

Croydon Council

REPORT TO:	LICENSING COMMITTEE 17 June 2015
AGENDA ITEM:	8
SUBJECT:	Application for Variation of Sex Establishment (Sex Shop) Licence – Local Government (Miscellaneous Provisions) Act 1982 – Schedule 3
LEAD OFFICER:	Executive Director, Place Department
CABINET MEMBER:	Councillor Mark Watson Cabinet Member for Communities, Safety & Justice
WARDS:	Croham
CORPORATE PRIORITY/POLICY CONTEXT: N/a	
FINANCIAL SUMMARY: There are no direct financial implications associated with this report.	
FORWARD PLAN KEY DECISION REFERENCE NO.:	

For general release

1. RECOMMENDATIONS

- 1.1 The Committee is asked to determine whether:
- (a) to make the variation to the Sex Establishment Licence as applied for; or
 - (b) to make such variation to the Sex Establishment Licence as they think fit;
or
 - (c) to refuse the application for a variation to the Sex Establishment Licence.

2. EXECUTIVE SUMMARY

- 2.1 The purpose of this report is to advise the Committee that an application has been received for a variation to a Sex Establishment (Sex Shop) Licence at Private Shop, 20c Selsdon Road, South Croydon, CR2 6PA.

3. DETAIL

3.1 Section 2 of the Local Government (Miscellaneous Provisions) Act 1982 enables a local authority to adopt, by resolution, the provisions in Schedule 3 of the Act for the licensing control of Sex Establishments, e.g. sex shops. The London Borough of Croydon has previously adopted these provisions. 'Sex shop' is defined, in paragraph 4 (1) of Schedule 3 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 (a) sex articles; or (b) other things intended for use in connection with, or for the purpose of stimulating or encouraging - (i) sexual activity; or (ii) acts of force or restraint which are associated with sexual activity".

3.2 In the same paragraph, 'sex article' is defined at 4 (3) (a) as "anything made for use in connection with, or for the purpose of stimulating or encouraging – (i) sexual activity; or (ii) acts of force or restraint which are associated with sexual activity; and (b) anything to which the following applies – 4 (4) (a) "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 (b) to any recording vision or sound".

3.3 Para. 6 of Schedule 3 provides that premises may only be used as a sex establishment under and in accordance with the terms of a licence granted under Schedule 3.

3.4 Para. 18 of Schedule 3 states that –

1. The holder of a licence under this Schedule may at any time apply to the appropriate authority for any such variation of the terms, conditions or restrictions on or subject to which the licence is held as may be specified in the application.
2. The appropriate authority –
 - (a) May make the variation specified in the application; or
 - (b) May make such variations as they think fit; or
 - (c) May refuse the application
3. The variations that an authority may make under sub paragraph 2(b) above include variations involving the imposition of terms, conditions or restrictions other than those specified in the application.

4 LICENCE HOLDER & APPLICANT FOR VARIATION

4.1 Darker Enterprises Limited
Unit 11b Trade City
Ashton Road
Harold Hill
Essex
RM3 8UJ

4.2 Darker Enterprises Ltd. hold a Sex Establishment (Sex Shop) Licence in LC20150617AR8

respect of premises at 20c Selsdon Road, South Croydon (the premises). A copy of the current licence is attached at Appendix 1.

- 4.3 The applicant wishes to amend the external appearance of the premises by placing decals/images in the shop front window. In order to do this, as per conditions 5(a) and 6(a) attached to the current licence, they must apply to vary the licence. There is no prescribed application form for the purpose. The applicant has therefore submitted their request by e mail together with copies of the proposed images they wish to place in the window. Copies of the e mail and the proposed images are attached at Appendix 2.
- 4.4 There are no statutory consultation or advertisement requirements with regard to an application to vary a sex establishment licence. However, condition 9 of the licence requires that the premises are not to operate under the licence until such alterations or additions to the premises as are necessary to comply with the licence conditions have been agreed with and completed to the satisfaction of the Police, Fire Officer and the Council, while condition 5 deals with the external appearance of the premises and requires any notice or display to be approved by the Council. Therefore, to assist the committee, the three Croham Ward Councillors, the Police, London Fire Brigade, and the Councils Highways & Planning departments have been advised of the proposed variation. No adverse comments or objections to the proposal have been received.

5 POLICE COMMENTS

- 5.1 The Licensing Officer from Croydon Police Station has not raised any objections to this application.

6. APPEALS

- 6.1 An applicant for the variation of the terms, conditions or restrictions on or subject to which any such licence is held whose application is refused may at any time before the expiration of the period of 21 days beginning with the relevant date appeal to the magistrates court acting for the relevant area.

7. CONSULTATION

- 7.1 There are no formal consultation requirements regarding this report.

8. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

- 8.1 There are no financial implications associated with this particular report.
- 8.2 (Approved by: Dianne Ellender, Head of Finance and Deputy S151 Officer).

9. COMMENTS OF THE COUNCIL SOLICITOR

- 9.1 The Solicitor to the Council comments that Schedule 3 does not specify any grounds for refusal of a variation application.

- 9.2 Therefore, the Committee has discretion in deciding whether to make the variation to the licence as applied, such variation as they think fit or refusal. However, that discretion must be exercised reasonably and any additional variations to those applied for, or refusal to vary the licence must be supported by evidence of a need to control use of the sex establishment.

(Approved by: Gabriel Macgregor, Head of Corporate Law on behalf of the Solicitor to the Council)

10. HUMAN RESOURCES IMPACT

- 10.1 There are no human resources implications associated with the preparation of this report.

11. CUSTOMER IMPACT

- 11.1 The Local Government (Miscellaneous Provisions) Act 1982 impacts on existing and potential licence holders. Well managed licensed premises attract customers and contribute to a vibrant local economy.

12. EQUALITIES IMPACT ASSESSMENT (EIA)

- 12.1 This report does not require a separate Equality Impact Assessment.

13. ENVIRONMENTAL AND DESIGN IMPACT

- 13.1 The licensed sex shops in Croydon are not considered to adversely impact on the local environment.

14. CRIME AND DISORDER REDUCTION IMPACT

- 14.1 There are not considered to be any local crime and disorder implications associated with this report.

15. HUMAN RIGHTS IMPACT

- 15.1 Article 1 of the First Protocol provides a right to peaceful enjoyment of possessions. Both a person's business and an existing licence are a possession and cannot be taken away or interfered with unless the law allows it and the action is justified.

Further, when determining applications under the Local Government (Miscellaneous Provisions) Act 1982, it is necessary to ensure that, as far as possible, the Council's procedures are compliant with the principles in Article 6 of the Convention – the right to a fair trial.

16. FREEDOM OF INFORMATION/DATA PROTECTION CONSIDERATIONS

- 16.1 Information that is provided to or held by the Council in relation to applications must only be processed and disclosed strictly in accordance with the Freedom of Information Act and Data Protection Act 1998 and other appropriate legislation, which may include the Gambling Act 2005 when it comes into force.

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