

BODY: GENERAL LICENSING SUB COMMITTEE
DATE: 25th May 2005
SUBJECT: Application for Renewal of a Sex Shop Licence
REPORT OF: Environmental Health Manager

Ward(s): Devonshire

Purpose: To consider an application from Kathleen Sutton for the renewal of a sex shop licence in respect of 93 Cavendish Place Eastbourne.

Contact: Paul Quanstrom, Environmental Health Manager, Telephone 01323 415360 or internally on extension 5360.
E-mail address
paul.quanstrom@eastbourne.gov.uk

Recommendation: That Licensing Panel determines Kathleen Sutton's application for the renewal of a sex shop licence in respect of 93 Cavendish Place Eastbourne.

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 Kathleen Sutton to renew a sex shop licence in respect of the premises at 93 Cavendish Place Eastbourne. The proposed hours of opening remain as Monday to Saturday 09:00 to 20:00 hours and Sunday 12:00 to 18:00 hours.
- 1.3 The applicant was granted the original sex shop licence at a meeting of the Licensing Panel on 23rd April 2004 for a period of 12 months with the conditions set out in Schedule 1.
- 1.4 The premises are located on Cavendish Place opposite a parade of mixed use shops between the road junctions with Longstone Road and Ashford Road. This location is within the Town Centre

area Neighbourhood Shopping Centre as defined in the Eastbourne Borough Plan 2001-2011. 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.

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 or renewed 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from holding a sex establishment licence because a previous sex establishment licence granted to that person has been revoked within the previous 12 months; or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 Panel is not obliged to 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 granting or renewal 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 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.

2.6 It is suggested that the locality originally identified for the initial application should remain, namely the area enclosed by Seaside Road, Langney Road near the junction with Terminus Road, Ashford Square, Winchcombe Road, Firle Road and Seaside. The locality contains a mix of commercial uses, Bourne School and a number of churches, but is a predominately residential area – Policy HO2 of the Borough Plan.

2.7 As with locality, there is no strict definition of 'in the vicinity' of the premises but it is narrower than 'locality'. Clearly there is residential accommodation in the vicinity of the premises and All Souls' Church in Wellesley Road could also be considered to fall within the vicinity of the premises.

2.8 As far as I am aware from the information in my possession, the applicant is not unsuitable and if the licence were to be renewed, the business to which it relates would be managed or carried on for the benefit of the applicant. Eastbourne Borough Council has not set a limit for the number of sex shops in the locality which is proposed as that identified for the original application.

3.0 Representations

3.1 Members of the public had a period of 28 days ending on 14th April 2005 from the publication of the public notice placed by the applicant to make representations.

3.2 By the 14th April 2005 we had received:

1 Letter of objection, on sexual health and sexually related crime grounds.

4.0 Consultations

- 4.1 Comments were sought from the two statutory consultees.
- 4.2 Sussex Police Licensing Officer Alan Whitehead has confirmed that the Police have no objections.
- 4.3 The East Sussex Fire and Rescue Service does not raise an objection.

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. A renewal fee of £1,750 has been paid in this case.

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

5.0 Human Rights Act 1998 Implications

- 5.1 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.
- 5.2 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.

6.0 Crime and Disorder Act 1998

- 6.1 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.

7.0 Summary of Options

- 7.1 The Licensing Sub Committee can resolve to approve or refuse the renewal of application or defer consideration of the application to a future date. If the application is renewed it

would be subject to the proposed conditions set out in Schedule 1.

8.0 Conclusion

8.1 The Council has received a valid application for the renewal of a sex shop licence at 93 Cavendish Place. The Licensing Sub Committee will need to consider whether it is appropriate to renew the licence based on the representation, feedback from statutory consultees and the continued appropriateness of the locality.

Paul Quanstrom
Environmental Health Manager

Background Papers:

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

Sex Shop Licence Renewal Application Form submitted by Kathleen Sutton – dated 17th March 2005.

E-mail from Sussex Police dated 7th April 2005

Eastbourne Borough Council Local Plan 2001-2011

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.

Proposed Sex Shop licence terms, conditions and restrictions

MANAGEMENT OF THE PREMISES

1. The licensee, or some responsible person nominated by him and approved in writing by the licensing authority for the purpose of managing the sex establishment ("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. 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 shall be notified in writing to the licensing authority within 14 days of such change and such written details as the licensing authority may require in respect of the change of personnel shall be furnished within 14 days of a request in writing from the licensing authority.
3. A copy of the licence and any special conditions attached 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.
4. The licensee shall retain control over all parts of the premises and shall not let, licence or part with possession of any part.
5. No person under the age of 18 shall be admitted to the premises and a notice to this effect, in accordance with Condition 19, shall be displayed on the outside of the premises.
6. Neither the licensee nor any employee or agent shall personally solicit custom for the sex shop outside the vicinity of the sex establishment.
7. 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 name and that he is an employee.

B OPENING OF THE PREMISES

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 except during the following hours –

Monday to Saturday 09:00 hours to 20:00 hours and Sunday 12:00 hours to 18:00 hours.

9. 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 or Good Friday.

C CONDUCT OF THE PREMISES

10. No 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 shall be displayed, sold, hired, exchanged, loaned or demonstrated in a client cinema.
11. The sex shop shall be conducted primarily for the purpose of the sale of goods by retail.
12. All sex articles and other things displayed for sale, hire, exchange or loan within a sex establishment shall be clearly marked to show the price being charged.
13. All printed matter offered for sale, hire, exchange or loan within a sex establishment shall be available for inspection prior to purchase and notice to this effect shall be displayed in a conspicuous position within the premises.
14. 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.

D EXTERNAL APPEARANCE

15. The holder of a sex establishment licence may exhibit on the outside of the premises the name of the business and a notice, capable of being enclosed by a rectangle one square metre in area, consisting of the words "Licensed Sex Shop".
16. The holder of a sex shop licence shall exhibit on the outside of the premises a notice, capable of being enclosed by a rectangle one square metre in area, of the times opening and of the words "No person under the age of 18 shall be admitted to the premises".
17. 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 15 and 16.

18. The windows and openings of the premises shall be of a material or covered with a material which will render the interior of the premises invisible to passers-by, unless otherwise agreed with a licensing authority in writing.

E STATE, CONDITION AND LAYOUT OF THE PREMISES

19. 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.
20. 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.
21. No access shall be permitted through the premises to any other premises adjoining or adjacent except in the case of emergency.
22. Alterations or additions, either internal or external, shall not be made to the licensed premises without written consent from the licensing authority.
23. No facilities for previewing films, video recordings or other similar material shall be provided for customers.