

## NOTICE OF MEETING

# Licensing Committee

Date: Tuesday, 12 November 2013  
Time: 17:30  
Venue: Conference Room 1, (Beech Hurst)  
Beech Hurst, Weyhill Road, Andover, Hampshire, SP10 3AJ

**For further information or enquiries please contact:**

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**Legal and Democratic Service**

Test Valley Borough Council,  
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Andover, Hampshire,  
SP10 3AJ  
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The recommendations contained in the Agenda are made by the Officers and these recommendations may or may not be accepted by the Committee.

**PUBLIC PARTICIPATION SCHEME**

*If members of the public wish to address the meeting they should notify the Legal and Democratic Service at the Council's Beech Hurst office by noon on the working day before the meeting.*

## Membership of Licensing Committee

### MEMBER

Councillor A Hope  
Councillor J Anderdon  
  
Councillor I Andersen  
Councillor A Beesley  
Councillor A Brook  
Councillor J Budzynski  
Councillor M Cooper  
Councillor B Few Brown  
Councillor A Finlay  
  
Councillor K Hamilton  
Councillor A Johnston  
Councillor P Lashbrook  
Councillor N Long  
Councillor I Richards  
Councillor A Tupper

Chairman  
Vice Chairman

### WARD

Over Wallop  
Chilworth, Nursling  
& Rownhams  
St.Mary's  
Valley Park  
Alamein  
Winton  
Tadburn  
Amport  
Chilworth, Nursling  
& Rownhams  
Harroway  
Romsey Extra  
Penton Bellinger  
St.Mary's  
Abbey  
North Baddesley

## **Licensing Committee**

Tuesday, 12 November 2013

### **AGENDA**

**The order of these items may change as a result of members  
of the public wishing to speak**

- 1 Apologies**
- 2 Public Participation**
- 3 Declarations of Interest**
- 4 Urgent Items**
- 5 Minutes of the meeting held on 19 September 2013**
- 6 Minutes of the Licensing Sub-Committee held on: None**
- 7 Licensing Procedure Rules - Licensing Committee 5 - 6**  
Procedure rules for hearing licensing applications
- 8 Sex Shop Licence - 2 The Broadway, Andover 7 - 19**  
To consider an application for a Sex Shop Licence in respect of premises located at 2 The Broadway, Andover.

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## **Item 7**

# **Licensing Procedure Rules**

## **Licensing Committee**

### **Application**

These Procedure Rules shall apply when the Licensing Committee sits to hear Licensing applications other than those made pursuant to the Licensing Act 2003 and the Gambling Act 2005.

### **Terms of Reference of the Licensing Committee:**

1. Ward Councillors will have no involvement in the decision making process either by voting on the matter or otherwise participating in the Committee's deliberations, except that any ward Member (whether a Member of the Committee or not) may make a statement setting out his views or the views of those he represents. Such statement may be made immediately after any objector has made his case and been questioned thereon.

### **Procedure for hearing licensing applications:**

Following receipt of an application, the Licensing Officer will carry out reasonable consultation with any interested parties, including ward members. In the case of Public Entertainment applications this will include a notice to be advertised on the premises and a notice in the local press. Should any objection be received which cannot be resolved, the licensing application will then be referred to the Licensing Committee for consideration and determination. All objectors will be invited to the meeting; the Council's scheme of public participation will not apply.

1. Written objections, representations, petitions, etc will be circulated with the Agenda and will be taken into account by members of the Committee. It will not be possible to circulate any such communications received after the Agenda has been circulated, as both parties must have the opportunity of studying them prior to the meeting. Agenda and papers for consideration will be circulated at least 3 clear days before the meeting.
2. At the commencement of the meeting the Chairman will outline the procedure to all those present.
3. The Licensing Manager of the Council will present the facts to the Committee and will explain the Recommendation.
4. The Members of the Committee may ask questions of the Licensing Manager.

5. The Applicant or any person representing him may ask questions of the Licensing Manager.
6. Any Objector or any person representing him may ask questions of the Licensing Manager.
7. Relevant Council Officers, representatives of the Police or Fire Service (if present) may be questioned by:
  - (a) Members of the Committee
  - (b) The Applicant or any person representing him
  - (c) Any Objector or any person representing him
8. The Applicant (or his representative) may present his case, including calling any witness. The Licensing Manager and/or Members of the Committee may ask questions of the Applicant or any witness
9. Any Objector may ask questions of the Applicant or any witness.
10. The Objector (or his representative) may present his case including calling any witness.
11. The Licensing Manager and/or Members of the Committee may ask questions of the Objector.
12. The Applicant may ask questions of the Objector
13. The Applicant may sum up his case
14. The Objector may sum up his case
15. The Committee will deliberate in private with only its legal adviser and Committee Administrator in attendance. The decision on the matter and the reasons for it will be communicated to all those present in open session before the meeting is closed.

**Brief Description**

Procedure Rules for hearing licensing applications

## **Item 8                    Sex Shop Licence – 2 The Broadway, Andover**

Report of the Head of Legal and Democratic (Portfolio: Corporate)

### **Recommended that:**

- 1.     The Committee approve the application for the renewal and variation of a Sex Shop Licence in respect of premises at 2 The Broadway, Andover.**
- 2.     The Head of Administration issue a licence for a period of 12 months with the conditions as detailed in Annex 2 attached to this report subject to condition number 34 being revised in accordance with the suggestion contained within this report.**

#### **SUMMARY:**

- An application for a Sex Shop Licence has been received in respect of premises at 2 The Broadway, 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 Erotica Belle Limited for a Sex Shop Licence in respect of premises located at 2 The Broadway, Andover. These premises are currently the only licensed Sex Shop within the Borough. The application is to renew this licence and also to seek a variation to the current licence conditions. The Council adopted with effect from 1 June 1989 Schedule 2 of the Local Government (Miscellaneous Provisions) Act 1982 which meant that it was able to licence premises to be used as a Sex Shop or Sex Cinema. This provision was readopted on 1 April 2011 when the Council adopted an amendment to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 extending the existing legislation used to license a Sex Shop or Sex Cinema to also include Sexual Entertainment Venues. 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 a sex shop, a sex cinema or a sexual entertainment venue. 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 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. However, no objections were received during the 28 day period.

### **3 Consultations/Communications**

- 3.1 The Police, Head of Housing and Environmental Health (Environmental Health Manager) and local ward members have been consulted on this application. The Police have no objection to the grant of the licence and in respect of the variation ask that the licence be conditioned to ensure that DVDs are out of view from the doorway (see paragraph 4.6 below).

### **4 Options**

- 4.1 The Council has limited grounds upon which it can refuse a licence. An application can be refused if the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason. Alternatively, it can be refused if the licence were to be granted to a business which 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. Neither of these statements is relevant in the case of the application before the Committee.



An application could also be refused 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 has not decided to set such a limit.

- 4.1.1 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.
- 4.1.2 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 establishments are immoral or should not be permitted.
- 4.1.3 It is suggested therefore that Members consider the matters outlined in paragraph 4.1.1 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.
- 4.2 The primary issue for the Committee, having taken into consideration any objections received, is this – would the granting of a licence be 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 at its meeting held on 28 February 2006 decided to adopt the policy set out as Annex 1 attached to this report to be used in deciding whether or not a licence should be granted.
- 4.3 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 The Broadway or adjacent road within the vicinity of the premises then it is generally accepted that this would provide the Council with sufficient grounds for refusing the application. An analysis of properties within the area of the premises that might be of consideration in determining the application is as follows:-

- 4.4 Community leisure facility 2 Junction Road (bingo hall) and Station Hotel 63 Bridge Street (public house) NB these are commercial premises and not strictly community facilities Community meeting place St. Ann's Hall, Suffolk Road (although these premises are 100 metres away from the proposed licensed premises) Residential accommodation There are flats 1-7B above the proposed premises at 3 The Broadway. The next nearest residential properties are Flats 1-20 Knoll Court, Western Road and Flats 1-44 Clarence Court both, Bridge Street.
- 4.5 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 2 The Broadway falls, and consider the application on its own merits. Secondly, the Committee should consider whether the grant of a licence to the applicants 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 2 The Broadway (having regard to the comments in paragraph 4.4 above), and consider whether the nature of that use and the proposed use of 2 The Broadway is such that the premises are too close. Members should also consider that this is a renewal of the existing licence and thus unless a material change has occurred regarding the area, the premises or other premises within the area, refusal of the application could be deemed inappropriate.
- 4.6 The Committee should be aware that if a licence is granted, the conditions adopted by the Council attached as Annex 2 to this report would apply to the licence save that the Council can where appropriate exclude or amend any of the conditions. It may, if appropriate, attach special conditions to the licence to address a specific issue with the premises. If a licence is granted, the Committee will need to determine the applicant's request to vary licence condition 34 to allow the front door to remain open during times of hot weather. Officers have considered the request and believe it to be appropriate. It is therefore recommended that standard condition number 34 be amended as requested by the applicant and the following wording added to the condition:

*... This condition however shall not prevent the door to the premises being kept open to provide ventilation to the premises during periods of hot weather. On such occasions that the door remains open the licensee shall ensure that adult toys and DVDs are not visible from the doorway.*

## **5 Option Appraisal**

- 5.1 The options are either to grant a licence or not grant and if granted, to consider the application to vary the licence condition relating to the front door. If a licence (and/or the variation) is refused, the Council runs the risk that the applicants may appeal by way of judicial review 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 (continued) use of the premises and the amenity of any local residents or businesses 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.

## **6 Resource Implications**

- 6.1 There are no resource implications as a result of this report. The Committee may wish to note that the application attracts a fee of £1460.

## **7 Legal Implications**

- 7.1 If an application is refused on the grounds of the unsuitability of the applicant then he may appeal the decision in a magistrate's court. If the application is refused on the basis of a numerical limit or for the reasons set out in paragraph 4.1.1 above then the applicant can only challenge the refusal by way of a judicial review.

## **8 Equality Issues**

- 8.1 An Equalities Impact Assessment is not needed because the issues covered have previously been considered by this Committee and any decision to grant a licence does not constitute a change in policy.

## **9 Other Issues**

- 9.1 Community Safety – none specific.
- 9.2 Environmental Health/Sustainability Issues – none specific.
- 9.3 Property Issues – none.
- 9.4 Wards/Communities Affected – (Andover) Winton.

## **10 Conclusion**

- 10.1 The application has attracted no objections. 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 19 May 2005, 15 December 2005, 28 February 2006, 20 April 2006, 24 April 2007, 5 June 2008, 21 May 2009, 26 July 2012 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		
Author:	Michael White	Ext:	8013
File Ref:	EH.19/12		
Report to:	Licensing Committee	Date:	12 November 2013

**ANNEX 1**

**Local Government (Miscellaneous Provisions) Act 1982**

**GUIDELINES IN RELATION TO APPLICATIONS FOR SEX  
ESTABLISHMENTS  
WITHIN THE BOROUGH OF TEST VALLEY**

**Applications for a licensed sex establishment will be considered on the merits of each individual case. However, the Council is aware of the sensitivity of such applications and will only grant permission after considering the location of the proposed premises in relation to the following:**

- (i) a place of religious worship / education;
- (ii) a pre-school facility /school;
- (iii) a higher education campus;
- (iv) any residential accommodation;
- (v) an enclosed shopping mall, arcade or centre;
- (vi) a market;
- (vii) a public building open to the general public;
- (viii) a community meeting place;
- (ix) a community leisure facility;
- (x) a “Gateway” to an identifiable ‘locality’;
- (xi) a location where children may be at risk but not previously referred to in (i)—(x) above; or
- (xii) a conservation area within the meaning of the Town and Country Planning Acts.

**The location of the proposed premises in the vicinity of any of the above will not necessarily preclude a licence from being issued. The above is for guidance only.**

**Annex 2**

**Local Government (Miscellaneous Provisions) Act 1982**

**CONDITIONS APPLICABLE TO LICENCES FOR SEX ESTABLISHMENTS**

**Licensed Sex Shop – 2 The Broadway, Andover**

**Definition**

1. In these Conditions save when the context otherwise requires the following expressions shall have the following meanings:
  - i) “Sex Establishment”, “Sex Cinema”, “Sex Shop” and “Sex Article” shall have the meaning ascribed to them in the Third Schedule of the Local Government (Miscellaneous Provisions) Act 1982
  - ii) “Premises” means a building or part of a building and any forecourt yard or place of storage used in connection with a building or part of a building which is the subject of a licence for a Sex Establishment granted under the said Third Schedule
  - iii) “Approval of the Council” or “Consent of the Council” means the approval or consent of the Council in writing
  - iv) “Approved” means approved by the Council in writing
  - v) “The Council” means Test Valley Borough Council
  - vi) “Film” shall have the meaning ascribed to it in the Films Acts 1960 – 1980.

**General**

2. In the event of a conflict between these Conditions and any special conditions contained in a licence relating to a Sex Establishment the special conditions shall prevail.
3. The grant of a licence for a Sex Establishment shall not be deemed to convey any approval or consent which may be required under any enactment by law order or regulation other than the Third Schedule of the Local Government (Miscellaneous Provisions) Act 1982.

### **Times of opening**

4. The licensed Sex Establishment shall not be open to the public before 1000 hours and shall not be kept open after 2000 hours Monday to Saturday inclusive.
5. The licensed Sex Establishment shall not be open to the public before 1000 hours and shall not be kept open after 1800 hours on Sundays.
6. The Council reserve the right to request that the shop shall also close on any specific date provided that 21 days notice in writing is given stating the reason for the decision.

### **Conduct and Management of Sex Establishments**

7. Where the licensee is a body corporate or an unincorporated body any change of director, company secretary or other person responsible for the management of the body is to be notified in writing to the Council within 14 days of such change and such written details as the Council may require in respect of any new director, secretary or manager are to be furnished within 14 days of a request in writing from the Council.
8. The Licensee or some responsible person nominated by him in writing for the purpose of managing the Sex Establishment in his absence and of whom details (including photographs) have been supplied to and approved in writing by the Council shall be in charge of and upon the Premises during the whole time they are open to the Public.
9. The name of the person responsible for the management of a Sex Establishment be he the Licensee or a manager approved by the Council shall be prominently displayed within the Sex Establishment throughout the period during which he is responsible for its conduct.
10. The Licensee shall maintain a daily register in which he shall record the name and address of any person who is to be responsible for managing the Sex Establishment in his absence and the names and addresses of those employed in the Sex Establishment. The register is to be completed each day within thirty minutes of the Sex Establishment opening for business and is to be available for inspection by the Police and by authorised officers of the Council.
11. The Licensee shall retain control over all portions of the Premises and shall not let, licence or part with possession of any part of the Premises.
12. The Licensee shall maintain good order in the Premises.

13. No person under the age of 18 shall be admitted to the Premises or employed in the business of a Sex Establishment, and a notice to the former effect shall be displayed on all entrances to the Premises so as to be visible from the outside.
14. The Licensee shall ensure that the public are not admitted to any part or parts of the Premises other than those which have been approved by the Council.
15. No part of the Premises shall be used by prostitutes (male or female) for the purposes of solicitation or of otherwise exercising their trade.
16. Neither the Licensee nor any employee or other person shall seek to obtain custom for the Sex Establishment by means of personal solicitation outside or in the vicinity of the Premises.
17. The Licensee shall comply with all statutory provisions and any Conditions made there under.
18. The Licensee shall ensure that during the hours the Sex Establishment is open for business every employee wears a badge of a type to be approved by the Council indicating his name and that he is an employee.
19. The copy of the licence and of these Conditions required to be exhibited in accordance with paragraph 14(1) of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 shall be reproductions to the same scale as those issued by the Council. The copy of the licence required to be displayed as aforesaid shall be suitably framed and the copy of these Conditions shall be retained in a clean and legible condition.

## **User**

20. A Sex Shop shall be conducted primarily for the purpose of the sale of goods by retail
21. No change of use of any portion of the Premises from that approved by the Council shall be made until the consent of the Council has been obtained thereto.
22. No change from a Sex Cinema to a Sex Shop or from a Sex Shop to a Sex Cinema shall be effected without the consent of the Council.
23. Neither Sex Articles nor 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 shall be displayed, sold, hired, exchanged, loaned or demonstrated in a Sex Cinema.



### **Goods available in Sex Establishments**

24. All Sex Articles and other things displayed for sale, hire, exchange or loan within a Sex Shop shall be clearly marked to show to persons who are inside the Sex Shop the respective prices being charged.
25. All printed matter offered for sale, hire, exchange or loan shall be available for inspection prior to purchase and a notice to this effect is to be prominently displayed within the Sex Establishment.
26. No film or video film shall be exhibited, sold or supplied unless it has been passed by the British Board of Film Censors and bears a certificate to that effect and is a reproduction authorised by the owner of the copyright of the film or video film so certified.
27. The licensee shall, upon request by the Council, without charge display and make available in the Sex Establishment such free literature on counselling on matters related to sexual problems as may be published by the Family Planning Association and by such other similar organisations as may be specified by the Council. Such literature is to be displayed in a prominent position approved by the Council adjacent to all cash collection points in the Sex Establishment.

### **External Appearance**

28. No display, advertisement, work, letter, model, sign, placard, board, notice, device, representation, drawing, writing or any matter of thing (whether illuminated or not) shall be exhibited so as to be visible from outside the Premises except:-
  - i) Any notice of a size and in a form approved by the Council which is required to be displayed so as to be visible from outside the Premises by law, or by any condition of a licence granted by the Council.
  - ii) Such display, advertisement, word, letter, model, sign, placard, board, notice, device, representation, drawing, writing, or any matter or thing as shall have been approved by the Council.
29. The entrances to the Premises shall be of a material or covered with a material which will render the interior of the Premises invisible to passers by.
30. Windows and openings to the Premises other than entrances shall be covered with a material which will render the interior of the premises invisible to passers by except that this provision shall not prevent the display only of lingerie within the window area.

This regulation shall not be construed as lessening the obligation of the Licensee under Regulation 28 hereof.

- 30.1 Notwithstanding the above, the appearance of the establishment shall not be detrimental to the street scene.

**State, condition and Layout of the Premises**

31. The Premises shall be maintained in good repair and condition.
32. Lighting in all parts of the Premises as approved by the Council shall be in operation continuously during the whole of the time that the Sex Establishment is open to the Public.
33. The number, size and position of all doors or openings provided for the purposes of the ingress and egress of the public shall be approved by the Council and shall comply with the following requirements:-
- i) All such doors or openings approved by the Council shall be clearly indicated on the inside by the word “exit”.
  - ii) Doors and openings which lead to parts of the Premises to which the public are not permitted to have access shall have notices placed over them marked “private”.
  - iii) Save in the case of emergency no access shall be permitted through the Premises to any unlicensed premises adjoining or adjacent.
34. The external doors to the Sex Establishment shall be fitted with a device to provide for their automatic closure and such devices shall be maintained in good working order.
35. The Licensee shall make provision in the means of access both to and within the Sex Establishment for the needs of members of the Public visiting the Sex Establishment who are disabled.
36. No fastenings of any description shall be fitted upon any booth or cubicle within the Sex Establishment nor shall more than one person (including any employee) be present in any such booth or cubicle at any time.
37. Alternatives or additions either internal or external and whether permanent or temporary to the structure, lighting or layout of the Premises shall not be made except with the prior approval of the Council.
38. All parts of the Premises shall be kept in a clean and wholesome condition to the satisfaction of the Council.

**Safety**

39. The Licensee shall take all reasonable precautions for the safety of the public and employees.
40. The Licensee shall comply with any fire prevention and safety measures that may be required of him by the Council.
41. The Premises shall be provided with fire appliances suitable to the fire risks of the Premises and such fire appliances shall be maintained in proper working order and shall be available for instant use.