

REPORT TO:	LICENSING COMMITTEE 27 JUNE 2018
SUBJECT:	Application for Renewal of Sex Establishment (Sex Shop) Licence – Local Government (Miscellaneous Provisions) Act 1982 – Schedule 3
LEAD OFFICER:	Executive Director, Place Department
CABINET MEMBER:	Councillor Hamida Ali Cabinet Member for Communities, Safety & Justice
WARDS:	South Croydon
CORPORATE PRIORITY/POLICY CONTEXT: N/a	
FINANCIAL SUMMARY: There are no direct financial implications associated with this report.	
FORWARD PLAN KEY DECISION REFERENCE NO.: Not an executive decision	

1. RECOMMENDATIONS

1.1 The Committee is asked to determine whether:

- (a) to grant the application to renew the Sex Establishment Licence as applied for; or
- (b) to grant the application to renew the Sex Establishment Licence but in different terms than those applied for; or
- (c) to refuse to grant the application to renew the Sex Establishment Licence as applied for.

2. EXECUTIVE SUMMARY

2.1 The purpose of this report is to advise the Committee that an application has been received for the renewal of a Sex Establishment (Sex Shop) Licence at Private Shop, 20c Selsdon Road, South Croydon, CR2 6PA.

3. DETAIL

3.1 Section 2 of the Local Government (Miscellaneous Provisions) Act 1982 enables a local authority to adopt, by resolution, the provisions in Schedule 3 of the Act for the licensing control of Sex Establishments, e.g. sex shops. The London Borough of Croydon has previously adopted these provisions. 'Sex shop' is defined, in paragraph 4 (1) of Schedule 3 as "any premises, vehicle, vessel or stall used for a business which consists to a significant degree of selling, hiring, exchanging, lending, displaying or demonstrating (a) sex articles; or (b) other things intended for use in connection with, or for the purpose of stimulating or encouraging - (i) sexual activity; or (ii) acts of force or restraint which are associated with sexual activity".

3.2 In the same paragraph, 'sex article' is defined at 4 (3) (a) as "anything made for use in connection with, or for the purpose of stimulating or encouraging – (i) sexual activity; or (ii) acts of force or restraint which are associated with sexual activity; and (b) anything to which the following applies – 4 (4) (a) "to any article containing or embodying matter to be read or looked at or anything intended to be used, either alone or as one of a set, for the reproduction or manufacture of any such article; and (b) to any recording vision or sound".

3.3 Para. 6 of Schedule 3 provides that premises may only be used as a sex establishment under and in accordance with the terms of a licence granted under Schedule 3.

3.4 Para. 8 of Schedule 3 states that –

'The appropriate authority may grant to any applicant, and from time to time renew, a licence under this Schedule for the use of any premises for a sex establishment on such terms and conditions and subject to such restrictions as may be so specified.'

Para. 15 states –

'Any person objecting to an application for the renewal of a licence under this Schedule shall give notice in writing of his objection to the appropriate authority, stating in general terms the grounds of the objection, not later than 28 days after the date of the application.'

Para. 18 states –

'In considering any application for the renewal of a licence the appropriate authority shall have regard to any objections sent to them.'

Para. 19 states –

The appropriate authority shall give an opportunity of appearing before and being heard by a committee of the authority before refusing to renew a licence, to the holder.'

4 LICENCE HOLDER & APPLICANT FOR RENEWAL

- 4.1 Darker Enterprises Limited
Unit 3, Chancery Gate Business Centre
33 Tallon Road
Hutton
Brentwood
Essex
CM13 1TE
- 4.2 Darker Enterprises Ltd. hold a Sex Establishment (Sex Shop) Licence in respect of premises at 20c Selsdon Road, South Croydon (the premises). A licence was first granted for these premises on 13 June 2005. A copy of the current licence is attached at Appendix 1. Photographs of the shop frontage are attached at Appendix 2 to assist the committee.
- 4.3 The licence holder has applied to renew their licence for the premises. The licence lasts for one year and was due to expire on 28 February 2018.
- 4.4 An applicant for the renewal of a sex establishment licence must give public notice of the application. This requires an advertisement in a local newspaper and placing a notice on or near the premises. The applicant must also send a copy of their application to the Police.
- 4.5 A local resident has raised a written objection to the renewal of the sex establishment licence at 20c Selsdon Road. A copy of that objection is attached at Appendix 3. Para. 17 of Schedule 3 states that the appropriate authority shall not without the consent of the person making the objection reveal his name or address to the applicant. The person making the objection does not consent to their name and address being disclosed to the applicant.
- 4.6 To assist the committee, attached at Appendix 4 is an ordnance survey extract map of the area within the application premises marked 'x'.

5 POLICE COMMENTS

- 5.1 The Licensing Officer from Croydon Police Station is aware of the application to renew the licence and has not raised any objections to this renewal application.

6. REFUSAL OF LICENCES & APPEALS

- 6.1 Para 12 of Schedule 3 states –
12 (1) A licence under this Schedule shall not be granted—
(a) to a person under the age of 18; or
(b) to a person who is for the time being disqualified under paragraph 17(3) below; or

(c) to a person, other than a body corporate, 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; or

(d) to a body corporate which is not incorporated in the United Kingdom; or

(e) to a person who has, within a period of 12 months immediately preceding the date when the application was made, been refused the grant or renewal of a licence for the premises, vehicle, vessel or stall in respect of which the application is made, unless the refusal has been reversed on appeal.

(2) Subject to paragraph 27 below, the appropriate authority may refuse—

(a) an application for the grant or renewal of a licence on one or more of the grounds specified in sub-paragraph (3) below;

(b) an application for the transfer of a licence on either or both of the grounds specified in paragraphs (a) and (b) of that sub-paragraph.

(3) The grounds mentioned in sub-paragraph (2) above are—

(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, renewed or transferred 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, renewal or transfer of such a licence if he made the application himself;

(c) that the number of sex establishments in the relevant locality at the time the application is made is equal to or exceeds the number which the authority 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.

(4) Nil may be an appropriate number for the purposes of sub-paragraph (3)(c) above.

(5) In this paragraph “the relevant locality” means—

(a) in relation to premises, the locality where they are situated; and

(b) in relation to a vehicle, vessel or stall, any locality where it is desired to use it as a sex establishment.

6.2 In respect of the provisions of paragraph 12 (3)(c) of Schedule 3, Members are advised that the Council has not, at the time of this application, made a determination regarding the number of sex establishments which the authority considers is appropriate for the locality and therefore this may not be a ground upon which Members may decline to renew the license for the premises in question.

6.3 Para. 27 of Schedule 3 states –

27 (1) Subject to sub-paragraphs (2) and (3) below, any of the following persons, that is to say —

(a) an applicant for the grant, renewal or transfer of a licence under this Schedule whose application is refused;

(b) 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;

(c) a holder of any such licence who is aggrieved by any term, condition or restriction on or subject to which the licence is held; or

(d) a holder of any such licence whose licence is revoked, may at any time before the expiration of the period of 21 days beginning with the relevant date appeal to the magistrates' court acting for the relevant area.

(2) An applicant whose application for the grant or renewal of a licence is refused, or whose licence is revoked, on any ground specified in paragraph 12(1) above shall not have a right to appeal under this paragraph unless the applicant seeks to show that the ground did not apply to him.

(3) An applicant whose application for the grant or renewal of a licence is refused on either ground specified in paragraph 12(3)(c) or (d) above shall not have the right to appeal under this paragraph.

(4) In this paragraph—

“the relevant area” means—

(a) in relation to premises, the petty sessions area in which they are situated; and

(b) in relation to a vehicle, vessel or stall, the petty sessions area in which it is used or, as the case may be, desired to be used as a sex establishment; and
“the relevant date” means the date on which the person in question is notified of the refusal of his application, the imposition of the term, condition or restriction by which he is aggrieved or the revocation of his licence, as the case may be.

(5) An appeal against the decision of a magistrates' court under this paragraph may be brought to the Crown Court.

(6) Where an appeal is brought to the Crown Court under sub-paragraph (5) above, the decision of the Crown Court shall be final: and accordingly in section 28(2)(b) of the Supreme Court Act 1981 for the words "or the Gaming Act 1968" there shall be substituted the words ", the Gaming Act 1968 or the Local Government (Miscellaneous Provisions) Act 1982".

(7) On an appeal to the magistrates' court or the Crown Court under this paragraph the court may make such order as it thinks fit.

(8) Subject to sub-paragraphs (9) to (12) below, it shall be the duty of the appropriate authority to give effect to an order of the magistrates' court or the Crown Court.

(9) The appropriate authority need not give effect to the order of the magistrates' court until the time for bringing an appeal under sub-paragraph (5) above has expired and, if such an appeal is duly brought, until the determination or abandonment of the appeal.

(10) Where a licence is revoked or an application for the renewal of a licence is refused, the licence shall be deemed to remain in force—

(a) until the time for bringing an appeal under this paragraph has expired and, if such an appeal is duly brought, until the determination or abandonment of the appeal; and

(b) where an appeal relating to the refusal of an application for such a renewal is successful and no further appeal is available, until the licence is renewed by the appropriate authority.

(11) Where—

(a) the holder of a licence makes an application under paragraph 18 above; and

(b) the appropriate authority impose any term, condition or restriction other than one specified in the application,

the licence shall be deemed to be free of it until the time for bringing an appeal under this paragraph has expired.

(12) Where an appeal is brought under this paragraph against the imposition of any such term, condition or restriction, the licence shall be deemed to be free of it until the determination or abandonment of the appeal.

7. CONSULTATION

7.1 There are no formal consultation requirements regarding this report.

8. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

8.1 There are no financial implications associated with this particular report.
(Approved by Felicia Wright Head of Finance - Place).

9. COMMENTS OF THE COUNCIL SOLICITOR

9.1 The Solicitor to the Council comments that Schedule 3 (Paragraph 12) specifies the grounds upon which the Council may refuse the renewal application as set out, in full, in the body of the report above.

9.2 In respect of the provisions of paragraph 12(3)(c) of Schedule 3, Members are advised that the Council has not, at the time of this application, made a determination regarding the number of sex establishments which the authority considers is appropriate for the locality and therefore this may not be a ground upon which Members may decline to renew the license for the premises in question.

9.3 In reaching its determination on the renewal application, the Committee shall set out its reasons for the determination reached having due regard to the statutory criteria and the evidence presented to the Committee at the hearing and as part of the papers. In particular, in considering any application for the grant, renewal or transfer of a licence the authority shall have regard to any observations submitted to them by the chief officer of police and any objections of which notice has been sent to the Authority.

(Approved by: Sandra Herbert, for and on behalf of Jacqueline Harris-Baker,
Director of Law and Monitoring Officer)

10. HUMAN RESOURCES IMPACT

10.1 There are no human resources implications associated with the preparation of this report.

(Approved by: Jennifer Sankar, Interim Head of HR Place on behalf of Sue Moorman, HR Director)

11. CUSTOMER IMPACT

11.1 The Local Government (Miscellaneous Provisions) Act 1982 impacts on existing and potential licence holders. Well managed licensed premises attract customers and contribute to a vibrant local economy.

12. EQUALITIES IMPACT ASSESSMENT (EIA)

12.1 This report does not require a separate Equality Impact Assessment.

13. ENVIRONMENTAL AND DESIGN IMPACT

13.1 The licensed sex shops in Croydon are not considered to adversely impact on the local environment.

14. CRIME AND DISORDER REDUCTION IMPACT

14.1 There are not considered to be any local crime and disorder implications associated with this report.

15. HUMAN RIGHTS IMPACT

15.1 Article 1 of the First Protocol provides a right to peaceful enjoyment of possessions. Both a person's business and an existing licence are a possession and cannot be taken away or interfered with unless the law allows it and the action is justified.

Further, when determining applications under the Local Government (Miscellaneous Provisions) Act 1982, it is necessary to ensure that, as far as possible, the Council's procedures are compliant with the principles in Article 6 of the Convention – the right to a fair trial.

16. FREEDOM OF INFORMATION/DATA PROTECTION CONSIDERATIONS

16.1 Information that is provided to or held by the Council in relation to applications must only be processed and disclosed strictly in accordance with the Freedom of Information Act and Data Protection Act 1998 and other appropriate legislation, which may include the Gambling Act 2005 when it comes into force.

CONTACT OFFICER: Michael Goddard, Licensing Manager, ext. 61838.

APPENDICES: