

<b>DECISION-MAKER:</b>	LICENSING (GENERAL) SUB-COMMITTEE
<b>SUBJECT:</b>	APPLICATION FOR VARIATION OF A SEX SHOP LICENCE – PRIVATE SHOP, GROUND FLOOR, 16 HANOVER BUILDINGS, SOUTHAMPTON, SO14 1JA
<b>DATE OF DECISION:</b>	29 <sup>TH</sup> NOVEMBER 2012
<b>REPORT OF:</b>	HEAD OF LEGAL, HR AND DEMOCRATIC SERVICES
<b>STATEMENT OF CONFIDENTIALITY</b>	
Not applicable.	

### **BRIEF SUMMARY**

The Sub-Committee is requested to determine the application for the variation of a sex shop licence from Darker Enterprises Limited in respect of the Ground Floor, 16 Hanover Buildings, Southampton.

### **RECOMMENDATIONS:**

- (i) For the Sub-Committee to consider and determine the application for the variation of the sex shop licence in respect of the Ground Floor, 16 Hanover Buildings.

### **REASONS FOR REPORT RECOMMENDATIONS**

1. The determination of applications for variation of sex shop licences is not delegated to officers, therefore it is for the sub-committee to consider and determine the application.

### **DETAIL (Including consultation carried out)**

2. Southampton City Council first adopted the provisions of Part II of the Local Government (Miscellaneous Provisions) Act 1982 with effect from 16<sup>th</sup> March 1983.
3. Following High Court challenges to other local authorities' adoption of the legislation, the City Council was advised by Counsel in 1995 that it would be appropriate to readopt the provisions. The Council resolved the adoption of schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 on 10 April 1995, with the provisions coming into effect from 3 July 1995. Notices setting out the effect of the provisions were published in the Southern Daily Echo on 5 and 12 May 1995.
4. Darker Enterprises Limited, has held a sex shop licence in Southampton since 2003, with the licence being renewed annually since. A licence was initially held at 131 Above Bar Street until the premises were subject to a compulsory purchase order and the business relocated to its current site on the Ground Floor of 16 Hanover Buildings in July 2008.
5. On 12<sup>th</sup> June 2012 an application was made by Darker Enterprises Limited to renew the sex shop licence in respect of the Ground Floor of 16 Hanover Buildings. At the same time as making this renewal application, the applicant submitted a request to vary the conditions of the licence to permit changes to the current shop frontage.

6. The renewal of the licence was unopposed and in line with the scheme of delegation, which gives the Licensing Manager the power to determine such applications in those circumstances, the renewal of the licence has been deemed granted. Therefore, the renewal application is not presented for the consideration of the committee.
7. In summary, the applicant has requested to make the following changes to the shop frontage;
  1. Addition of address and telephone number to fascia board.
  2. Addition of location website to fascia board.
  3. Change of name on fascia board to Private Shops.
  4. Change of style and colour of name on fascia.
  5. Addition of "Stockists of DVDs, magazines, toys and lingerie".
  6. Wording "A great single and couple friendly store" on window with silver background.
  7. Wording "Licensed Adult Centre" on window with silver background.
  8. One window to have mannequin dressed in lingerie with rear of display area blanked to prevent view of shop interior.
8. The applicant has submitted a covering letter listing the proposals along with an impression of the proposed changes. These are attached to this report as **Appendix 1**. A photograph of the appearance of the current shop frontage has also been supplied by the applicant and is attached as **Appendix 2**.
9. In proposing these changes, the applicant would be seeking to vary conditions 16(b) and 16(c) of the current licence. Condition 16(b) states;

'The exterior of the premises shall consist of material and colours of a discreet nature appropriate to the character of the locality and shall be in keeping with the appearance of other premises in the vicinity. There shall be no external advertisements nor shall the frontage contain displays of advertisements of any nature or permit the interior of the place licensed to be viewed from outside'.

In addition condition 16 (c) currently sets out the requirements of the licensing authority in terms of agreed appearance and signage for these premises.

A copy of the current licence containing all the conditions relating to this premises is attached as **Appendix 3**.

10. Nickii Humphries, the Interim Licensing Manager at the time the application was made, advised the applicant that she had concerns that the proposed new shop frontage was not sufficiently discreet and appropriate to the character of the locality and that the proposed colour scheme would not be in keeping with the appearance of other premises in the vicinity. These views of the Licensing Manager are summarised in relation to each of the proposals as follows;

1. Addition of address and telephone number to fascia board. – **No objections to this request**
2. Addition of location website to fascia board – **No objections to this request**
3. Change of name on fascia board to Private Shops UK - **No objections to this request**
4. Change of style and colour of name on fascia board – **Concerns as outlined above**
5. Addition of “Stockists of DVDs, magazines, toys and lingerie” – **Concerns as outlined above**
6. Wording “A great single and couple friendly store” on window with silver background – **Concerns as outlined above**
7. Wording “Licensed Adult Centre” on window with silver background – **No objections to proposed wording but refer to overall design issues**
8. One window to have mannequin dressed in lingerie with rear of display area blanked to prevent view of shop interior – **Concerns as outlined above.**

A copy of the email sent to the applicant outlining these concerns is attached as **Appendix 4**. The views expressed by the interim Licensing manager at the time of the application are upheld by the current Licensing Managers.

11. There is no requirement under the Act to advertise a variation of the licence, only for the application, renewal or transfer of a licence. Therefore, there is no formal mechanism of consultation for this process, although a copy of the proposed variation was served on Hampshire Constabulary by the applicant.
12. The Hampshire Constabulary Western Licensing Unit have advised that they have concerns that the addition of the proposed words ‘*Stockist of DVDs, Magazines, Toys & Lingerie*’ (under the words ‘*PRIVATE SHOPS UK*’) could be misinterpreted by children who may enter the premises. Hampshire Constabulary have suggested that to deter any under 18’s entering the premises, these words be removed or amended, or that the word ‘*Adult*’ be inserted, or the word ‘*Toys*’ removed. A copy of the email sent by Hampshire Constabulary outlining these concerns is attached as **Appendix 5**.
13. Section 18 of the Local Government (Miscellaneous Provisions) Act 1982 permits that the holder of a sex shop licence may at anytime apply for any variation of the terms, conditions or restrictions on or subject to which the licence is held.
14. The authority may;
  - Make the variation specified in the application; or

- Make such variations as they think fit; or
  - Refuse the application.
15. Should the committee be mindful to grant any variation to the appearance of the current shop frontage, it is recommend the applicant be advised of the need check with the Planning department as to whether planning permission is required before any changes are implemented.
  16. 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 appeal within twenty-one days of the giving of written notice of the grounds of the refusal, to the Magistrates' Court.
  17. A note of the procedure that the Sub-Committee has adopted for consideration of applications of this kind is attached as **Appendix 6**.

## **RESOURCE IMPLICATIONS**

### **Capital/Revenue**

18. There are no financial implications.

### **Property/Other**

19. Not applicable.

## **LEGAL IMPLICATIONS**

### **Statutory Power to undertake the proposals in the report:**

20. Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 sets out the City Councils power to determine an application to vary the terms, conditions or restrictions of a sex shop licence.

### **Other Legal Implications:**

#### **21. CRIME AND DISORDER ACT 1998**

Section 17 of the Crime and Disorder Act 1998 places the Council under a duty to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area.

#### **22. HUMAN RIGHTS ACT 1998**

The Act requires UK legislation to be interpreted in a manner consistent with the European Convention on Human Rights. It is unlawful for the Council to act in a way that is incompatible (or fail to act in a way that is compatible) with the rights protected by the Act. Any action undertaken by the Council that could have an effect upon another person's Human Rights must be taken having regard to the principle of proportionality - the need to balance the rights of the individual with the rights of the community as a whole. Any action taken by the Council which affects another's rights must be no more onerous than is necessary in a democratic society. The matter set out in this report must be considered in light of the above obligations.



DATE LAST AMENDED:


AMENDED BY:

**FOR DEMOCRATIC SERVICES USE ONLY:**

DATE AND TIME REPORT RECEIVED:

Date

Time:

CLEARANCE:

[TYPE YES or NO]

Name: