

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		
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