use any sex article during a performance.
11. All performers are to be provided with a copy of the Code of Conduct for Performers and are to be given training on its contents.
12. Performers must be provided with a secure lockable changing room with separate sanitary facilities from those used by the customers.

The Premises

Sexual Entertainment Venue Licensing Policy

13. Where lap dancing is performed, the Licensee shall ensure that an internal and external CCTV system of a type and specification approved by Northumbria Police is installed at the premises. Specifically:
- a) the system shall be maintained in good working order with regular servicing and shall be operational throughout the operating hours of the premises;
 - b) The system must provide coverage of all parts of the premises to which customers have access;
 - c) images recorded by the system shall be retained securely for a minimum of 31 days and must be immediately available on request to a Police officer or authorised officer of the Council; and
 - d) there must be at least one member of staff on duty throughout operating hours who is trained and capable of downloading recorded CCTV images onto discs or other mobile data storage devices.

Management Standards

14. The Licensee must remain in personal control of the Premises at all times or nominate in writing to the Council an individual over the age of 18 who will direct activities within the Premise

