

Appendices

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NORTHAMPTON
BOROUGH COUNCIL

Item No.

6

Ward:

Name of Group:	LICENSING
Meeting Date:	27th September 2011
Directorate:	Public Protection
Head of Service:	Steve Elsey
Corporate Director	Julie Seddon

Report Title	Application for a change in the Sex Establishment Licence Conditions.
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1. Recommendations

That the application be considered and determined.

2. Summary

The Application

A request has been made by Ms Lisa Moss of Simply Pleasure Ltd. for an amendment to the Council's Sex Establishment Licence conditions, to allow an 'Open Window Display' at their premises 86 Wellingborough Road Northampton.

3. Background

On 28th May 1998 the current Sex Shop Conditions were introduced and have remained in force unchanged to date. Simply Pleasure Ltd have asked that they be granted the facility to have an 'Open Window Display'. Images of such displays are attached to the report and have been agreed by other relevant authorities..

They have confirmed that the inside of the premises will not be visible from the outside and displays will not include anything of an explicit or erotic nature. They are of the opinion that such a display will improve the appearance of the shop.

The decision to be made is whether granting permission for such a display will comply with Conditions 1,2, 3 and 5 of the Northampton Borough Council Sex Shop Conditions.

1. The Law

Where a district Council has adopted Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, (which Northampton Borough Council has), then any person wishing to use premises as a “sex establishment”, requires a licence to do so.

The Act specifies the form of any application and that notice of the application for a grant, renewal or transfer must be given in the local press and publicly displayed for 21 days. Any person may object to the application in writing to the local authority within 28 days of the application. The local authority is required to inform the applicant in general terms of the grounds of the objections.

The local authority is also required to have regard to the observations of the police.

The Act provides that an applicant shall be given the opportunity of presenting his application before the committee when the matter is determined. If objectors attend, and wish to speak, whether they are allowed to do so is entirely in the Committee’s discretion. Members must bear in mind however, that if any objectors raise any matters not disclosed by their objection, the applicant may be entitled to have the hearing adjourned to consider the points raised.

It must be emphasised that the local authority’s duty is to carefully consider an application on its merits.

There are various grounds on which an application must be refused. To précis;

- (a)** That the applicant is unsuitable to hold a licence by reason of having been convicted of an offence or for any other reason.
- (b)** That if the licence were granted the business would be managed by or carried on for the benefit of a person other than the applicant, who would be refused the grant if he himself applied.
- (c)** That 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 is appropriate.
- (d)** That the grant of the licence would be inappropriate having regard to the character of the relevant locality, the use to which any premises in the vicinity are put or to the layout character or condition of the premises.

If the Committee is not reasonably satisfied that one or more of the above criteria are relevant to the application, its duty is to grant the licence. The legal requirement is that Members should, as far as possible, take into account only information available to them which is relevant in deciding whether or not the above criteria apply to each particular application and ignore any religious, moral or social viewpoints they may hold about sex shops generally.

2. Suitability of Applicant and Location of Premises

The Local Government (Miscellaneous Provisions) Act 1982 enables the Council to control the suitability of an individual applicant, the location of the premises and the number of premises in a defined locality, the appearance of the shop and the shop front, the level of fee and the hours of opening.

A licensing authority can adopt reasonable policy guidelines to help it determine applications for sex shop licences, in particular that it would be inappropriate to site sex shops in certain specified historically important streets or near schools, shopping complexes or in residential areas.

Councillors can to some extent use their own subjective local knowledge in deciding which factors are relevant in the character of the locality.

3. Planning Implications

In planning terms the definition of a shop is an establishment for sales or services to visiting members of the public. With the exception of motor vehicles, types of goods for sale are not a planning consideration.

As with all shops the display of their advertisements can only be controlled if they are above a particular size or height or are illuminated.

Shop window displays are not normally controlled and no provision exists to control the goods for sale on these premises. Generally speaking, an advertisement requiring consent would be viewed in terms of its style and design, giving regard to the building and the street scene rather than its particular wording or content.

4. The Council's Present Policy on the Number of Licensed Sex Establishments in the Borough of Northampton.

On 25 May 2010 The Council amended the existing 'Sex Establishment' Policy, agreed by the Licensing Committee at its meeting on 28th May 1998 and 17th December 1998: include the words:

"That the appropriate number of Sex Establishments and Sex Entertainment Venues in the Borough of Northampton be restricted to the following localities:

- a) The area bounded by and including the Wellingborough Road, Kettering Road and Abington Avenue be limited to three.
- b) The area of Regent Square be restricted to a single "Sex Establishment".

This area was deemed to be a suitable location for such establishments.

Sex Shop Conditions remained unchanged.

The Act was designed to allow local authorities to have a certain degree of control over such premises whilst at the same time allowing the general public scope to comment.

There have been no complaints at any time received during the last twelve months.

Conditions relevant to this application include:

1. To ensure that at all times, the premises, and every part thereof, comply with the Indecent Displays Act, 1981.
2. To ensure that the premises comply at all times with the provisions of the Town and Country Planning (Control of Advertisements) Regulations, 1992.
3. The external appearance of the licensed premises (including all advertisements displayed thereon) shall be in accordance with a scheme previously submitted to, and approved by, the Local Authority. In the case of the grant of a new licence, the existing scheme must be submitted to the Council within 28 days of the grant of any licence.
5. No alteration in any respect whatsoever to the appearance of the licensed premises shall be made without the prior approval in writing of the Council.

3A. Any Relevant Policies

Local Government (Miscellaneous Provisions) Act 1982.

Sex Shop Licence Conditions.

The Northampton Borough Council Policy on Sex Establishments. (*Scheme previously submitted to, and approved by, the Local Authority*).

4. Options and Evaluation of Options

That the Committee make a decision to grant or not to grant the application.

5. Resource Implications (including Financial Implications)

The Licensing Enforcement officers will continue to monitor and enforce 'Sex Shop Conditions'.

6. Consultees (Internal and External)

Internal	Legal Planning
External	N/A

7. Compliance Issues

Finance Comments

The application fee remains unchanged.

Legal Comments

“Indecent “ is not defined in any statute but bears its dictionary meaning: unbecoming, highly unsuitable or inappropriate, contrary to the fitness of things, in extremely bad taste or grossly offensive.

Case Law also defines it to be “Whether the images complained of would be considered indecent according to ‘recognised standards of propriety’ or ‘the standard of decency which ordinary right-thinking members of the public would set’ ”

Indecent Displays (Control) Act 1981.

“1 Indecent displays.

(1) If any indecent matter is publicly displayed the person making the display and any person causing or permitting the display to be made shall be guilty of an offence.

(2) Any matter which is displayed in or so as to be visible from any public place shall, for the purposes of this section, be deemed to be publicly displayed.

(3) In subsection (2) above, “public place”, in relation to the display of any matter, means any place to which the public have or are permitted to have access (whether on payment or otherwise) while that matter is displayed except—

(a) a place to which the public are permitted to have access only on payment which is or includes payment for that display; or

(b) a shop or any part of a shop to which the public can only gain access by passing beyond an adequate warning notice;

but the exclusions contained in paragraphs (a) and (b) above shall only apply where persons under the age of 18 years are not permitted to enter while the display in question is continuing.

(4) Nothing in this section applies in relation to any matter—

(a) included by any person in a television broadcasting service or other television programme service (within the meaning of Part I of the Broadcasting Act 1990);]

(b) included in the display of an art gallery or museum and visible only from within the gallery or museum; or

(c) displayed by or with the authority of, and visible only from within a building occupied by, the Crown or any local authority; or

(d) included in a performance of a play (within the meaning of the Theatres Act 1968); or

(e) included in a film exhibition as defined in the Cinemas Act 1985—

(i) given in a place which as regards that exhibition is required to be licensed under section 1 of that Act or by virtue only of section 5, 7 or 8 of that Act is not required to be so licensed; or

(ii) which is an exhibition to which section 6 of that Act applies given by an exempted organisation as defined in subsection (6) of that section.]

(5) In this section “matter” includes anything capable of being displayed, except that it does not include an actual human body or any part thereof; and in determining for the purpose of this section whether any displayed matter is indecent—

(a) there shall be disregarded any part of that matter which is not exposed to view; and

(b) account may be taken of the effect of juxtaposing one thing with another.

(6) A warning notice shall not be adequate for the purposes of this section unless it complies with the following requirements—

(a) The warning notice must contain the following words, and no others—

“WARNING Persons passing beyond this notice will find material on display which they may consider indecent. No admittance to persons under 18 years of age.”

(b)The word “WARNING” must appear as a heading.

(c)No pictures or other matter shall appear on the notice.

(d)The notice must be so situated that no one could reasonably gain access to the shop or part of the shop in question without being aware of the notice and it must be easily legible by any person gaining such access.”

Any objections received for this application must fall within Paragraph 12 Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 and the members of the committee must steer away from any moral considerations raised by any objector(s).

The committee ought to have due regard to the European Convention of Human Rights Act Article 1 Protocol 1 (peaceful enjoyment of possessions) and Article 10 (freedom of expression)”

Planning

With the exception of motor vehicles, types of goods for sale are not a planning consideration.

As with all shops the display of their advertisements can only be controlled if they are above a particular size or height or are illuminated.

Crime and Disorder Issues

N/A

Equality Impact Assessments

The Equality Act 2010

This provides a new cross-cutting legislative framework to protect the rights of individuals and advance equality of opportunity for all; to update, simplify and strengthen the previous legislation; and to deliver a simple, modern and accessible framework of discrimination law which protects individuals from unfair treatment and promotes a fair and more equal society.

In implementing the Licensing of Sex Entertainment Venues, associated legislation and guidance, this Licensing Authority is committed to ensuring that the obligations and duties within this legislation are met.

Human Rights Act Implication

Local Authorities must take into account any rights the existing operator may have under Article 1, Protocol 1 of the European Convention of Human Rights,(which entitles every person to the peaceful enjoyment of their possessions) and Article 10 (freedom of expression).

Other compliance issues

Northampton Borough Council Sex Shop Licence Conditions and their reference to displays and advertisements. (Conditions 1,2,3 and 5).

8. Background Papers

Home Office	Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982. Indecent Displays (Control) Act 1981.	
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