

**BODY:** GENERAL LICENSING SUB COMMITTEE  
**DATE:** 13th April 2005  
**SUBJECT:** Application for Sex Shop Licence  
**REPORT OF:** Commercial Services Manager Environmental Health

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**Ward(s):** Upperton

**Purpose:** To consider an application from Mr. Alan Butler for a sex shop licence in respect of 3 Terminus Buildings Station Parade Eastbourne.

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**Recommendation:** That the sub-committee determines Mr. Butler's application for sex shop licence for 3 Terminus Buildings Station Parade Eastbourne.

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## **1.0 Introduction**

- 1.1 Eastbourne Borough Council has adopted the provisions of the Local Government (Miscellaneous Provisions) Act 1982 relating to the licensing of sex establishments. For the purposes of the legislation a sex establishment is either a sex shop or a sex cinema.
- 1.2 This report considers an application made by Alan Butler of Rochester, Kent for the grant of sex shop licence in respect of the premises at 3 Terminus Buildings, Station Parade, Eastbourne. The proposed hours of opening are Monday to Saturday 09:00 to 20:00 hours and Sunday 11:00 to 17:00 hours. The proposed window display and floor plans are attached as appendices 1 and 2. Mr Butler's letter about himself and the company is reproduced as appendix 3.
- 1.3 The premises are located between Kallkwik and the former head post office; Stafford House residential accommodation is located above. Station Parade shops are opposite with the Enterprise Centre at the rear of them, shown at appendix 4. This location is just inside the town centre north-west boundary and just outside the town centre secondary shopping areas, these areas as defined in the Eastbourne Borough Plan 2001-2001 proposals map. The immediate area of the applicant site does not have a specific Borough Plan policy allocation. The premises in question has planning consent for retail use and no further planning consent is required for it to be used as a licensed sex shop. Part of the proposals map is attached as appendix 5. The full map will be displayed at the meeting.

## **2.0 Consideration of the Application**

- 2.1 Paragraph 12 of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 sets out the circumstances when a licence shall not be granted and the issues that may be considered when determining an application.
- 2.2 A licence shall not be granted to:

- A person under the age of 18; or
  - A person who for the time being is disqualified from holding a sex establishment licence because a previous sex establishment licence granted to that person has been revoked within the previous 12 months; or
  - A person who is not resident in the United Kingdom or was not resident throughout the period of six months immediately preceding the date of the application; or
  - A body corporate which is not incorporated in the United Kingdom; or
  - A person who has, within a period of 12 months immediately preceding the date of the application been refused a sex establishment licence for the same premises, unless that refusal has been reversed on appeal.
- 2.3 As far as I am aware from the information in my possession, the applicant does not fall into any of the categories set out above and therefore the sub-committee can not refuse the application on these grounds.
- 2.4 A licence may be refused on one or more ground:
- a) If the applicant is unsuitable to hold a licence by reason of having been convicted of an offence or for any other reason;
  - b) 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 a licence if he made the application himself;
  - c) If the number of sex establishments in the relevant locality at the time the application is determined is equal to or exceeds the number which the authority consider is appropriate for that locality;
  - d) If the grant 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
    - iii. The layout, character or condition of the premises in respect of which the application is made.
- 2.5 As far as I am aware from the information in my possession, the applicant is not unsuitable and if the licence were to be granted, the business to which it relates would be managed or carried on for the benefit of the applicant. The applicant states that he has 9 sex shop licenses without problems and has provided details of those granted and refused.
- 2.6 In formulating a decision about the application Members of the sub-committee will need to consider:
- The character and extent of the locality in which the proposed sex shop is to situated
  - The number of sex establishments that is appropriate for that locality; which can be nil.
  - The use to which the premises in the vicinity of the proposed sex shop are put.

- 2.7 There is no strict definition of 'relevant locality' however it is clear that it does not need to be defined with precise lines on a map or in terms of a certain radius from the premises in question. What has been made clear through case law is that the relevant locality cannot encompass the whole of a local authority's area.
- 2.8 Utilising the Borough Plan proposals map I would suggest that the locality within which the premises is situated includes the area enclosed by Saffrons Road, Dittons Road, northern end of Southfields Road, Enys Road, Arundel Road, Upper Avenue across the railway line and then southwards to the Arndale Centre Bolton Road and South Street. This area contains a mix of commercial uses including part of the town centre shopping area and residential uses, 2 day nurseries and a language school.
- 2.9 If it is decided that the area described above constitutes the locality, it would appear to lie close to or adjoining part of the boundary of the area included as being in the locality of 93A Cavendish Place, when the application for a sex shop for those premises was reported to and granted by Licensing Panel on 23rd April 2004, i.e. from Ashford Square around the eastern boundary of the Arndale Centre to Langney Road near the junction with Terminus Road.
- 2.10 As with locality, there is no strict definition of 'in the vicinity' of the premises but it is narrower than 'locality'. There is residential accommodation above and in the vicinity of the premises. The language school in Southfields Road and a day nursery in The Avenue could be considered as in the vicinity.

### **3.0 Representations**

- 3.1 Members of the public had a period of 28 days ending on 28<sup>th</sup> February 2005 from the publication of the public notice placed by the applicant.
- 3.2 By the 28<sup>th</sup> February 2005 we had received:
- 2 letters of objection and 2 email objections
- 3.3 A further letter was received after the 28 day deadline.
- 3.4 The issues raised by those objecting concerned the following issues:
- The granting of a licence would be inappropriate for the locality. The premises is in an area that is used as an arrival point for people coming into the town and also a meeting point for young people especially foreign students. It represents the wrong image to visitors.
  - Another sex shop is undesirable on moral grounds. It's location on a popular thoroughfare would be degrading for a town with a fine reputation.
  - The location on a main thoroughfare into the town centre is inappropriate. There is already a sex shop not very far away. Another sex shop in such a prominent position would not assist the regeneration aim of improving the quality of the retail offer.

### **4.0 Consultations**

- 4.1 Comments were sought from the two statutory consultees.

4.2 Sussex Police licensing officer Alan Whitehead has verbally raised no objection to the application on behalf of Sussex Police, and will be confirming this in writing. Mr. Whitehead has been invited to the meeting should Members have any questions.

4.3 The East Sussex Fire and Rescue Service has commented that there is insufficient detail on the plan to comment. The appropriate fire safety legislation applies should the premises open for business.

## **5.0 Resource Implications**

5.1 Licensing fees are set at a level to ensure that income covers the expenditure involved in administering the licensing function. An application fee of £3,500 has been paid in this case although a 50% refund would be made were the application to be refused.

If a licence is granted periodic inspections of the premises would be made to ensure compliance with the licence conditions.

## **6.0 Human Rights Act 1998 Implications**

6.1 Article 1 of the First Protocol is concerned with the protection of property and provides that every person is entitled to peaceful enjoyment of his possessions. The term 'possessions' is given a broad definition and includes a licence. However, Article 1 of the First Protocol does not apply to property that a person wants or hopes to acquire. Therefore an applicant for a licence is not able to rely on this Article. Local residents are also entitled to receive protection under Article 1.

6.2 Article 6 relates to the right to a fair hearing. The applicant has been advised that Licensing Panel will consider her application and that she is entitled to be present and represented at the meeting and a copy of this report has been sent to her.

## **7.0 Crime and Disorder Act 1998**

7.1 The Council is obliged to consider the crime and disorder implications of any decisions that it makes and do all that it reasonably can to prevent crime and disorder in its area. As set out above Sussex Police have not raised an objection to the application.

## **8.0 Summary of Options**

8.1 General Licensing sub committee can resolve to approve or refuse the application or defer consideration of the application to a future date. If the application is approved the licence would be subject to the conditions. The draft conditions are set out in appendix 6. The applicant had requested that these conditions are amended to permit the window display and advertisement shown as part of the application.

## **9.0 Conclusion**

9.1 The Council has received a valid application for a sex shop licence at 3 Terminus Buildings Station Parade Eastbourne. The sub committee will need to consider the extent and character of the locality in which the premises is situated and form a view if it is inappropriate to grant a licence having regard to the character of the locality and/or the use to which any premises in the vicinity are put and/or the layout, character or condition of the premises.

**Douglas Lindsay**  
**Commercial Services Manager Environmental Health**

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**Background Papers:**

The Background Papers used in compiling this report were as follows:

Application for Sex Shop licence submitted by Alan Butler – dated 1st February 2005

Further information requested from Mr Butler dated 22 March 2005

Letter from Mr Butler received on 4<sup>th</sup> April

Letter from East Sussex Fire and Rescue Service dated 8th March 2005

Letter from Development control Manager dated 11th March 2005

Eastbourne Borough Council Local Plan 2001-2011

[http://www.eastbourne.gov.uk/Planning/Borough\\_Plan/index.asp](http://www.eastbourne.gov.uk/Planning/Borough_Plan/index.asp)

To inspect or obtain copies of background papers please refer to the contact officer listed above.

(document reference)dw/reports/General licensing sub-committee-13.04.05 Sex Shop

## **APPENDIX 6**

### **Proposed sex shop licence terms, conditions and restrictions**

#### **A MANAGEMENT OF THE PREMISES**

1. The licensee, or some responsible person nominated by her and approved in writing by the licensing authority for the purpose of managing the sex shop ("the Manager"), shall have personal responsibility for and be present on the premises at all times when the premises are open to the public.
2. A copy of the licence and these conditions shall at all times be displayed in a conspicuous position on the premises, so as to be available for inspection by the police, the fire authority and authorised officers of the licensing authority.
3. The licensee shall retain control over all parts of the premises and shall not let, licence or part with possession of any part.
4. No person under the age of 18 shall be admitted to the premises and a notice to this effect, in accordance with Condition 13, shall be displayed on the outside of the premises.
5. Neither the licensee nor any employee or agent shall personally solicit custom for the sex shop outside or in the vicinity of the sex shop.
6. The licensee shall ensure that during the hours that the premises are open for business every employee wears a badge of a type approved by the licensing authority indicating his/her name and that s/he is an employee.

#### **B OPENING OF THE PREMISES**

7. The premises shall not, without the written consent of the licensing authority, be opened and used for the purposes for which the licence is granted except during the following hours: Monday to Saturday 09:00 to 20:00 hours and Sunday 12:00 to 18:00 hours.
8. The premises shall not, without the written consent of the licensing authority, be opened and used for the purposes for which the licence is granted on Christmas Day, Good Friday and Easter Sunday.

#### **C CONDUCT OF THE PREMISES**

9. All sex articles and other things displayed for sale within the premises shall be clearly marked to show the price being charged.
10. All printed matter offered for sale within the premises shall be available for inspection prior to purchase and notice to this effect shall be displayed in a conspicuous position within the premises.
11. No film or video recording shall be exhibited, sold or supplied unless it has been passed by the British Board of Film Classification and bears a certificate to that effect.
12. All purchases shall be placed in an unmarked bag or similar article which is made of material that completely obscures the items purchased.

#### **D EXTERNAL APPEARANCE**

13. The licensee shall exhibit on the outside of the premises the name of the business and a notice, capable of being enclosed by a square or rectangle of not more than one square metre in area, consisting of the words "Licensed Sex Shop".
14. The licensee shall exhibit on the outside of the premises a notice, capable of being enclosed by a rectangle one square metre in area and visible at all times to persons approaching the premises, with the times opening and the words "No person under the age of 18 shall be admitted to the premises".
15. No other signs or words, or any displays or advertisements, shall be displayed on the outside of the premises or in the vicinity of the premises, except those mentioned in Condition 13 and 14.
16. The windows and openings of the premises shall be of a material so that the interior of the licensed premises and displays of articles sold at the premises shall not be visible to persons outside of the premises.

**E STATE, CONDITION AND LAYOUT OF THE PREMISES**

17. External doors shall be closed at all times other than when persons are entering or leaving the premises. The external doors shall be fitted with a device to provide for their automatic closure and such devices shall be maintained in good working order.
18. The premises shall be fitted with an inner entrance door or screen so that no part of the interior of the premises or any of the contents of the premises shall be visible when persons are entering or leaving the premises, unless otherwise agreed with the licensing authority in writing.
19. No access shall be permitted through the premises to any other premises adjoining or adjacent except in the case of emergency.
20. Alterations or additions, either internal or external, shall not be made to the licensed premises without written consent from the licensing authority.
21. No facilities for previewing films, video recordings or other similar material shall be provided for customers.