

Licensing & Regulatory Committee

2nd April 2019

Name of Cabinet Member:

Not applicable

Director approving submission of the report:

Deputy Chief Executive (Place)

Ward(s) affected:

Wyken

Title: Application for a performance of hypnotism under the Hypnotism Act 1952, and the regulation of future performances within the Local Authority.

Is this a key decision?

No

Executive Summary:

The purpose of this report is to request that the Licensing & Regulatory Committee (as the Licensing Authority) authorise and approve conditions for a performance of hypnotism at a licensed premises on the 20 April 2019. The report also seeks to consider the arrangements for the regulation and authorisation of future performances of hypnotism within the Local Authority.

Recommendations:

That the Licensing & Regulatory Committee considers:

1. To authorise the performance of hypnotism by Colin Adamson to be undertaken at the Pinley RFC on 20 April 2019, subject to the conditions attached as Appendix 1 to this report;
2. That the conditions attached as Appendix 1 to this report be approved and attached to any future authorisation issued by the Council for the staging of hypnotism as a means of entertainment;
3. That the Head of Planning and Regulation be given delegated authority to determine any future applications for authorisation of performances of hypnotism under the Hypnotism Act 1952;
4. That subject to point 3 above, where a representation is received against a decision to refuse an application for a performance of hypnotism, a Licensing and Regulatory Sub - Committee will meet to review this decision.

List of Appendices included:

1. Proposed conditions
2. Application form for Hypnotism

Background papers:

Hypnotism Act 1952
Home Office Circular 39/1996

Other useful documents

None

Has it been or will it be considered by Scrutiny?

No

Has it been or will it be considered by any other Council Committee, Advisory Panel or other body?

No

Will this report go to Council?

No

1. Context (or background)

- 1.1 The licensing team at Coventry City Council was contacted in February 2019, by a hypnotist, Colin Adamson, to hold a performance for entertainment purposes at a licensed premises in the City of Coventry on the 20 April 2019. Currently the Council has no policy or conditions in place to regulate acts of hypnotism.
- 1.2 Performances of hypnotism for entertainment purposes are regulated by the Hypnotism Act 1952. Whilst an act of hypnotism is not a licensable activity under the Licensing Act 2003, it still remains a licensing function, for which authorisation is required.
- 1.3 Section 2(1) of the Hypnotism Act 1952, states that no person shall give an exhibition, demonstration or performance of hypnotism on any living person, or in connection with an entertainment to which the public are admitted, whether on payment or otherwise at any place, unless the Licensing Authority has authorised that exhibition, demonstration or performance. Any such authorisation may be subject to conditions.
- 1.4 Hypnotism includes hypnotism, mesmerism and any similar act or process which produces or is intended to produce in any person, any form of induced sleep or trance in which the susceptibility of the mind of that person to suggestion or direction is increased or intended to be increased.
- 1.5 The Hypnotism Act 1952 as amended makes it a criminal offence to conduct hypnotism for public entertainment unless the Licensing Authority has given authorisation.
- 1.6 Section 3 of the Hypnotism Act 1952, imposes a restriction on hypnotising anyone under the age of 18 for public entertainment.
- 1.7 In 1996 the Home Office reviewed the Hypnotism Act 1952 and provided some guidance to Local Authorities in a Home Office Circular (a background paper to this report). An expert panel concluded that there was no evidence of serious risk to participants in stage hypnosis. They considered that the small potential risk which does exist could be alleviated through applying clear conditions to the regulation of performances and by providing more information to audiences to enable them to make an informed choice before deciding whether to participate. This guidance still remains current.
- 1.8 The proposed conditions at Appendix 1 to this report follow the model scheme and are intended to strike a balance between legitimate concerns for public safety and the ability for hypnotists to perform.
- 1.9 The proposed conditions include a requirement to admit authorised officers to allow for inspection, The Hypnotism Act gives a right of entry to Police Officers, however, the proposed extension by condition to Licensing Officers and Officers of the Fire Authority, is considered a proportionate step in regulating the event.
- 1.10 The proposed conditions clearly state the application requirements and prospective applicants will complete an application form which is attached as Appendix 2 to this report. The Police and Fire Authority will be consulted on applications received.
- 1.11 There is currently no requirement for a fee for a performance of hypnotism.

2. Application details

- 2.1 The licensing team received a written request from Colin Adamson in February 2019 to stage a performance of hypnotism on the 20th April 2019 at Pinley RFC.
- 2.2 Notice of the performance has been given to the responsible authorities and they have no adverse comments.
- 2.3 The applicant has provided all the necessary details as required in the proposed application form (see Appendix 2).
- 2.4 The applicant is an experienced hypnotist and the licensing team have confirmed with other local authorities where he has staged previous performances that there have been no concerns or complaints.
- 2.5 The proposed venue is a licensed premises within the Local Authority area.

3. Future authorisations

- 3.1 Although delegation to Officers can normally only be granted by Full Council, Section 2(3A) of the Hypnotism Act 1952, states that the authorisations of hypnotism is a function to be carried out by the Licensing Committee. Therefore, it is the Licensing & Regulatory Committee (rather than Full Council) which is able to delegate these functions to Officers.
- 3.2 All acts of hypnotism require authorisation from the Licensing Authority and the Licensing and Regulatory Committee are requested to consider delegating this function, and the determination of any future applications to the Head of Planning and Regulation in order to process such requests in a timely and efficient manner. Where such requests are rejected or in situations where the applicant is not satisfied with the authorisation there will be a right of appeal to the Licensing & Regulatory Committee. It is proposed that where an appeal against a decision is made, a Licensing & Regulatory Sub-Committee is convened to review the decision.

4. Options considered and recommended proposal

- 4.1 There are two courses of action available to the Committee in relation to recommendations 1 and 2:
 - (i) Authorise the performance with conditions
 - (ii) Refuse to authorise the performance
- 4.2 Your Officer recommends option (i) and supports the authorisation of the performance because based on the type of event and the circumstances detailed in section 2 in this report. It would be both unreasonable and inappropriate to refuse the authorisation in this case.
- 4.3 With regard to recommendation 3 in the report, your Officer recommends that the Licensing & Regulatory Committee delegates the authority to approve future applications to the Head of Planning and Regulation as this will be cost effective to the Local Authority and will enable applications to be dealt with in a timely and efficient manner.

- 4.4 With regard to recommendation 4 in the report, your Officer recommends that a Licensing & Regulatory Sub-Committee is convened to review decisions when an application has been refused. The reason for this is that it would be more cost-effective for the Local Authority and due to application timescales it would enable applications to be dealt with in a more efficient and timely manner.
- 4.5 The Committee are advised that they may depart from the officer recommendation if, they believe it is appropriate to do so. Should the Committee decide to depart from the recommendation and choose an alternative option, they must provide full reasons for this decision. This application should be considered on its own merits and all the circumstances taken into account before a decision is made.

5. Results of consultation undertaken

- 5.1 Consultation has taken place with the required responsible authorities and there have been no adverse comments.

6. Timetable for implementing this decision

- 6.1 There is no right of appeal to this decision.

7. Comments from Executive Director, Place

7.1 Financial implications

There are no financial implications arising directly from this report and any expenditure arising as a result of implementing the conditions will be met from existing budgets.

7.2 Legal implications

Although there is no right of appeal against the decision to authorise or refuse the performance of hypnotism, the Council could still be challenged by means of Judicial Review if it was held to have acted unreasonably.

8 Other implications

8.1 How will this contribute to achievement of the Council's key objectives / corporate priorities (corporate plan/scorecard) / organisational blueprint or Coventry Sustainable Community Strategy

It is the Regulatory Services team's responsibility to ensure that members of the public in Coventry are not put at risk. This contributes to the Council's core aim of ensuring that citizens live longer healthier lives.

8.2 How is risk being managed?

If the application for an authorisation to hold a performance of hypnotism is not handled in line with the Act, there is a risk of Judicial Review, and associated costs.

8.3 What is the impact on the organisation?

None

8.4 Equalities / EIA

This decision will not affect the service provision and therefore details of the Equalities Impact Assessment are not relevant in this case.

8.5 Implications for (or impact on) the environment

None

8.6 Implications for partner organisations?

None

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