

## **Report to the Licensing Sub-Committee**



**Date of meeting:**                      **6 November 2012**

**Epping Forest  
District Council**

**Subject:**                                      **Local Government (Miscellaneous Provisions) Act 1982 –  
Application for Grant of a Sex Establishment Licence – Shop  
Fifty Ways, 105 Epping New Road Buckhurst Hill Essex IG9 5TQ**

**Responsible Officer:**                      **Kim Tuckey (01992 56 4034)**

**Democratic Services Officer:**              **M Jenkins (01992 56 4607)**

### **Decision Required:**

To ask members to determine an application for the grant of a Sex Establishment Licence.

### **Report:**

#### **Application for Grant of Sex Establishment Licence**

1. On the 14<sup>th</sup> September 2012, the District Council has received an application from Midnight Lady Limited trading as 50 Ways for the grant of a Sex Establishment Licence in respect of the shop premises at 105, Epping New Road, Buckhurst Hill, Essex
2. A copy of the application is attached together with a plan showing the location of the premises.

### **Consultation**

3. The 1982 Act requires the applicant for the grant of a Sex Establishment to:-
  - (a) give public notice of the application by publishing an advertisement in a local newspaper and by displaying a notice on or near the premises for a period of 21 days; and
  - (b) send a copy of the application to the Chief Officer of Police.
4. In considering an application for the grant of a licence the Sub-committee must have regards to any observations submitted by the police and any validly submitted objections.
5. Any objections to the application must be in writing and received by the Council not later than 28 days after the date of application.

A public notice was displayed at the premises and a notice was published in the local paper, however, the wording led to a misunderstanding and local residents understood that the application was for a Sex Encounter Venue, Sex Cinema as well as a Sex Shop. The applicant was asked to correct the error and post the notice again. All of the residents that objected were informed of this.

Nine objectors wished to continue with their representations and their letters and emails are attached

Essex Police, Essex County Fire and Rescue Service, Environment and Street Scene and Essex County Council's Trading Standards Service replied to the consultation but made no representations.

### **Grounds for Refusal**

6. The Act sets out the grounds upon which an application for the grant of a licence **must** be refused and upon which a grant application **may** be refused.

7. A licence **must** not be granted:

- (a) to a person under 18; or
- (b) to a person who has been disqualified from holding a licence; or
- (c) to a person not a resident of the United Kingdom or was not so resident throughout the period of six months immediately preceding the application ; or
- (d) to a Company not incorporated in the United Kingdom; or
- (e) to a person who has been refused a licence within the last 12 months a person who has, within a period of 12 months immediately preceding the date when the application was made, been refused the grant or renewal of a licence for the premises, vehicle, vessel or stall in respect of which the application is made, unless the refusal has been reversed on appeal..

8. An application for the grant of a licence **may** be refused on the following grounds:

- (a) that the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason; or
- (b) that if the licence were to be granted, renewed or transferred, 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, renewal or transfer of such a licence if he made the application himself;
- (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 for that locality;
- (d) 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, vehicle, vessel or stall in respect of which the application is made.

9. The Act specifically provides that for the purposes of (c) above **nil** may be an appropriate number.

### **Relevant Locality**

10. In relation to grounds (c) and (d) above, the Act defines the “relevant locality” as the locality where the premises are situated.

## **Comments on the Application**

11. Insofar as officers are aware, none of the mandatory grounds for refusal set out in paragraph 7 above are applicable in respect of this application.

## **Conditions**

12. Mr Bowerbank has stated in his application that he wishes to open between 10 until 6 Tuesday to Saturday. This is within the times specified in the Authority's standard conditions. The Act provides that the licence shall remain in force for one year or such shorter period as the authority may decide unless previously or cancelled or revoked.

13. The Council can impose terms and conditions and impose restrictions on the licence. The Council's policy sets out its standard conditions which it would usually apply to this licence unless there are specific reasons why they should not apply.

## **Appeals**

14. If the application is refused based upon the discretionary grounds 12 (3) (a) and (b) of The Act (set out in paragraph 8 (a) and (b) of this report) the applicant may appeal within 21 days to the Magistrates Court.

15. The Act provides for no appeal against refusals under grounds 12 (3) (c) and (d) of the Act (set out in paragraph 8 (c) and (d) of the report) although decisions under these grounds have been challenged in the Courts by way of judicial review on the ground that the decision was not properly taken or that there was some procedural irregularity or breach of the rules of natural justice.

16. If members decide to refuse the application they shall, if required to do so by the applicant, give her a statement in writing of the reasons for the decision within 7 days of the request to do so.

## **SEXUAL ENTERTAINMENT VENUE AND SEX ESTABLISHMENT LICENSING POLICY**

### **STANDARD LICENSING CONDITIONS RELATING TO SEX SHOPS LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982 AS AMENDED BY THE POLICE AND CRIME ACT 2009**

## **PART 1**

### **Standard Conditions for all Sex Establishments**

#### **Management of the Premises**

1. The Licensee or some responsible person nominated by him over the age of 18 and approved in writing by the Council 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 incorporated body, any change of director, company secretary or other person responsible for the management of the body shall be notified in writing to the Council 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 Council.

3. The name of the person responsible for the management of the Premises, whether the Licensee or the manager, shall be displayed in a conspicuous position within the Premises throughout the period during which he is responsible for the conduct of the Premises.

4. The Licensee shall retain control over all parts of the Premises and shall not let, licence or part with possession of any part. The Council must be immediately notified in the event that any part of the Premises is affected by the termination of a lease or other event affecting the Licensee's control of the Premises.

5. The Licensee shall ensure that the public is not admitted to any part of the Premises that has not been licensed.

6. Neither the Licensee nor any employee or agent shall personally solicit custom for the sex establishment outside or in the vicinity of the Premises.

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 Council indicating his name and that he is an employee. This shall not apply to any Performers.

### **Display of Licence**

8. A copy of the Sex Establishment Licence and the Conditions of the Licence made by the authority must be kept exhibited in the public area of the premises.

### **Age Policy**

9. No person under 18 years of age to enter the premises.

10. All customers appearing to be under the age of 25 to be required to provide photographic proof

11. No person under 18 years of age is to be employed in the business of the establishment.

12. At all entrances there shall be prominently displayed so as to be visible at all times to persons approaching the premises a notice prohibiting entry to all persons under 18 years of age.

13. The Licensee of the premises shall ensure that all persons employed on the premises are aware of the age restriction on clients and that they exclude or remove from the premises any person attempting to evade the restriction.

14. No change from a sex cinema to a sex shop or a sex shop to a sex cinema shall be made without the written consent of the Council.

### **Breach of Licensing Conditions**

15. Any breach of legislation or failure to comply with the conditions attached to the Licence may result in prosecution or in the revocation of the Licence.

### **General**

16. The Council may substitute, delete, vary or amend these conditions at any time

## **STANDARD CONDITIONS FOR SEX SHOPS**

### **Opening of the Premises**

1. The Premises shall not, without the written consent of the Council, be opened and used for the purposes for which the licence is granted except during the following hours:

Monday – Saturday 9 am – 6 pm

Sunday 11 am – 4 pm

2. The Premises shall not, without the written consent of the Council, be opened and used for the purposes for which the licence is granted on Christmas Day or Good Friday.

### **External Appearance**

3. 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 or such other size as agreed with the Council, consisting of the words 'Licensed Adult Establishment'.

4. (a) No other words or signs, 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 3 or otherwise approved by the Council in writing; and  
(b) No external loudspeakers may be installed.

5. The windows, doors 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.

### **State, Condition and Layout of the Premises**

6. 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 for their automatic closure and such devices shall be maintained in good working order.

7. 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.

8. No access shall be permitted through the Premises to any other Premises adjoining or adjacent except in the case of emergency.

9. Lighting shall be in operation continuously during the whole of the time that the Sex Establishment is open to the public.

10. Any facilities for previewing films, video recordings or other similar material shall be physically separated from the display area of the shop in such a manner that no material being displayed by way of preview shall be visible or audible outside the preview area.

11. No fastenings of any description shall be fitted upon any booth or cubicle within the Sex Establishment

### **Safety and Security**

12. The Licensee shall ensure a suitable closed-circuit television system is installed and maintained to the satisfaction of the Council and police complaint with the codes of practices issued under the Data Protection Act 1998.

## **Goods Available in Sex Establishments**

13. All Sex Articles as defined in Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 and other things displayed for sale, hire, exchange or loan within a Sex Establishment shall be clearly marked to show to persons who are inside the Sex Shop the respective prices being charged.

14. All printed matter, films and video films offered for sale, hire, exchange or loan shall be openly displayed and available for inspection prior to purchase and a notice to this effect is to be prominently displayed inside the Sex Establishment. (This regulation does not require that films or video films be exhibited (played) to customers).

### **Resource Implications:**

None

### **Legal and Governance Implications:**

None

### **Safer, Cleaner and Greener Implications:**

None

### **Consultation Undertaken:**

Statutory consultation undertaken. The results have been set out above.

### **Background Papers:**

- **Local Government (Miscellaneous Provisions) Act 1982**
- **Epping Forest's Sexual Entertainment Venue and Sex Establishment Licensing Policy**
- **(Home Office Guidance - Sexual Entertainments Venues)**

### **Attached Documents**

- **Application for grant of licence for a sex establishment and public notice**
- **Plan of the surrounding area**
- **Standard Conditions set out in the Authority's Epping Forest's Sexual Entertainment Venue and Sex Establishment Licensing Policy**