

**PUBLIC PROTECTION COMMITTEE: 06 October 2015**

**Report of the Head of Regulatory Services**

**RENEWAL APPLICATION OF A SEX ESTABLISHMENT LICENCE –  
LOVECRAFT, 80 COWBRIDGE RD EAST, CARDIFF**

**1. Background**

- 1.1 Sex Establishment Licences are issued under the provisions of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982. Mr Simon Sternchuss is the holder of a Sex Establishment Licence in respect of Lovecraft, 80 Cowbridge Road East, Canton, Cardiff; the licence was first granted in September 2001.
- 1.2 An annual renewal application in respect of the premises was received by the Licensing Section on 19<sup>th</sup> August 2015. As part of the application there is a statutory 28 day consultation period during which a notice is displayed at the premises and advertised in the South Wales Echo. The final date for objections was 16<sup>th</sup> September 2015.
- 1.3 During the consultation period one objection was received, detailed in Appendix A.

**2. Detail of Objection**

- 2.1 The one objection received with regard to the renewal application refers to the window display as 'inappropriate' as it is located in a busy family shopping area and is passed by school children. The objector requests that if the licence is renewed there is a clause added to restrict the window display.
- 2.2 Photographs of the existing display have been taken by a Licensing Enforcement Officer and are detailed in Appendix B.

**3. Procedural Guidance.**

- 3.1 A licence can only be refused on certain grounds; these are contained within the Local Government (Miscellaneous Provisions) Act 1982. Many of those grounds for refusal are inapplicable in this case. Those which could apply in this instance are:

- a) the Committee considers the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason.
- b) the number of sex establishments in the relevant locality is equal to or exceeds the number which the Committee considers is appropriate for the locality.
- c) the Committee considers that the grant or renewal of the licence would be inappropriate, having regard to the: -
  - (i) character of the relevant locality; or
  - (ii) use to which any premises in the vicinity are put; or
  - (iii) layout, character, or condition of the premises.

3.2 Based on the one objection it would be difficult for the Committee to refuse to renew the application on the grounds specified above.

3.3 The legislation states that the Committee may renew a licence “on such terms and conditions and subject to such restrictions as may be so specified.” The Committee also has power to prescribe standard conditions to be applicable to all sex establishment licences in general.

#### 4. **Power to prescribe standard conditions**

4.1 Local authorities have the power to make regulations prescribing standard conditions applicable to licences for sex establishments. This is the case in Cardiff and the Regulations for Sex Establishments are detailed in Appendix C.

4.2 The Regulations state that ‘the Council reserves the right to amend, delete or add conditions at any time if deemed appropriate.’

4.3 The legislation specifically says that standard conditions may regulate displays or advertisements on or in sex establishments.

#### 5. **Window Display Condition**

5.1. Condition 20 of Cardiff’s standard sex establishment conditions states:

*‘No window shall contain any sign, advertising material, goods or display likely to cause an offence to persons passing the window’*

This condition is fairly subjective and difficult to enforce, as what one person may consider to be offensive may be acceptable to another.

5.2 There are currently five licensed sex shops in Cardiff. A change in the standard conditions with regard to ‘blanking’ off the window display would have to apply to all of the licensed premises.

- 5.3 At its meeting of 2<sup>nd</sup> October 2012, the Public Protection Committee considered 15 objections to the annual renewal application for this premises, all of which related to the suitability of the window display. At the meeting the applicant gave an assurance that should as item displayed in the window cause an offence it would be removed following receipt of a complaint. The Committee resolved to grant the application and considered it unnecessary to attach a further condition to the standard Sex Establishment Licence conditions.
- 5.4 Since the Committee hearing in October 2012 the Licensing Section has not received any complaints regarding the window display until this year's renewal application.

## **6 Procedure at the Committee Meeting**

- 6.1 Normal practice in Cardiff is to give a hearing to the objectors and to the applicant. Having regard to existing case law, it is recommended that the proceedings be conducted as a hearing of the parties' cases and not as an adversarial contest between opposing parties. It is recommended that the following procedure be adopted:
- 6.1.1 the applicant be permitted to hear and note what the objector has to say;
  - 6.1.2 the Committee hears no other objectors than those whose written objections were received before the end of the 28-day objection period;
  - 6.1.3 the objector if present may, if they wish, speak to the meeting. The objector must restrict their presentations to their written submission and how they relates to the statutory grounds for refusal;
  - 6.1.4 the applicant should then have the opportunity to address the Committee on the application and provide information in support of the application;
  - 6.1.5 the objector may be present to listen to the case put by the applicant but may not speak;
  - 6.1.6 the Committee to ask the objectors, the applicant, and the public to leave the room while the members consider their decision; and
  - 6.1.7 the objectors, the applicant, and the public be invited to return to hear the Committee announce the decision.
- 6.2 Section 11 of the of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 provides that where the renewal application has been submitted before its expiry the licence will remain in force until the authority determines the application.

- 6.3 An applicant refused renewal has the right of appeal against the decision of the authority to a Magistrates' Court and then the Crown Court. However if the refusal is under Grounds (b) or (c) mentioned in paragraph 3.1 above there is no right of appeal, although the applicant may apply for judicial review of the decision.

There is also a right of appeal against the imposition of conditions on the licence.

## **7. Achievability**

This report contains no equality personnel or property implications.

## **8. Legal Implications**

- 8.1 The legal implications appear throughout the text of this Report.
- 8.2 All decisions taken by or on behalf of the Council must (a) be within the legal powers of the Council; (b) comply with any procedural requirement imposed by law; (c) be within the powers of the body or person exercising powers on behalf of the Council; (d) be undertaken in accordance with the procedural requirements imposed by the Council e.g. standing orders and financial regulations; (e) be fully and properly informed; (f) be properly motivated; (g) be taken having regard to the Council's fiduciary duty to its taxpayers; and (h) be reasonable and proper in all the circumstances.

## **9. Financial Implications.**

- 9.1 This report does not result directly in any additional financial implications.

## **10. Recommendation**

It is recommended that the application for the renewal of the sex establishment licence in respect of Lovecraft, 80 Cowbridge Road East, Cardiff, be determined.

**Dave Holland**  
**HEAD OF REGULATORY SERVICES**

**17 September 2015**

This report has been prepared in accordance with procedures approved by Corporate Managers.

Background Papers: None