

Item 9 Sex Shop Licence – 2B Junction Road, Andover

Report of the Head of Administration (Portfolio: Corporate)

Recommended:

- 1. That the Committee approve the application for a Sex Shop Licence in respect of premises at 2B Junction Road, Andover.**
- 2. That the Head of Administration issue a licence for a period of 12 months with the conditions as detailed in Annex 2 to the report and also such additional conditions, if any, as he considers appropriate.**

SUMMARY:

- An application for a Sex Shop Licence has been received in respect of premises at 2B Junction Road, Andover.
- As the Head of Administration does not have the necessary delegated powers, the application must be determined by the Licensing Committee.

1 Introduction

- 1.1 An application has been received from Mr J D Coughlan and Mr C Blake trading as PL Limited for a Sex Shop Licence in respect of the existing licensed Sex Shop at 2B Junction Road, Andover. These premises currently are the only licensed sex establishment in the Borough. The Council adopted with effect from 1st June 1989 Schedule 2 of the Local Government (Miscellaneous Provisions) Act 1982 which means that it is able to licence premises to be used as a Sex Shop or Sex Cinema. There is no delegated power for applications to be determined by officers so the matter must come before this Committee for determination.

2 Background

- 2.1 The legislation requires that no person shall, in any area in which the sex establishment licensing provisions have been adopted, use any premises, vehicle, vessel or stall as a sex establishment except under and in accordance with the terms of a licence granted by the appropriate local authority. A “sex establishment” is either a sex shop or a sex cinema. This report concerns an application for a licence to use premises as a sex shop. A “sex shop” is defined by legislation as “any premises, vehicle, vessel or stall used for a business which consists to a significant degree of selling, hiring, exchanging, lending, displaying or demonstrating sex articles or other things intended for use in connection with, or for the purpose of stimulating or encouraging sexual activity or acts of force or restraint which are associated with sexual activity”.

- 2.2 A “sex article” is defined as “anything made for use in connection with, or for the purpose of stimulating or encouraging-
- (a) sexual activity; or
 - (b) acts of force or restraint which are associated with sexual activity; and
 - (c) to any article containing or embodying matter to be read or looked at or anything intended to be used, either alone or as one of a set, for the reproduction or manufacture of any such article; and
 - (d) to any recording of vision or sound, which is concerned primarily with the portrayal of, or primarily deals with or relates to, or is intended to stimulate or encourage, sexual activity or acts of force or restraint which are associated with sexual activity; or is concerned primarily with the portrayal of, or primarily deals with or relates to, genital organs, or urinary or excretory functions.”
- 2.3 The Committee may wish to note that the application is in practical terms a renewal of the existing licence and the premises and is operated by the same proprietors. From 2005 to 2006 the proprietors operated a licensed sex shop from adjacent premises at 2C Junction Road.
- 2.4 Applicants are required to display a public notice at the premises and in addition, publish a notice in a local newspaper advising that an application has been submitted and inviting written objections. The Licensing Manager can confirm that both of these requirements have been met by the applicant. Only objections received within 28 days of the date of the notice may be considered by the Council. The names and addresses of objectors must be kept confidential unless the objectors indicate otherwise. This report has been produced prior to the end of the 28 day period and as at this date no objections have been received. Should any objections be received, the details will be provided to Members at the meeting.
- 2.5 The Council is required, before considering the application, to give notice in writing of the general terms of any objection to the applicant. The Licensing Manager will forward a copy of any objections to the applicant and his response (if any) will be reported upon verbally at the meeting.

3 Corporate Objectives and Priorities

- 3.1 When dealing with the initial application for the proprietors’ premises at 2C Junction Road, objections were received suggesting that the granting of a licence would lead both directly and indirectly to an increase in criminal activity related to the existence of the premises. There is no evidence to suggest that this would be the case and it should be noted that the Police have raised no objection to the granting of a licence.

4 Consultations/Communications

- 4.1 The Police, Housing and Community Service (Community Safety Manager), Environment and Health Service and local ward members have been consulted on this application. As at the date of preparing this report no comments had been received. Any comments received after this will be reported verbally at the meeting.

5 Options

- 5.1 The Council has limited grounds upon which it can refuse a licence. It could do so if “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 authority consider appropriate for that locality”. The Committee will be aware that it decided at its meeting held on 28 February 2006 not to set such a limit.
- 5.1.1 The only other grounds for refusal and one which is relevant to this application is 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 in respect of which the application is made.
- 5.1.2 The “relevant locality” is defined in the Act as meaning, in relation to the premises, the locality in which it is situated. If any objections are received, in assessing the application the Committee should consider these in the light of the statutory grounds for refusal mentioned above. In doing so, Members may call on their own views in reaching a decision as to what is appropriate in any particular location. The Committee, in determining the application, should consider each of these issues and determine whether grant or refusal is appropriate and, if so, why. However, it would be unlawful to refuse the application merely because the Committee consider sex shops are immoral or should not be permitted.
- 5.1.3 It is suggested therefore that Members consider the matters outlined in paragraph 5.1.1 above and detailed below. If Members decide that a licence should not be granted, they must provide details of how the “relevant locality” was chosen, how its character was identified and why that character was thought to make the licensing of a sex shop inappropriate.

- 5.2 The primary issue for the Committee is, having taken into consideration any objections received, is the granting of a licence inappropriate in view of the location of the premises and in particular its relation to surrounding properties? In determining what is appropriate, it is normal to consider what other premises are in the vicinity of the proposed premises. The Committee will recall that at its meeting held on 28 February 2006 it decided that the matters listed in Annex 1 attached to this report would be used as criteria to assist in deciding whether or not a licence should be granted. This list should not be regarded as definitive and is provided to assist the Committee in determining the application. As an example, if there were a school or church in Junction Road then it is generally accepted that this would provide the Council with sufficient grounds for refusing the application. An analysis of properties within Junction Road that might be of consideration in determining the application is as follows:-
- 5.3 Shops or other retail premises Numbers 2 (sign shop), 2a (empty – previously hairdressers), 2c (empty - previously sex shop), 2d (hairdressers), 6/8 (funeral directors), 10 (locksmiths), 12 (builders merchants), 18a (hairdressers), 31 (dentist) Community leisure facility Number 2 (bingo hall) Community meeting place Number 45 (The Junction – advice and information centre for 16 to 25 year olds) Residential accommodation A large part of Junction Road is residential although there are no such premises in the immediate vicinity of the proposed Sex Shop. The rear of the sheltered accommodation known as Charles Dalton Court does face number 2B Junction Road although these premises are accessed via Weyhill Road. There is temporary homeless people's accommodation at number 46 Junction Road, twenty units for homeless families at numbers 54 and 56 and nine units of short-stay accommodation at number 70.
- 5.4 It is suggested that the Committee approach the determination of this application in three steps. Firstly, the Committee should identify an area of reasonably consistent character within which 2B Junction Road falls, and consider the application on its own merits. Secondly, the Committee should consider whether the grant of a licence to the applicant for this use of the premises would be inappropriate given the character of the area. Thirdly, the Committee should identify any potential sensitive use of premises near to 2B Junction Road (as detailed in paragraph 5.3 above), and consider whether the nature of that use and the proposed use of 2B Junction Road is such that the premises are too close. Members should also consider that the licensed premises have been in existence in their current location for two years and that unless a material change has occurred regarding the area, the licensed premises or other premises within the area, then refusal would seem inappropriate.
- 5.5 The Committee should be aware that if a licence is granted, the standard conditions adopted by the Council attached as Annex 2 to this report would apply to the licence. It may also be appropriate to amend or delete some of these conditions or add further conditions to the satisfaction of the Head of Administration.

6 Option Appraisal

- 6.1 The options are either to grant a licence or not grant. If the latter, the Council runs the risk that the applicants may appeal to the Magistrates Court with the risk of the Council losing the appeal (with costs). If the licence is granted, there is a minimal risk that nuisance is caused by the use of the premises and residents amenity may suffer. The imposition of conditions will reduce the likelihood of nuisance being caused and if it does occur, the Council could take this into consideration when an application to renew the licence is submitted.

7 Risk Management

- 7.1 An evaluation of the risks associated with the matters in this report indicate that further risk assessment is not needed because the changes/issues covered do not represent significant risks or have previously been considered by Councillors.

8 Resource Implications

- 8.1 There are no resource implications as a result of this report. The Committee may wish to note that the application attracts a fee of £3000.

9 Legal Implications

- 9.1 None other than those detailed within paragraph 6.1 above.

10 Other Issues

- 10.1 Community Safety – see paragraph 3.1 above.
- 10.2 Equality Issues – none specific.
- 10.3 Environmental Health/Sustainability Issues – none specific.
- 10.4 Property Issues – none.
- 10.5 Wards/Communities Affected – (Andover) St. Mary's.

11 Conclusion

- 11.1 At the time of writing this report the application has attracted no objections that cite grounds which can be considered valid in deciding whether or not a licence should be granted. The Committee must therefore determine the application taking into account the location of the proposed premises in relation to other premises in the immediate area. It should be noted that the Council would be able to exercise control over the premises if a licence were granted by attaching conditions to the licence. It should also be noted that a licence, if granted, would be for a period of 12 months and would then have to be renewed. Upon application for renewal the Committee would be able to take account of the impact of the premises upon the neighbouring area.

Background Papers (Local Government Act 1972 Section 100D)
Reports to Licensing Committee 19th May 2005, 15th December 2005, 28th February 2006, 20th April 2006, 24th April 2007 and all associated paperwork.

Confidentiality

It is considered that this report does not contain exempt information within the meaning of Schedule 12A of the Local Government Act 1972, as amended, and can be made public.

No of Annexes:	Two		
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