



<b>REPORT OF:</b>	HEAD OF ENVIRONMENTAL HEALTH SERVICES
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<b>TO:</b>	LICENSING & REGULATORY COMMITTEE
<b>DATE:</b>	16 MARCH 2004

<b>AGENDA ITEM NO:</b>	5	<b>WARD(S) AFFECTED:</b>	-
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<b>SUBJECT:</b>	APPLICATION FOR RENEWAL OF A SEX ESTABLISHMENT LICENCE
<b>PURPOSE OF THE REPORT:</b>	TO DETERMINE THE APPLICATION FOR RENEWAL OF A SEX ESTABLISHMENT LICENCE FOR THE SEX SHOP TRADING AS PILLOW TALK, 91 BRIGHTON ROAD, REDHILL
<b>RECOMMENDATIONS:</b>	
That the Committee determine the application.	

### Background

- Under Part 2 section 2 of the Local Government (Miscellaneous Provisions) Act 1982 ("the Act") a local authority may resolve to adopt Schedule 3 of the Act ("the schedule") to control the licensing of sex establishments. The Council did so on 11 November 1982. [minute 49, page 530].
- The first sex shop licence for Pillow Talk was granted at the Licensing & Regulatory Committee (L&R) on 23 January 2002 [minute 42 page 340], and subsequent minor variations on 6 February 2002 [minute 48 page 372]. This committee agreed to renew the licence on 5 February 2003 [minute 26 page 401]. On 8 January 2004 Mr Alan Butler, the licensee, applied for renewal of the licence without any change to the conditions placed on the licence issued in February 2003. A copy of the current licence with conditions is attached in Annex 1.
- Officers have made six routine unannounced visits to the premises since February 2003 and on each occasion found that the licence conditions were being complied with.

### Factors for Consideration

- Paragraphs 10(7)-(11) of the Schedule requires the applicant to place a public notice advertising the application in a local newspaper and to display a notice of the application for renewal on or near the premises in a place where it can be conveniently read by the public. Officers are satisfied that these requirements have been met.
- Although the licence issued on 7 February 2003 expired on 6 February 2004 an application for the renewal of the licence was made prior to that date and therefore under paragraph 11 of the Schedule it remains in force until the withdrawal of the application or its determination by the Committee.

6. A locality plan is attached at Annex 2. The YMCA Young Persons Supported Housing Scheme is currently under construction at the corner of Brighton Road/Brook Road and is due to open in January 2005. Occupancy will occur on a phased basis, and the scheme will eventually house 42 single people between the age of 16 and 30 years.
7. Two letters of objection dated 14 and 24 January 2004 have been received from a Redhill resident whose name and address cannot be disclosed as he has refused permission (paragraph 10 (17) of the schedule). Transcripts of the letters are attached as Annexes 3 and 4. The objector has been invited to attend the meeting, but he has written to say that as he is a carer he is unable to attend. He has subsequently been invited to send a nominated representative to speak on his behalf.
8. The objector argues that Redhill is not a suitable place for a sex shop. The objections do not specifically refer to the management or operation of Pillow Talk as a sex shop.
9. No other objections have been received, and no complaints have been received regarding the sex shop since the granting of the first licence in February 2002.
10. Inspector L Ashworth, Surrey Police, has confirmed that the Police have no objection to the renewal of the licence.

### **Resource Implications**

11. The Draft Statement of Values, Objectives and Priorities for Action identified that the Council will inspect and enforce legislation concerning health and safety and other public safety issues under its control.

### **Human Rights Assessment**

12. Members are aware that the Human Rights Act 1998 came into effect on 2 October 2000 and although not mentioned in representations, it is prudent to consider relevant parts of the Act in the following manner:
  - a description of the human rights issue raised;
  - identifying whether, and if so which, human rights article has been engaged;
  - advice as to whether the breach is nevertheless in accordance with the law and complies with any justification required under the individual articles, by reference to the article's actual restrictions;
  - advice as to the "significance" or extent of the human rights issue and therefore the appropriate method for determination;
  - advice as to whether a breach of the article is nevertheless proportionate (namely "no greater than is necessary"), and fair in terms of Section 14.
13. Article 6 must be complied with in all circumstances. However, Article 8 and Article 1 of the first protocol are restrictive articles. This means that even if there is a recognised breach of them, if it can be argued that one of the exceptions set out applies, the breach can be considered as justifiable. The detail of the exceptions is set out below.

14. **Article 6 states, inter alia:**

“In the determination of his civil rights and obligations and of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law ...”

**Response:** It can be argued that the Licensing & Regulatory Committee is an impartial tribunal and that its proceedings are carried out in public and that the information put forward by the applicant has been put forward to and properly considered by the committee. Moreover, it can be argued that the committee procedure of allowing both the applicant and objectors to speak is such a procedure. In addition the applicant has a right of appeal albeit on limited grounds against the committee’s decision to the Magistrates’ Court and potentially to the Crown Court should the application be refused, and other interested parties also have rights of legal challenge.

15. **Article 8 states:**

“Everyone has the right to respect for his private and family life, his home and correspondence.”

**Response:** Paragraph 2 of Article 8, sets out the cases where breach of the article can be justified. A public authority may interfere with the right where that interference is lawful and necessary in a democratic society in the interest of:

- national security;
- public safety;
- the economic wellbeing of the country;
- preventing disorder or crime;
- protecting health or morals;
- protecting the rights and freedoms of others.

In this case it can be argued that the interference is lawful in the protection of the rights and freedoms of others, since the licensing legislation is designed to balance the interests of the general public with those of applicants.

In this case the rights of the applicant and the community that would utilise the proposed facility have been considered and balanced against those of others in the area who are affected. In this case, Members should take into account the character of the locality. (See Annex 2 together with para. 6.) It is felt that any interference with the latter’s rights is justifiable as being lawful and necessary for the reason stated above, and having taken into account the full circumstances of the application set out in the committee report and as is presented in oral evidence.

A further part of the assessment under the Human Rights Act, is to determine whether the interference of an individual’s rights by reliance on a reason in the Article is “proportionate”. This means that any interference must be no greater than is necessary. That is, it is reasonable and fair. The power to impose regulations and conditions to control the proposed activity allows the

impact to be contained and ensures that the interference is in accord with this principle.

16. **Article 1 of the First Protocol states:**

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided by law and by the general principles of international law”.

**Response:** Paragraph 2 of Article 1, sets out the cases where breach of the Article can be justified. The preceding provisions, shall not, in any way impair the right of the State to enforce such laws as it deems necessary:

- to control the use of property in accordance with the general interest; or
- to secure the payment of taxes or other contributions or penalties.

In this case the first justification would apply. The peaceful enjoyment of the residential and business amenity of the area can be protected by licensing conditions.

Again the rights of the applicant and the community that would utilise the proposed facility have been considered and balanced against those of others in the area who are affected. It is felt that any interference with the latter's rights is justifiable and being lawful and necessary for the reason stated above, and having taken into account the full circumstances of the application set out in this report.

The comments as to whether the breach of these rights is “proportionate” applies also.

In addition to the above a licence has been deemed to be a possession and therefore the applicant should not be deprived of such unless it is in the public interest to do so.

**Legal Implications**

17. Sex shop is defined under the Act as any premises, vessel, vehicle or stall used for a business which consists to a significant degree of selling, hiring or exchanging, lending, displaying or demonstrating sex articles or other things intended for use in connection with or for stimulating or encouraging sexual activity or acts of force or restraint which are associated with sexual activity.
18. Sex article means anything for use in connection with or for stimulating or encouraging sexual activity or acts of force or restraint which are associated with sexual activity. A licence is not required for the sale, supply or demonstration of birth control items.
19. Paragraph 8 of Schedule 3 allows the licence to be granted or renewed on such terms and conditions and subject to such restrictions as may be so specified.

Comment - Previous licences have been granted subject to substantial conditions as contained in Annex 1. The Committee can review and amend these if they find it necessary and have good grounds for doing so.

20. Paragraph 9 of Schedule 3 indicates that if renewed, a licence shall remain in force for twelve months or such a shorter period as the Council may determine.

Comment - If the Committee decides that there are relevant issues of concern relating to the occupancy of the YMCA building as mentioned in paragraph 6 above they may specify a licence period shorter than one year.

21. A Council should decide whether or not the applicant is a fit and proper person to be granted a licence. This is a matter for the committee to determine in each case.

Comment - The applicant has declared that he has no convictions recorded against him. A copy of the application was sent to the Chief Officer of Police, who has raised no objections (see paragraph 9 above).

22. In the case of sex establishments there is a right of appeal against the Council's decision (paragraph 27 Schedule 3) to the Magistrates Court and thereafter to Crown Court subject to exceptions. Only those grounds set out below might be appropriate in this case.

- i) Where the number of sex establishment in the relevant locality is equal to or exceeds the number which the Council has determined is appropriate.

Comment - No such restriction was imposed when the provisions of the Act were adopted. To do so now is a change in policy and requires a decision at Full Council. This ground cannot therefore be applied in this case.

- ii) There is also no right of appeal if an application is refused on the following grounds namely that;

- a) the grant or renewal of a licence would be inappropriate because of the character of the locality; or  
b) the use to which any premises in the vicinity are put or;  
c) because of the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made

Comment - Even though there is no right of appeal in these circumstances the Council's decision can still be challenged by way of Judicial Review, if it is not based on evidence given to the committee, or is otherwise unreasonable.

23. In law, persons should not be deprived of their ability to earn their living except for just cause and in accordance with natural justice, particularly when dealing with applications for renewals of licences. Unless one or more of the grounds set out above are satisfied, the applicant would have a legitimate expectation of the licence being renewed. Failure to comply with this requirement would leave the council's decision on the application open to challenge by way of appeal or judicial review.

24. A similar right of appeal exists against any condition attached to a licence.

Comment - Should the Committee decide to alter the conditions previously imposed they need to bear this right in mind.

## **Options**

25. The Council may grant the application on such terms and conditions and subject to such restrictions as may be so specified. Any licence so granted, unless cancelled or revoked, will remain in force for one year or for such shorter period specified in the licence as the Council may think fit.
26. The Council may refuse the application for the renewal of the licence on one or more of the grounds set out in paragraph 12(3) of the schedule namely:-
- (a) that the applicant 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, 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 of such a licence if he made the application himself;
  - (c) that the number of sex establishments in the relevant locality (i.e. in the locality where the premises are situated) at the time the application is made is equal to or exceeds the number which the Council considers is appropriate for that locality (nil may be an appropriate number);
  - (d) that the grant 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 in respect of which the application is made.

## **Appeal Procedure**

27. Where the right of appeal exists, an applicant may appeal to the magistrates' court within 21 days from the date on which the person was notified of the decision or became aware of the condition.

## **Recommendations**

28. Members are requested to determine the application for a sex establishment licence. It is not considered appropriate for officers to make recommendations but Members' attention is drawn to the comments in the report, highlighting the particular issues Members need to consider in this case.

Background Papers:     None