

PUBLIC PROTECTION COMMITTEE: 13 MARCH 2024

REPORT OF THE HEAD OF SHARED REGULATORY SERVICES

VARIATION OF A SEX ESTABLISHMENT LICENCE – LOVECRAFT, COWBRIDGE ROAD 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. Any person who sells, hires, exchanges, lends, displays or demonstrates sex articles (including 18R videos/DVDs etc) or other items which are intended to stimulate sexual activity are required to have a Sex Establishment Licence. The Act refers to such premises as sex shops.

1.2 Under Paragraph 13 of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, a licensing authority may make conditions restricting the hours of opening and closing. The Council's conditions for licensed sex shops includes the following conditions in relation to the times that they may trade:

6. Except with the previous consent of the Council a Sex Establishment shall not be open to the public before 9am and shall not be kept open after 11pm.

7. Except with the previous consent of the Council a Sex Establishment shall not be open on Sundays, Good Friday and Christmas Day.

A copy of the Council's sex shop conditions is contained in Appendix A.

2. Details of the application.

2.1 An application for a Sex Establishment Licence in respect of Lovecraft, 80 Cowbridge Road East, was first granted by this Committee at its meeting on 5 September 2001. The operator is Mr Simon Sternchuss.

2.2 An application by Mr Sternchuss for permission to trade between the hours of 10.00 and 16.00 on the two Sundays that precede Christmas, and the Sunday before New Year was subsequently granted by this committee on 4 December 2007.

- 2.3 Mr Sternchuss has now submitted a request for permission to open every Sunday from 10.00 to 16.00 hours and on bank holidays. In support of this request, Mr Sternchuss feels that the current restricted opening hours are outdated, and the shop should be permitted to trade in line with other premises in the area.
- 2.4 Under Paragraph 13 of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 a licensing authority may make conditions restricting the hours of opening and closing.
- 2.5 The grant of Sex Establishment Licences is regulated by Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982. Paragraph 18 of the Act allows the holder of a licence to make an application for a variation of the terms, conditions or restrictions on or subject to which the licence is held. The authority may allow, amend or refuse the variation applied for. Where the variation is refused the applicant has the right of appeal to the Magistrates Court.

3. Considerations.

- 3.1 Sunday trading in England and Wales was not generally permitted until 1994. Shops such as department stores and supermarkets were not able to open although a number of specialist outlets could, including garden centres, small "corner" or family run shops, and chemists. The Sunday Trading Act 1994 enabled a shop with a floor area of 280 square metres or less to open on Sundays with no restrictions. If the shop has an area of more than 280 square metres it may open for not more than six hours, beginning no earlier than 10.00am and ending no later than 6.00pm. There are still some constraints on what can be sold (for example, alcoholic drinks), and Christmas Day and Easter Sunday have been excluded as trading days. This applies even to garden centres, which earlier had been trading over Easter.
- 3.2 The Deregulation (Sunday Dancing) Order 2000, amended the Sunday Observance Act to enable discotheques to provide entertainments involving dancing on Sundays and to make charges for admission on a commercial basis. The Order came into effect on 28 December 2000 and from that date premises with the appropriate licence could charge for admission to dances on Sunday.
- 3.3 Similar requests have previously been made to this committee and were subsequently granted. On 8 September 2009, the previously licensed sex shop located on 8 Mill Lane was granted permission to trade on Sundays and bank holidays.

4. Achievability

4.1 This report contains no equality personnel or property implications.

5. Legal Implications

5.1 There is a right of appeal to the Magistrates Court against any refusal to vary the conditions of licence.

5.2 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 eg. 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.

6. Financial Implications.

6.1 The licensing service is required to be self-financing with all expenditure being met from licence fees and charges which are reviewed periodically. The statute does not permit charging a fee for consideration of an application for variation of a sex establishment licence and this has been taken into account in setting appropriate licence fee levels.

7. Recommendation

7.1 That the application be considered and determined on its merits.

Helen Picton
Head of Shared Regulatory Services

18 January 2024

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

Background Papers:
Standard Licence Conditions for a Sex Establishment.