

Agenda Item No: 4
Licence Reference WK/201111225 & LN/020100655
Report To: LICENSING COMMITTEE
Date: 7 FEBRUARY 2012
Report Title: Local Government (Miscellaneous Provisions) Act 1982 -
Application is made for the renewal of a sex shop licence
for Pillow Talk at 32 High Street, Ashford TN24 8TE.
Report Author: Licensing Manager



Summary:

The report advises Members of a licence application under the provisions of the Local Government (Miscellaneous Provisions) Act 1982 Schedule 3.

Application type: **Application is made for the renewal of a sex shop licence under the provisions of Schedule 3 of Local Government (Miscellaneous Provisions) Act 1982**

Applicant: **Ms Jacqueline Singer**

Premises: **Pillow Talk at 32 High Street, Ashford TN24 8TE**

Key Decision: NO

Affected Wards: Victoria Ward

Recommendations: **That the Licensing Committee are recommended to make a determination, at the conclusion of the Hearing, to grant (subject to conditions) or refuse to grant a sex shop licence to the applicant.**

Policy Overview: The Sex Shops, Sex Cinemas and Sexual Entertainment Venues Policy 2011.

Financial Implications: There are no specific financial implications arising from this application. However additional costs may be incurred should the matter go to appeal.

Other Material Implications: **HUMAN RIGHTS:** In considering this application the Committee will balance the competing Human Rights of the various parties including the right to respect for private and family life, the protection of property and the right to a fair hearing.

LEGAL: Under the Local Government (Miscellaneous Provisions) Act 1982 the Council has adopted provisions which enable the Council to exercise control of sex establishments.

Exemption Clauses: Not applicable

Background Papers: None

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Agenda Item No.

Report Title: **Local Government (Miscellaneous Provisions) Act 1982 -
Application is made for the renewal of a sex shop licence
for Pillow Talk at 32 High Street, Ashford TN24 8TE.**

Purpose of the Report

1. The report advises Members of a review application under the provisions of the Local Government (Miscellaneous Provisions) Act 1982.

Application type: **Application is made for a renewal of a sex shop
licence.**

Applicant: **Ms Jacqueline Singer**

Premises: **Pillow Talk at 32 High Street, Ashford TN24 8TE**

Issue to be Decided

2. Members are asked to consider the renewal application for a sex shop licence at the conclusion of the Hearing, to grant (subject to conditions) or refuse to grant a sex shop licence to the applicant.

Background

3. The Local Government (Miscellaneous Provisions) Act 1982 provides that a local authority may, by resolution, adopt Schedule 3 to that Act. Ashford Borough Council adopted Schedule 3 effective from 1 May 1983. Section 27 of the Policing and Crime Act 2011 extended the provisions of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 by introducing a new category of sex establishment called "sexual entertainment venues". The Council adopted the extended Schedule 3, effective from April 2010.
4. Functions under Schedule 3 are the responsibility of the full Council of the local authority, as defined. Under section 101 of the Local Government Act 1972, local authorities may arrange for the discharge of these responsibilities by a committee or sub-committee of the appropriate authority. The Council has arranged for the Licensing Committee to make decisions relating to these matters.
5. A sex establishment licence for Pillow Talk, 9 Castle Street, Ashford was applied for in 2002 by Mr Alan Butler and was subsequently granted.
6. In 2010 Ms Jacqueline Singer relocated the shop from Castle Street to 32 High Street and applied for a sex shop licence. As no objections were received, the licence was granted under delegated authority by Officers. A copy of the licence is in Appendix A.

Application for a renewal of a sex shop licence

7. In September 2011 Ms Singer applied for a renewal of the sex shop licence for Pillow Talk, 32 High Street, Ashford TN24 8TE. The application was made to the Council on 7 September 2011 and a public notice was placed on the window of the premises.
8. On 28 September 2011 Mr Hemming contacted the Licensing Authority with information regarding one of the persons working in the shop, asking if the person was a fit and proper person to be working in a licensed sex shop. The information was passed to Kent Police for consideration and it is suggested that this is not the matter for consideration before the Committee. If Kent Police subsequently provide information that the person in question is not a suitable person to work in a sex shop, his approval to work in a sex shop will be considered as may be revoked. This person is not Ms Singer.
9. Mr Hemming wrote a further letter to the Licensing Authority on 30 September regarding the suitability of Pillow Talk Limited to be granted a sex shop licence, due to the financial situation of the company. (See Appendix B). As both the existing licence and the application for the renewal of the sex shop licence was applied for by Ms Singer and not in the name of Pillow Talk Limited, the objection was considered irrelevant to the renewal application under consideration and Mr Hemming was informed by letter on 5 October 2011.
10. Mr Hemming responded providing additional information regarding Ms Singer's suitability that may be relevant in a decision as to whether Ms Singer was a fit and proper person to be granted a sex shop licence and following legal advice, it was agreed that the matter should be brought before Members for consideration.
11. During the writing of this report, proof of the notice being made in a local newspaper was requested from the applicant. Due to an administrative error by the applicant, the public notice was not placed in a local paper and the applicant was advised to resubmit the application (Appendix C) and to ensure the correct notices were placed. The second consultation period ended on 22 December 2011. The objection by Mr Hemming is still regarded as valid and assurances were sought from him before 22 December that he wanted his objection to be considered.
12. Since 2002 no objections have been received for a sex shop licence for Pillow Talk during the annual renewal process, either for the premises licensed to Mr Butler or the premises licensed to Ms Singer.

Considerations

13. The issues before Members may be summarised as follows:
 - i. Is the state of Parisvale Limited and the financial history of this company a relevant factor when considering whether Ms Singer is a suitable person to hold a sex shop licence?

- ii. If the issues raised are considered relevant to the suitability of the applicant to hold a licence, what weight should Members give them in considering whether to grant a licence?
 - iii. Should the application be granted?
14. Any person can object to an application, however the Council's policy states that the licensing authority is likely to give greater weight to objections relevant to the grounds set out in paragraph 12, of Schedule 3, Local Government (Miscellaneous Provisions) Act 1982 for refusing a licence. Less weight is likely to be given to objections based on moral grounds/values.
15. Local authorities cannot consider objections that are not relevant to the grounds set out in paragraph 12. Objectors must give notice of their objection in writing, stating the general terms of the objection.
16. Paragraph 12 of Schedule 3 sets out the grounds for refusing an application for the grant, renewal or transfer of a licence. A licence **must not** be granted:
- a) to a person under the age of 18;
 - b) to a person who is for the time being disqualified due to the person having had a previous licence revoked in the area of the appropriate authority within the last 12 months;
 - c) to a person, other than a body corporate, who is not resident in an European Economic Area (EEA) State 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 an EEA State; 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.

None of the above are applicable to this application.

17. A licence **may** be refused where:
- a) the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for **any other reason**;
 - b) 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) the number of sex establishments, or of sex establishments of a particular kind, in the relevant locality at the time the application is determined 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.
18. A decision to refuse a licence must be relevant to one or more of the above grounds. In making any determination to refuse an application, renewal or transfer the local authority will give consideration to the unsuitability of an applicant.
19. In determining the suitability or otherwise of an applicant the local authority will consider any previous convictions and in particular those that have been imposed in respect of offences involving violence, dishonesty, or a breach of the requirements of the legislation covering the type of establishment in respect of which the application is made.
20. Mr Hemming's objection is on the grounds that Ms Singer is an unsuitable person to hold a sex shop licence due the following reasons:
 - a) Jacqueline Singer was the Director of Parisvale Limited, which allegedly traded whilst insolvent and increased debt during this time.
 - b) Jacqueline Singer is said to have liquidated Parisvale Limited without informing major creditors and then sold products through Pillow Talk Retail that were allegedly illegally obtained.
 - c) Pillow Talk Retail Ltd was incorporated in December 2010 and was allegedly subject to a County Court Judgment in April and has allegedly yet to file any accounts.
21. Members are asked to consider whether the objection is relevant to the issue of unsuitability and if so, what weight to give them in determining whether to grant the licence or not.
22. While Ms Singer has not been convicted of an offence, it is the objector's view that she is an unsuitable person to hold a sex shop licence.
23. When considering whether the applicant can be trusted to run a sex shop in accordance with the licence and the general law, Members may take in to account anything which may rationally be considered to render the applicant unsuitable. Factors they may wish to include are:
 - Is the applicant honest?
 - Does she have experience of running sex shops?
 - Does she understand the sex shop licence conditions?
 - Can she be relied on to run the premises in accordance with the licence?
24. The Committee may wish to seek assurances that the premises is run in accordance with the licence conditions and whether the applicant has a sound financial business case.

25. The matters before the Committee concern the suitability of the applicant to be granted a licence and do not concern whether the location is a suitable place for a sex shop, whether the layout of the premises is correct or the number of sex shops in the area.

Unlicensed 'sex shops'

26. Members should be aware that were the application to be refused the premises **shall be able to trade in sex articles**. Unlicensed shops are allowed to sell sex articles (although not R18 videos) as long as this does not constitute a "significant degree" of their business. Therefore there are two determining factors when defining whether a premises constitutes a sex shop:

- type of material stocked, and
- degree or extent to which that material is stocked

27. Unlicensed 'sex shops' are not under the control of the Council and conditions cannot be imposed, for example, regarding entry of children under 18, regulating employees, controlling the nature of displays etc.

28. It is the Officer's understanding that Ms Singer, if the renewal application is refused, will open continue operating at 32 High Street as an unlicensed premises. Officers will advise on the level of business considered appropriate to ensure that the business does not consist to a significant degree of selling, hiring, exchanging, lending, displaying or demonstrating either sex articles. If this advice is not followed the Council may take enforcement action as appropriate for the operation for an unlicensed sex establishment.

Police Comments

29. The Police are notified whenever a sex shop licence application or renewal application is received and have no objections to this application.

Hearing

30. Under paragraph 10(19) of Schedule 3, before refusing an application, renewal or application to transfer a licence an applicant should be given the opportunity to appear before and be heard by the Licensing Committee. Although a local authority is under a duty to consider any objections made within 28 days of the application, it has discretion to hear later objections provided the applicant is given the opportunity to deal with those objections.

Appeal

31. In the event that the Committee refuses the application for the renewal of a sex shop licence the applicant has a 21 day right of appeal to the decision in a Magistrates' Court, unless the application was refused under 12(3)(c) or (d), in which case the applicant can only challenge the refusal by way of judicial review.

Human Rights

32. When determining applications for sex shop licences the Licensing Authority states in its policy that will have consideration to any rights an existing operator may have under Article 1, Protocol 1 of the European Convention on Human Rights (ECHR) (which entitles every person to the peaceful enjoyment of their possessions) and Article 10 (freedom of expression).

33. Whilst the rights under Article 1 and 10 may be activated the weight to be accorded to these rights in this context is low level. The right to freedom of expression to participate in the activities of sex shops is not prohibited but may be controlled by licensing. Similarly the right to possession of an existing licence is proportionally protected subject to a fair balance of the rights of the holder and the public interest.

34. Further details are contained in Appendix D

Recommendations

35. That Members carefully consider the application for renewal and the objection and at the conclusion of the Hearing, grant (subject to conditions) or refuse to grant a sex shop licence to the applicant

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- Appendix A:** Copy of 2010/11 sex shop licence for Pillow Talk
Appendix B: Objection from Mr Hemming and corresponding paperwork
Appendix C: Application for the renewal of a sex shop licence
Appendix D: Human Rights