

REPORT TO: LICENSING COMMITTEE 3RD JUNE 2004
REPORT ON: SEX SHOP LICENSING
REPORT BY: DEPUTE CHIEF EXECUTIVE (SUPPORT SERVICES)
REPORT NO: 405-2004

1.0 PURPOSE OF REPORT

1.1 To advise members as to options available in dealing with applications for sex shops.

2.0 RECOMMENDATIONS

2.1 It is recommended that the Committee agree to consider each application on its merits as outlined in paragraph 6.10 below, approve the conditions outlined in Appendix 1 as standard conditions and set a fee for a sex shop licence at £235.

3.0 FINANCIAL IMPLICATIONS

3.1 There are no financial implications.

4.0 LOCAL AGENDA 21 IMPLICATIONS

4.1 None.

5.0 EQUAL OPPORTUNITIES IMPLICATIONS

5.1 All applicants will continue to be dealt with fairly and equally. Licensing of sex shops can cause particular offence within some quarters and some women strongly object because of possible links between pornographic material and violence against women.

6.0 MAIN TEXT

6.1 The City of Dundee District Council resolved to licence sex shops in May 1983. Shortly thereafter in July 1983 application was lodged for existing premises. This application was refused and a subsequent appeal was dismissed by the Sheriff as incompetent. No further applications have been lodged. Messrs Muir Myles Lafferty, Solicitors, have requested clarification of the Committees policy as a client of theirs may apply for a licence.

6.2 Sex shops are required to be licensed under Schedule 2 to the Civic Government (Scotland) Act 1982.

6.3 In terms of paragraph 9.(1) of that Schedule where an application has been made the Council shall:

- (a) grant or renew a licence unconditionally;
- (b) grant or renew a licence subject to conditions;
- (c) refuse to grant or renew a licence.

6.4 The conditions referred to at (b) above shall be such reasonable conditions that the Council thinks fit and without prejudice to that generality, may include conditions regulating:

- (a) the hours of opening and closing of sex shops;
- (b) displays of advertisements on or in such sex shops;
- (c) the visibility of the interior of sex shops to passers-by.

6.5 Under paragraph 9.(3) of the Schedule a licence shall not be granted:

- (a) to a person under the age of 18;
- (b) to a person who is for the time being disqualified under paragraph 13(10) or 19(5) below;
- (c) to a person other than a natural person if any director of it or partner in it or any other person responsible for its management is disqualified under paragraph 13(1) or 19(5) below;
- (d) to a person who has been convicted of an offence under paragraphs 19 to 21 below;
- (e) to a person who is not resident in the United Kingdom or was not so resident throughout the period of six months immediately preceding the date when the application was made;
- (f) to a body corporate which is not incorporated in the United Kingdom;
- (g) to a person who has, within the period of 12 months immediately preceding the date when the application was made, been refused by the same council the grant or renewal of a licence under this Schedule for the premises, vehicle, vessel, or stall in respect of which the application is made, unless the refusal has been reversed on appeal; or
- (h) to a person other than a natural person if any director of it or partner in it or any other person responsible for its management has, within that period, been refused by the same Council the grant or renewal of such a licence, unless the refusal has been reversed on appeal.

6.6 Sub-paragraph 9(4) states that without prejudice to sub-paragraph (3) the Council shall refuse an application if in their opinion one or more of the grounds specified in sub-paragraph (5) below apply;

The grounds mentioned in sub-paragraph (4) above are;

- (a) that the applicant or, where the applicant is a person other than a natural person, any director of it or any partner in it or any person responsible for its managements, is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason;
- (b) that, if the licence were to be granted or renewed, 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 or renewal of such a licence if he made the application himself;
- (c) that the number of sex shops in the relevant locality at the time the application is made is equal to or exceeds the number which the district or islands council 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.

6.7 The Committee should note that in considering the number for the purposes of sub-paragraph (c) above a locality may be assessed at nil.

- 6.8 Tayside Police were consulted and have indicated that they would judge any application on its merits. They also pointed out that there are no sex shops currently under their jurisdiction.
- 6.9 The Director of Planning and Transportation was also consulted and reports that there are no land use planning considerations relative to this issue. He also reports concerns at the implications of establishing areas where specific types of retailing are permitted as this could give rise to amenity considerations that the planning system is unable to regulate.
- 6.10 Having regard to all of the above it is recommended that the Committee should simply consider any application lodged on its individual merits by firstly defining the relevant locality of the sex shop and thereafter determining the number of sex shops for that locality. Thereafter the Committee should have regard to the character of the relevant locality including whether:
- (a) the premises are in a residential area;
 - (b) the premises are in a main shopping area;
 - (c) the premises are in an area of historical importance;
 - (d) the grant of a licence will cause a detrimental change to the locality;
 - (e) the premises are on a thoroughfare used by children; and
 - (f) the premises are in an area with sensitive issues.
- 6.11 In the case of any applications granted the conditions outlined in Appendix 1 should be attached as standard conditions.
- 6.12 The fee for a sex shop licence should be set at £235.

7.0 CONSULTATIONS

The Chief Constable and Director of Planning and Transportation have been consulted.

8.0 Name Patricia McIlquham

Depute Chief Executive (Support Services)

Date: 7th May 2004

APPENDIX 1**CONDITIONS FOR A SEX SHOP LICENCE**

1. The hours of opening be restricted to 10.00 am to 9.00 pm daily.
2. No persons under the age of 18 years shall be admitted to the premises or employed in the business of the establishment.
3. No display, advertisement, signage or other matter shall be exhibited so as to be visible from outside of the premises except:-
A notice bearing:
 - i) The inscription "Sex Shop";
 - ii) The name, style or title to be approved by the Council;
 - iii) The hours of opening.
4. The licence holder or the manager named in the licence shall be in charge of and upon the licensed premises during the whole time they are open to the public.
5. The licence holder shall retain control over all portions of the premises and shall not let out, or part with possession of any part of the premises during the currency of the licence.
6. Any fire officer, police constable or authorised officer of the Council shall be permitted free access to the whole of the premises at any time and all reasonable directions and requirements of such officers or of the Council must be complied with.
7. The licence, or a copy thereof, shall be exhibited on the premises and shall be available for inspection at all times.
8. The external door shall be fitted with an effective self-closing device and remain closed at all times other than when a person is passing through it.
9. The licence holder shall maintain good order in the premises and shall ensure all music is controlled to the satisfaction of the Head of Environmental and Trading Standards to ensure no nuisance is caused to neighbouring occupiers.