

## ITEM NO: 10

<b>90DECISION-MAKER:</b>	LICENSING (GENERAL) SUB-COMMITTEE		
<b>SUBJECT:</b>	APPLICATION FOR RENEWAL OF A SEX SHOP LICENCE – HIDDEN ASSETS, 439 MILLBROOK ROAD WEST		
<b>DATE OF DECISION:</b>	4 <sup>th</sup> JUNE 2008		
<b>REPORT OF:</b>	SOLICITOR TO THE COUNCIL		
<b>AUTHOR:</b>	Name:	JOHN WHITE	Tel: 02380832749
	E-mail:	john.white@southampton.gov.uk	

### STATEMENT OF CONFIDENTIALITY

Not applicable.

### SUMMARY

The Sub-Committee is requested to determine the application for renewal of a sex shop licence from Mr. Matthew Barry Caplen Smith and further request to vary conditions on the current licence in respect of 439 Millbrook Road West.

### RECOMMENDATIONS:

- (i) For the Sub-Committee to consider the application and subsequent objections before deciding whether to grant renewal of the licence as requested by the applicant.
- (ii) For the Sub-Committee to separately consider the applicants request to vary two conditions on the current licence and subsequent objections, before deciding whether to grant these requests.

### REASONS FOR REPORT RECOMMENDATIONS

Three objection letters have been received from residential addresses within the period of notice (See appendix 6).

### CONSULTATION

Applicants for the renewal of a sex shop licence are required to display a notice on the premises to be licensed for 21 days and advertise in a local newspaper circulating in Southampton.

Applicants for the renewal of a sex shop licence are required to supply a copy of the application to the Chief Constable of Hampshire Constabulary.

Any person objecting to an application for the renewal of a sex shop licence shall give notice of in writing to the local authority, not later than 28 days after the date of the application.

### ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

None

### DETAIL

## **BACKGROUND INFORMATION**

1. Southampton City Council first adopted the provisions of Part II of the Local Government (Miscellaneous Provisions) Act 1982 with effect from 16th March 1983.
2. In April 1984, the Council determined the relevant localities in respect of the premises then under consideration.
3. The plans of the two areas showing the relevant localities are held by the Licensing Team at Southbrook Rise, with the first area being Kingsland Place/St. Mary Street and the second area being East Street.
4. Following High Court challenges to other local authorities' adoption of the legislation, the City Council was advised by Counsel in 1995 that it would be appropriate to readopt the provisions. The Council resolved the adoption of schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 on 10 April 1995, with the provisions coming into effect from 3 July 1995. Notices setting out the effect of the provisions were published in the Southern Daily Echo on 5 and 12 May 1995.
5. No further applications were made for sex shop or sex cinema licences until 2002, when an application was received for premises at 131 Above Bar. The Licensing and Public Safety Panel agreed to the grant of a licence in respect of those premises, subject to conditions, on 5 February 2003.
6. The Licensing and Public Safety Panel subsequently considered two applications in respect of premises in Millbrook Road West in July 2003 and resolved to grant both licences subject to conditions. An application was also granted for 103 St. Mary Street in December 2004.

## **THE APPLICATION AND RELEVANT LOCALITY**

7. An application (attached as Appendix 2) has been received for renewal of a sex establishment licence in respect of the premises at 439 Millbrook Road West.
8. The Planning & Sustainability Division of the Directorate of Development and Sustainability confirms that there is no specific planning development brief for this area.
9. The Committee (or its predecessors) has not previously considered the issue of determining an appropriate number of sex establishments within a relevant locality which would include these premises.
10. However two such areas (not including these premises) had previously been decided by the Council, and the background information relating to this is set out above.

## **APPLICATION DETAILS**

11. A copy of the application for the renewal of a sex shop licence in respect of 439 Millbrook Road West is attached as Appendix 2.
12. The applicant is Mr. Matthew Barry Caplen Smith, of whom further details are given in the application.
13. Notice of the application was placed in the Southern Daily Echo on 27<sup>th</sup>

March 2008.

14. On 26<sup>th</sup> March 2008, the Licensing Officer witnessed that the notice of the application, dated 19<sup>th</sup> March 2008, was exhibited on the front window of 439 Millbrook Road West. This notice was exhibited on the front window of 439 Millbrook Road West for 21 days.
15. In addition to the application to renew the licence, the applicant has also made a written request to vary two conditions on the current licence.
16. The applicant wishes to vary condition 16 (b) on the current licence, to allow a fully enclosed window display in the shop front in order to display lingerie only. The proposed display has been described as being similar to those already offered by high street chains and would take up the whole of the front window area. However, it would be fully enclosed so as to block any view passers by could possibly have of the interior of the shop behind it. The applicant makes reference to the display being tastefully lit during opening hours, but he has indicated that any lighting would be turned off at the close of business every day. A copy of the applicant's written request outlining his full proposal is attached as Appendix 3.
17. Photographs of current lingerie displays in the front windows of two 'high street' stores located in Southampton city centre are attached as Appendix 4.
18. The applicant also wishes to vary condition 16 (b) on the current licence, to change the colours of the shop front to a navy blue background with silver lettering. The colours at present are, as standard, gold lettering on a brown background. The applicant feels that the proposed change is necessary to allow customers to be able to distinguish that the premises are separate to the sex shop located next door at 437 Millbrook Road West. The applicant's request can be viewed on page 11 of the renewal application form attached to this report as appendix 2
19. Photographs of the current frontage of the 439 Millbrook Road West are attached as Appendix 5.
20. A copy of the conditions listed on the current licence are attached as Appendix 7.
21. The Licensing Officer can confirm that regular inspections of the premises have taken place throughout the past year to ensure that the licence conditions are being adhered to. No issues have been identified as a result of these inspections.
22. The applicant has been invited to attend the Sub-Committee's meeting.
23. The Licensing Officer can confirm that regular inspections of the premises have taken place throughout the past year to ensure that the licence conditions are being adhered to. No issues have been identified as a result of these inspections.

#### **PROPOSED TRADING ACTIVITIES**

24. This is an application for renewal of a sex shop licence. Mr. Matthew Barry Caplen Smith has indicated he wishes to sell by retail goods including lingerie and other clothing items, videos, DVDs, magazines and other marital aids.

25. In addition, it is understood that the applicant also intends to stock and sell British Board of Film Classification (BBFC) Restricted 18 (R18) classified video recordings at the premises (such video recordings may contain pornographic images). The Video Recordings Act 1984 makes it an offence to supply an R18 classified video recording except in a licensed sex shop and also makes it an offence to supply an unclassified video recording.
26. Members should note that a sex establishment licence does not permit the sale of any goods that are prohibited in law, in particular by the Obscene Publications Act 1964.
27. Although no indication has been given in the application, it is likely that the applicant will wish to show BBFC R18 classified trailers on a television monitor within the display area. Such trailers would contain pornographic images and would be in the form of a loop (continuous) videocassette or DVD containing short clips advertising various films for sale in the premises. It would be likely that the television monitor would be sited close to the sales assistant's desk at the premises.
28. The applicant is also currently the manager of "Hidden Desires," a licensed sex shop on St. Mary Street.
29. If the Sub-Committee grant the application for renewal of the licence, it may be on such terms and conditions and subject to such restrictions as the Sub-Committee may specify.

#### **THE LEGISLATION – DEFINITIONS**

30. Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 sets out the framework for the consideration of applications for sex shop licences.
31. The legislation requires that no person shall, in any area in which the sex establishment licensing provisions have been adopted, use any premises, vehicle, vessel or stall as a sex establishment except under and in accordance with the terms of a licence granted by the appropriate authority.
32. A "sex establishment" is either a sex shop or a sex cinema. This report concerns an application for a licence to use premises as a sex shop.
33. A "sex shop" is defined by the legislation as follows: "any premises, vehicle, vessel or stall used for a business which consists to a significant degree of selling, hiring, exchanging, lending, displaying or demonstrating sex articles or other things intended for use in connection with, or for the purpose of stimulating or encouraging sexual activity or acts of force or restraint which are associated with sexual activity".
34. A "sex article" is defined as: "anything made for use in connection with, or for the purpose of stimulating or encouraging—
  - a) sexual activity; or
  - b) acts of force or restraint which are associated with sexual activity; and
  - c) 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
  - d) to any recording vision or sound, which is concerned primarily with the

portrayal of, or primarily deals with or relates to, or is intended to stimulate or encourage, sexual activity or acts of force or restraint which are associated with sexual activity; or is concerned primarily with the portrayal of, or primarily deals with or relates to, genital organs, or urinary or excretory functions.”

#### **THE LEGISLATION – NOTICES AND OBJECTORS**

35. Applicants are required to display a public notice at the premises for 21 days and, in addition, publish in a local newspaper a notice inviting written objections.
36. The names and addresses of objectors must be kept confidential unless the objectors indicate otherwise.
37. The Act does not provide objectors with a right to be heard in person by the Sub-Committee. Those persons from whom valid objections have been received have been advised of the date and time of the meeting and have also been advised that they may only address the meeting at the invitation of the Sub-Committee.
- 38.. If granted, sex shop licences are in force for one year or for such shorter periods specified in the licence as the Sub-Committee may think fit.
39. Under the Council’s current scheme of delegation, the renewal of any such licence would be a matter for the Sub-Committee.

#### **THE LEGISLATION – APPLICATION PROCEDURE**

40. Paragraph 10 of Schedule 3 to the Act requires an application to be made in writing to the appropriate authority and to state the full name of the applicant, his permanent address and his age. In the case of an application made by a body corporate or an unincorporated body, the full name of the body, the address of its registered or principal office and the full names and private address of the directors or other persons responsible for its management are required to be provided.
41. In addition, the full address of the premises must be given.
42. The applicant is required to send a copy of the application to the Chief Officer of Police within seven days of the date of the application and any objections to the application must be made in writing to the City Council not later than 28 days after the date of the application.
43. The City Council is required, before considering the application, to give notice in writing of the general terms of any objection to the applicant. The Licensing Officer has forwarded transcripts of each objection (without identifying the objector, unless consent has been given) to the applicants.
44. The Act requires that, in considering any application for the grant of a licence, the Sub-Committee shall have regard to any observations submitted to them by the Chief of Police, and any objections of which notice has been sent to them within the 28-day period referred to above.
45. The City Council is required to give an applicant an opportunity of appearing before and being heard by the Sub-Committee before the application is determined.

46. A note of the procedure that the Sub-Committee has adopted for consideration of applications of this kind is attached as Appendix 1.

### **THE LEGISLATION – OBJECTIONS**

47. The legislation requires the Sub-Committee, in considering an application, to have regard to any observations made by the Chief of Police and to any objections of which proper notice has been given.
48. The Sub-Committee has the discretion, subject to the restrictions mentioned below, to invite objectors, who have given written notice of their objections, to address the Sub-Committee.
49. At the hearing itself the Sub-Committee has a discretion to allow objections to be heard subject to:
50. a) only those objectors whose written objections have been received before the end of the 28 day period may be heard (subject to (e) below);  
b) those objections confined to putting forward only points which are relevant to consideration of the grounds of refusal and which were contained in written objections referred to in (a) above;  
c) if the objectors are heard this should precede the hearing afforded to the applicant and the applicant should be given the opportunity of hearing and noting what the objectors say.  
d) The objectors and the applicant may not ask questions of each other.  
e) The Sub-Committee may, at their discretion, consider objections or representations made out of time. Such discretion can only be exercised if the applicant has been afforded reasonable time to consider the content prior to the hearing.
51. Members are encouraged to approach this application in three steps:  
a) Identify an area of reasonably consistent character within which the premises falls, and consider this application on its own merits.  
b) Consider whether the grant of a licence to the applicant for this use of the premises would be inappropriate given the character of that area.  
c) Consider the location of other licensed sex shops given the area's nature and environs and the resultant effect.

### **THE LEGISLATION – LICENCE CONDITIONS**

52. The City Council has a power under the Act to make regulations prescribing standard conditions on or subject to which sex shop licences are, in general, to be granted. The City Council has made such regulations.
53. These may include the hours of opening and closing of sex establishments, displays or advertisements on or in such establishments, the visibility of the interior of sex establishments to passers-by and any change of a sex cinema to a sex shop or vice versa. All such conditions are presumed to apply to every licence granted unless they have been expressly excluded or varied.
54. In addition, the Indecent Displays (Control) Act 1981 prohibits the public display of any indecent matter unless access is only on payment or the display is in a shop that can only be accessed by passing beyond a warning notice. No person under the age of 18 may be permitted to enter.

55. The warning notice must contain the following words: “WARNING - persons passing beyond this notice will find material on display which they may consider to be indecent. No admittance to persons under 18 years of age”.
56. The applicants for this licence have indicated that they wish to continue trade on Mondays to Saturdays between 9:00 a.m. and 8:00 p.m. on each of those days.

#### **THE LEGISLATION – CRITERIA**

57. Written reasons must be given to the applicant within seven days of the applicant requesting the information from the City Council.
58. Paragraph 12 of Schedule 3 to the Act sets out both mandatory and discretionary grounds for the refusal of an application for a licence.
59. A licence shall not be granted:
- a) to a person under the age of 18; or
  - b) to a person who has had such a licence revoked, within 12 months of that revocation; 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 6 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 the 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 in respect of which the application is made, unless the refusal has been reversed on appeal.
60. The Sub-Committee may refuse an application for the grant of a licence on one or more of the following grounds:
61. 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, 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 in respect of which the application is made.
62. The Act provides that nil may be an appropriate number of premises in “the relevant locality.”
63. The “relevant locality” is defined by the Act as meaning, in relation to the

premises, the locality in which it is situated.

64. Although the Council has, in the past, determined appropriate numbers of sex shops for specific localities, it is considered advisable to merely deal with this application on its merits and not to embark on an additional exercise of determining a precise “relevant locality” and an appropriate number of establishments in it. Such an exercise is only recommended if after having regard to the area generally (and in accordance with paragraph 51 of this Report) it is felt that the number and / or proximity of premises may be inappropriate.
65. In assessing the application, Members should consider any objections in the light of the statutory grounds of refusal. In doing so Members may call on their own moral sense in reaching a view as to what is appropriate in any particular location.
66. Members, in determining the application, should consider each of these issues and determine whether grant or refusal is appropriate and, if so, why.
67. However, it would not be lawful to refuse the application merely because Members consider sex shops are immoral or should not be permitted. Further, there are discretionary grounds of refusal. Members have a residual discretion to grant an application despite it falling within one of these grounds, but Members should only do so in these circumstances for good reasons, which would need to be specified.

#### **THE LEGISLATION – APPEALS**

68. An applicant for the grant of a sex shop licence, whose application has been refused, may appeal within twenty-one days of the giving of written notice of the grounds of the refusal, to the Magistrates' Court.
69. However, there is no right of appeal if the refusal is on one of the mandatory grounds:
  - a) applicant under 18
  - b) applicant disqualified
  - c) applicant not resident in the United Kingdom
  - d) body not incorporated in the United Kingdom
  - e) licence refused for the premises within 12 monthsunless the applicant seeks to show that the ground did not apply to him.
70. In addition there is no right of appeal against a decision by the Sub-Committee 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 appropriate for that locality or that the grant of a licence would be inappropriate having regard to the character of the relevant locality, or to the use to which any premises in the vicinity are put, or to the layout, character or condition of the premises in respect of which the application is made.
71. Appeal against the decision of a Magistrates' Court may be made to the Crown Court.



72. Similarly, if a licence is granted, a right of appeal exists against any term, condition or restriction on or subject to which the licence is held.

## **FINANCIAL/RESOURCE IMPLICATIONS**

### **Capital**

- 73 There are no financial implications.

### **Revenue**

- 74 Not applicable.

### **Property**

- 75 Not applicable.

### **Other**

- 76 The work involved for the licensing team in bringing this renewal to the committee is contained within existing budgets.

## **LEGAL IMPLICATIONS**

### **Statutory power to undertake proposals in the report:**

- 77 Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 sets out the City Councils power to renew a sex shop licence.
- 78 Paragraph 18 of Section 2, Schedule 3 of Local Government (Miscellaneous Provisions) Act 1982 gives the City Council the power to either; (a) make the variation specified in the application; or (b) make such variations as they think fit; or (c) refuse the application. The variations that an authority may make as they think fit include variations involving the imposition of terms, conditions or restrictions other than those specified in the application.

### **Other Legal Implications:**

#### **THE LEGISLATION - CRIME AND DISORDER ACT 1998**

- 79 Section 17 of the Crime and Disorder Act 1998 places the Council under a duty to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area.

#### **THE LEGISLATION - HUMAN RIGHTS ACT 1998**

- 80 The Act requires UK legislation to be interpreted in a manner consistent with the European Convention on Human Rights. It is unlawful for the Council to act in a way that is incompatible (or fail to act in a way that is compatible) with the rights protected by the Act. Any action undertaken by the Council that could have an effect upon another person's Human Rights must be taken having regard to the principle of proportionality - the need to balance the rights of the individual with the rights of the community as a whole. Any action taken by the Council which affects another's rights must be no more onerous than is necessary in a democratic society. The matter set out in this report must be considered in light of the above obligations.

## **POLICY FRAMEWORK IMPLICATIONS**

81 The decision to determine the application in the manner set out in this report is not contrary to the council's policy framework.

**SUPPORTING DOCUMENTATION**

**Appendices**

1.	Procedure for hearing the application
2.	Application for renewal of a sex shop licence for Hidden Assets, 439 Millbrook Road West, Southampton
3.	Letter from applicant requesting variation of current licence conditions
4.	Photographs of lingerie displays in front windows of two city centre shops
5.	Photographs of the current frontage of 439 Millbrook Road West
6.	Three letters of objection to the application for renewal
7.	Current licence conditions for 439 Millbrook Road West

**Documents In Members' Rooms**

1.	None.
2.	

**Background Documents**

Title of Background Paper(s)	Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)
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1.	Application for a sex shop licence	
2.	Responses from Officers, Police and Fire & Rescue Service	
3.	Objections (consent to identification)	
4.	Transcripts of objections (no consent to identification)	

**Background documents available for inspection at:** Licensing Office, Southbrook Rise

**FORWARD PLAN No:**

**KEY DECISION?**

<b>WARDS/COMMUNITIES AFFECTED:</b>	
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**Special Procedure for the Licensing (General) Sub-Committee – Applications for Sex Establishment licences**

One of the Council's Corporate Legal Advisors will be in attendance throughout the proceedings and he/she is there to advise Members. Sub-Committee Members may seek clarification on points of procedure at any time.

Please note that the Sub-Committee will normally adjourn for lunch at 1:00 p.m. and that comfort breaks will be taken at the discretion of the Chair at appropriate points during the meeting.

**1. INTRODUCTION**

- ◆ Everyone to introduce themselves
- ◆ The Licensing Officer will introduce the report, including background information and any written objections received.
- ◆ Members' questions to the Licensing Officer

**2. OBJECTORS**

If Objectors (including Police) have attended indicating a wish to address the Sub-Committee the Sub-Committee will consider each request in light of its discretion to permit oral representations.

As a guide, such representations will only be permitted if appropriate in order to briefly summarise and expand upon the main points of objection as set out in written submissions. Mere recitation of previous written submissions will not be permitted, nor will the introduction of entirely new grounds of objection.

Questions of Objectors will not be permitted by any party (including Members).

**3. APPLICATION**

The applicant or their representative will outline the details of the application and call any witnesses in support.

Questions may be asked of the applicant or of any witnesses by:

- Licensing Officer
- Members of the Sub-Committee

The applicant may call supporting witnesses at their discretion during the presentation of their application. Questions may be asked by the Sub-Committee Members / Licensing Officer of such witnesses at any appropriate point in their presentation

If any written objections have been received the applicant or their representative will be invited to comment on them

**4. SUMMING UP**

The applicant or their representative will have a final opportunity to sum up their application.

**5. CONSIDERATION OF DECISION - CONFIDENTIAL SESSION**

Members of the Sub-Committee will retire to consider the decision. In doing so the Solicitor to the Sub-Committee and the Sub-Committee Administrator will retire with them, but will take no part in the discussion of the merits of the case or what the decision should be

Should the Solicitor to the Sub-Committee be required to clarify any points of law, these will be repeated in the public session.

**6. ANNOUNCEMENT OF DECISION**

Sub-Committee Members will return and the Chair of the Sub-Committee will deliver the decision in public session. The Licensing Officer will confirm this decision in writing to the Applicant within 7 days of the Sub-Committee decision, together with details of any relevant right of appeal.

*Note:* This procedure note is issued as a guide only – the order and conduct of business may be varied by the person presiding at any time in order to facilitate the determination of the matter, having regard to statutory restrictions and the rules of natural justice.

LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT  
1982, SECTION 2



APPLICATION FOR THE GRANT\*/RENEWAL\*/TRANSFER\* OF A  
LICENCE TO USE ANY PREMISES, VEHICLE, VESSEL OR STALL  
AS A SEX ESTABLISHMENT

1. Is the application being made:
  - (a)  by an individual; or
  - (b)  on behalf of a partnership; or
  - (c)  a body corporate?

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2. Give the full names of the applicant (i.e. the individual, partnership, body corporate or unincorporated body making application). If the applicant is an individual any former names must also be given.

Matthew B. C. Smith

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3. Give the applicant's permanent home address (if an individual) or registered or principal office (if a partnership, body corporate, or unincorporated body) and a telephone number at which the applicant may be contacted during normal office hours.

4 Tetney close, Maybush, Soton SO16 9NJ

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4. Is the application in respect of a sex shop or a sex cinema?

Sex shop

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5. Is the application in respect of
  - (a)  premises; or
  - (b)  a vehicle; or
  - (c)  a vessel; or
  - (d)  a stall?

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6. Where the Licence is sought in respect of a vehicle, vessel or stall state where it is to be used as a sex establishment.

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7. Where the Licence is sought in respect of premises give the full address of the premises, including the postcode.

439 Millbrook Rd West, Soton  
SO15 0HX

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8. Are the whole of the premises described in response to Question 7 above to be used as a sex establishment?

yes.

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9. If the answer to Question 8 above is "No" please state
- (a) which parts of the premises are to be used for the purposes of a sex establishment;
  - (b) the uses to which the remainder of the premises are to be put;
  - (c) the names, addresses and dates of birth of those who are responsible for the management of the remainder of the premises.
- 
10. Are the premises, vehicle, vessel or stall in use as a sex establishment at the date of this application? *yes*
- 
11. Were the premises, vehicle, vessel or stall in use as a sex establishment on 22nd December 1981? *NO*
- 
12. Under what names are or will the premises be known?  
*Hidden Assets*
- 
13. If the applicant is an individual give the following information:
- (a) Date of birth; *07/07/71*
  - (b) Place of birth; *ROMSEY*
  - (c) Nationality. *British*
-

14. If the applicant is a partnership, body corporate or an unincorporated body complete the table in respect of each of the Directors, the Company Secretary or other persons responsible for the management of the body. In the case of a partnership details of all the partners must be given.

Forename	Surname	Former name (if any)	Home Address	Capacity	Date of Birth	Place of Birth	Nationality

15. Complete the table below in respect of each of the individuals whose names are given in response to questions 2 and 14 above.

Names	Date of Birth	If place of birth is not within UK give date when UK residence commenced.	Address or permanent residence throughout six months immediately preceding the date of this application.
M.B.C. SMITH	07/07/71	—————	4 TETNEY CLOSE SUTTON SO169NT



16. This question need only be answered where the applicant is a Company.
- (a) Is the applicant a wholly or partly owned subsidiary of another Company?
  - (b) What type of Company is the applicant (e.g. public or private limited by share or guarantee etc.?)
  - (c) In which Country is the Company incorporated?
  - (d) What is the date of incorporation of the Company?
  - (e) Supply a certified copy of the applicant Company's Memorandum and Articles.
  - (f) If the applicant is a subsidiary of another Company give the following details and information:-
    - (i) A list of all other companies controlled by the holding company together with full details of any ultimate holding company.
    - (ii) A certified copy of the Memorandum and Articles of the parent company
    - (iii) The names and addresses of the Directors and Company Secretary of the parent company (use a separate sheet if necessary).

17. If applicant is a company give a full list of names, addresses and holdings of shareholders holding 10% or more of the issued share capital and the number of remaining shareholders.

Name	Address	Date of Birth	Holdings

18. Has the applicant a financial interest in the business which is the subject of this application? If 'yes' to what extent? **NO**
- 
19. Is the whole of the business owned by the applicant? **NO**
- 
20. If the whole of the business is not owned by the applicant state the names and addresses of those who will share in the profits of the business. In each case state the percentage share to be taken by each individual.
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21. Is the applicant concerned in any other way financially or otherwise with any other business? **NO**
- 
22. If the answer to Question 21 is 'yes' give full details of the other business and the nature and extent of the connection.
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23. Is the business required to purchase merchandise from a particular company, person or body? If 'yes' supply a copy of any agreement and state what is to be purchased and from whom. **NO**
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24. Supply scale plans of the premises clearly showing the interior layout and the use of each part (see note C). **(Provided in previous applications/no change)**
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25. What means are to be taken to prevent the interior of the premises being visible to persons outside the premises? **N/A (already in place).**
- 
26. Give details of the times during which it is proposed to open the premises:-
- (a) Days of the week **mon - sat**
- (b) Hours of the day **9.00AM - 8.00PM**
- 

② Neil Phillips, Kammez, Rawthams Lane SO10W SO16 8AP

27. In respect of each individual who is to be responsible for the management of the premises in the absence of the licence holder please supply the following details:-

Forename	Surname	Former name (if any)	Permanent Home Address	Date of Birth	Place of Birth	Date upon which became resident in the UK (if place of birth outside UK)	Nationality
Neil	Phillips	—	Kewnes Ranburns Lane Ranburns SO170N SO16.8AP	06/06/72	SO170N	N/A	British

28. In respect of each of the persons whose names are given in response to Question 2, 14, 16 and 27 give details of their occupations during the 5 years immediately prior to this application. These must include the names and addresses of all employers and the nature and dates of employment.

Forename	Surname	Former name (if any)	Employers Name and Address	Description of nature of work
<del>Smith</del> Matthew	Smith	_____	_____	_____
Ned	Phillips	_____	_____	_____
			in current employment for over 5 years Business owner.	

29. In respect of each of the persons or bodies whose names are given in response to Questions 2, 14, 16, 17 and 27 give details of their previous convictions and of any previous convictions of any of their spouses:-

Forenames	Surname	Former Name	Date of Conviction	Place of Conviction	Nature of Offence	Sentence

30. Have you any reason to believe that a prosecution may be pending against any of the persons or bodies whose names are given in response to Questions 2, 14, 16, 17 and 27? If 'Yes' give full details. **NO**

31. Has any person or body named in this application been associated in any way with any other application for a licence for a sex establishment? **yes**

32. Is there in force against the applicant or any of the persons or bodies named in answer to Questions 14, 19, 27 and 29 a disqualification from holding a licence for a sex establishment under the Local Government (Miscellaneous Provisions) Act 1982?

If 'Yes' give full details. **NO**

33. Is there any further information which the applicant would wish the Council to take into account when considering this application?

(This space may also be used to amplify any replies to other questions.)

In this application, I would like to request a change of Colours for the shopfront. It has become very apparent, that patrons are and have been entering the wrong shop, thinking that it is part of the same business, which at the moment is easily done because of the similar Colours of both shopfronts at the moment. The proposed new Colours are, Navy blue where there is dark brown and silver for the lettering where there is gold now. I believe these Colours to be in keeping and discreet. I also believe this to be warranted, to obtain the Separation that is required for both business.

Also I would refer to previous applications with regards the taking of the licence fee, only when "all" relevant paperwork is in your possession.

Many thanks for your time and efforts

ALBERT

APPLICANTS ARE WARNED THAT ANY PERSON WHO, IN CONNECTION WITH AN APPLICATION FOR THE GRANT, RENEWAL OR TRANSFER OF A LICENCE MAKES A FALSE STATEMENT WHICH HE KNOWS TO BE FALSE IN ANY MATERIAL RESPECT, OR WHICH HE DOES NOT BELIEVE TO BE TRUE, IS GUILTY OF AN OFFENCE AND LIABLE ON SUMMARY CONVICTION TO A FINE NOT EXCEEDING £20,000.00

DECLARATION

I Matthew Smith

declare that the information given above is true and complete in every respect

Dated this 19th day of March 2008

Signature 

Name of Signatory (BLOCK CAPITALS) M.B.C. SMITH

Designation of Signatory (BLOCK CAPITALS) MANAGER

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Applicants are strongly recommended to seek professional legal advice before making an application for a sex establishment licence. Please note that members of the Licensing Team are not able to give such advice to applicants in any circumstances.

**APPLICANTS ARE REFERRED TO THE ATTACHED NOTES**



Richard

In addition to the renewal application for 103 St Mary St, I would like to request a variation on the licence conditions for Hidden Assets, 439 Millbrook Rd West, Sutton. This request is to allow a fully enclosed window display in the shopfront. The display would only use similar colours to those already used ie: (creams, soft browns and golds). The whole window area would be fully enclosed and of solid construction, which would completely shield any view of the shop interior as required in the conditions. It would be tastefully lit and we would only wish to display tasteful lingerie. We have hundreds of pieces of lingerie on the premises, at least 50% of which could quite happily be sold in any high st lingerie stall/store/department. It is only this "HIGH ST" style clothing that would be used for this display, not any of the more risqué items which may raise eyebrows, or cause any sort of visual embarrassment.

There are countless department stores and speciality stores which are free to display many lingerie items, in some very large window displays up and down the country, in the most public shopping areas available. These shops are passed hundreds of thousands of times every year by people from all walks of life, without any issues of taste or vulgarity being raised. The most prominent of these stores would be Ann Summers, which sells a great deal of the same items that we sell, yet they have open window displays with quite risqué lingerie and I have also seen on one occasion, a huge sign promoting an adult toy called the "Rabbit", which almost filled the whole window of one side of the store, also when looking in through the front doors, adult toys ~~were~~ were clearly visible towards the rear of the shop. In view of these facts, we feel that it is very unfair that we are under such heavy restrictions with

regard to our advertising on our shopfront, just because we stock a larger amount of certain items and stock R18 material. We feel that this window display, would more than meet the issue of discretion for the shopfront. We have always taken the regulations very seriously and believe that we should be entrusted with a certain amount of trust, since we have proven from when we were first licensed, that we are trustworthy and have never taken it upon ourselves to "push or look" in any way, shape or form without notifying the Council of our intention.

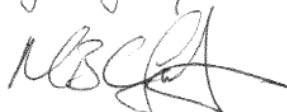
So in short, we are asking for a totally enclosed window display, to show nothing more than tasteful lingerie, which would be periodically changed to show lingerie for Christmas time/Valentines/Summer/Bridal etc!, in a tastefully colored and lit environment. The use of this display, could never "hoodwink" any person that we are anything but a licensed sex shop, as we clearly display this fact on the shopfront as well as the required signage with regard to the content inside and the possible offence that it may cause anyone who cares to enter.

On the day of the hearing, I will provide photos of various stores who display lingerie in the socon area.

Please consider this matter seriously, as it is (we believe), not asking for anything indiscreet or distasteful in any way and there are many licensed sex shops in the UK who have displays of this sort already.

Many thanks for your time and efforts

Yours faithfully



NBC SMITH:  
APPLICANT

## Appendix 4

*[Photographs of lingerie displays in the front windows of two city centre shops]*

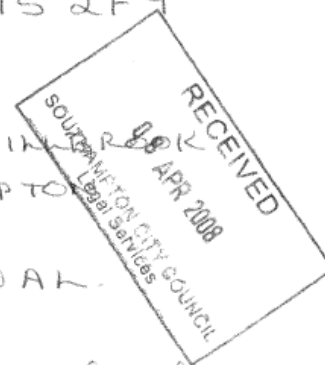
## Appendix 5

*[Photographs of the current frontage of 439 Millbrook Road West]*

Licensing Team  
Southbrook Rise  
Southampton  
SO15 1YG

42 Harborough Rd  
Polygon  
Southampton  
SO15 2FY

HIDDEN ASSETS 439 MINNERS  
ROAD WEST SOUTHAMPTON



LICENCE RENEWAL

My objection to the renewal of this licence is based on my perception of the changes requested by the applicant and the location of the shop itself.

I have never been satisfied that short stopping parades, not even located in district centres, are ideal for sex shop trading.

The vice, prostitution and drug dealing areas used to be where one would expect to find sex shops, the Council have changed all that in recent years.

I further object to the colour of the shop front, navy blue with silver is too garish, red and cream or pastel colours would be

2/ more pleasing to the eye.

Regarding the display of lingerie, this in itself is not really objectionable but the back lighting, illumination should not be allowed for the following reasons:

It would be contrary to the prevention of crime and compromise public safety.

Young people, teenagers, children could use the lighted area as a gathering point after dusk has fallen, not because of the nature of the shop trade but to view the lingerie and use this particular shop as a focal point due to the novelty value of the different facade.

Therefore the lingerie should not be illuminated after the shop has closed, or after "lighting up time".

I suggest that the display should be akin to that seen in the Anne Summers

## HIDDEN ASSETS

3/ Shop in Above Bar and that a condition be imposed to dictate the type of items in the window, panties, bras, stockings, boots etc

None of my comments and observations are based on a moralistic viewpoint but merely on a common sense attitude regarding trading choices in the parade and avoidance of the gathering of groups likely to intimidate residents who use the shops and walk along the parade at dusk and after dark.

You may give my name and address to the applicant

S Barter

LORRAINE BARTER

3-4-08

The Licensing Team  
Southampton City Council  
Southbrook Rise

9TH APRIL 2008

Dear Sir,

"Hidden Assets"

Licence renewal: 439 Millbrook Road West, SO70N

Having inspected the Application for the above premises,  
I wish to object to the renewal of the Licence.

It is noted that the applicant wishes to change the design  
of the frontage of the shop, including the paintwork.

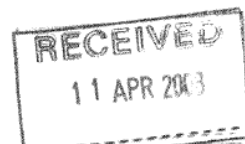
In addition, the request for a window-display is a radical  
change of Condition regulating the appearance of the premises.

An illuminated display of lingerie in the window, so  
close to the narrow footway, is doubtless to attract customers  
and to identify this particular retail-outlet. This could  
be considered as invidious advertising via the display.

On reading the request for this change of Condition, it  
is difficult to assess the situation without photographs  
or scale drawings. Explanation at a Licensing meeting  
is not enough for an objector or Panel member to examine  
the situation properly.

Yours faithfully,

(Please withhold name and address)





2nd April 2008

2 Applications for Sex Shop Licences  
at 437 and 439 Millbrook Rd West

I wish to draw these 2 separate Applications to your notice. It is thought that this type of shop is misplaced within a Shopping Parade frequented by families and a walking route to school. These shops were licensed some time ago. It would seem that the Conditions laid down by the Council have been followed year by year.

(19/03/08)

Two requests submitted by the Applicant of no. 439 are:-

1. Requesting change of colour of shop-front from brown with gold to navy blue with silver. This would differ from the other three licensed shops in the city.
2. Requesting permission to change the obligatory obscure glazing from cream coloured blinds to an illuminated display of lingerie. The submission gives details in writing (no plans or photos)

I have inspected both Applications as invited in the Public Notices (ECHO).

The first Application considered by the City Council (131 ABOVE BAR) formed the basis of set Conditions. The Licensing Panel was anxious to keep control of the situation, as opposed to the risk of unlicensed premises. I felt that Trading Standards and Police should be able to exercise sufficient control but these 2 services could not specify shop-front appearance or public interaction and allied matters.

Having read the proposal for the window display, I question the reasoning that lingerie is displayed in main-sheet store windows. Yes, it is attempting to attract customers but one generally seeks the article amongst ordinary goods. A sex shop claims to stock "Adult goods". As I see it, the customer in search of lingerie would, by chance, be introduced to "extreme products" and R18 videos.

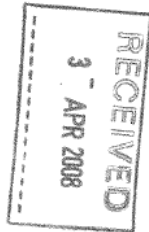
PTO

-2-

This letter is to alert you to the proposal to change the Conditions regulating the "Hidden Assets" shop, thus ~~be~~ breaking the uniformity of the City Council's strategy.

Yours sincerely,

P.S. "Private Shop", 131 Above Bar, is on the perimeter of the proposed Cultural Quarter with residential. Can this be right?



**Regulations for Sex Establishments**

Southampton City Council, in exercise of the powers conferred upon them by paragraph 13 of Schedule 3 to the Local Government (Miscellaneous Provisions) Act, 1982 and of all other powers enabling them in that behalf make the following Regulations:

- 1 (a) In these Regulations the following expressions that is to say "Sex Establishment", "Sex Shop", "Sex Cinema", "Sex Article", and "Vessel" shall have the meanings respectively assigned to them by Schedule 3 of the Act.
- (b) In these Regulations the following expressions shall have the meanings hereby respectively assigned to them namely: -
  - "the Act" - means the Local Government (Miscellaneous Provisions) Act, 1982.
  - "the Council" - means Southampton City Council.
  - "the licensed premises" - means any premises, vehicle, vessel or stall licensed under the Act.
  - "licence holder" - means a person who is the holder of a sex establishment licence.
  - "permitted hours" - means the hours during which the licensed premises are permitted under Regulations 2 and 3 hereof to be open to the public.
  - "sex establishment licence" - means a licence granted pursuant to Schedule 3 of the Act.

**Conditions applicable to licences for Sex Establishments**

2. The licensed premises shall be closed throughout Good Friday, Easter Monday, Christmas Day, Boxing and every Sunday and may be open only during the permitted hours prescribed in Regulation 3 hereof.
3. The permitted hours of opening, unless varied by special condition, shall be as follows:-
 

Mondays	9:00 a.m. to 8:00 p.m.
Tuesdays	9:00 a.m. to 8:00 p.m.
Wednesdays	9:00 a.m. to 8:00 p.m.
Thursdays	9:00 a.m. to 8:00 p.m.
Fridays	9:00 a.m. to 8:00 p.m.
Saturdays	9:00 a.m. to 8:00 p.m.
4. The licensed premises shall not be used for any purpose other than the business of a sex establishment.

5. The licensed premises shall not be open for the purposes for which the sex establishment licence is granted on any occasion when the Council may signify in writing to the licence holder, occupier or other person having at the time the care and management of the premises, that the same should not be open.
6. No person who is or appears to be under the age of 18 or is known by the licence holder or any servant or agent of his present on the licensed premises to be under that age shall be admitted to or shall be permitted to remain on the licensed premises.
7. The licence holder: -
  - (a) shall display on the licensed premises in a conspicuous position his sex establishment licence;
  - (b) shall exhibit on those premises such notices in such form and in such position as may be prescribed;
  - (c) shall comply with any prescribed restriction with respect to the exhibiting of other written matter or of signs of any description on the licensed premises.
8. No facilities shall be provided in a sex shop for: -
  - (a) seeing any television broadcast or the replaying of any video tape or film or other like matter, except for a looped video recording, the content of which and location of the equipment shall be approved by the Licensing Officer, nor;
  - (b) hearing any sound broadcast tape or other like matter other than facilities for the reception of radio programmes broadcast by the British Broadcasting Corporation or the Independent Broadcasting Authority.
  - (c) A television, DVD player and video tape player may be installed in the licensed premises in a position approved by the Licensing Officer out of sight of customers for the sole purpose of quality control of recordings made available in the licensed premises.
9. No music, dancing or other entertainment whether of a like kind or not shall be provided or permitted, other than as permitted by Regulation 8 of these Regulations, and no refreshment of any kind shall be served on nor shall any facilities for the taking of such refreshment be provided upon the licensed premises.
10. The licence holder shall exhibit on the exterior of the licensed premises in a position visible to persons outside the premises a notice, in addition to his name, in not more than one place, in characters not exceeding three inches in height and consisting only of the words "licensed sex shop" or "licensed sex cinema" (as the case may be) and such indication, if any, as he thinks fit to give of the times at which the licensed premises are open. No other notices, unless pursuant to these Regulations, may be exhibited.
11. The licence holder shall exhibit in a conspicuous manner and in some conspicuous place inside the licensed premises and at the point of access to the licensed premises a notice stating that persons under the age of eighteen years are not admitted thereto.

12. The licence holder shall not display in any position visible to persons outside the premises any matter which does not comply with the Indecent Displays (Control) Act 1981.
13. The licence holder shall not permit any person other than persons employed by him, his servant or agent, statutory undertakers or, if applicable, his landlord to enter upon any part of the premises which are not available to the public in connection with the display, sale, hire, exchange, loan or demonstration of sex articles.
14. The licence holder shall not display any advertisement which is visible to persons outside the premises except as permitted by these Regulations or under the Act and no advertisements shall be displayed wherever visible which depict any article or thing intended for use in connection with or for the purpose of stimulating or encouraging acts of force or restraint which are or may be associated with sexual activity.
15. The licence holder shall ensure that the interior of the sex establishment shall not be visible to persons outside the premises.
16.
  - (a) The exterior of the licensed premises shall be of materials approved by the Council
  - (b) The exterior of the premises shall consist of material and colours of a discreet nature appropriate to the character of the locality and shall be in keeping with the appearance of other premises in the vicinity. There shall be no external advertisements nor shall the frontage contain displays of advertisements of any nature or permit the interior of the licensed premises to be viewed from outside.
  - (c) Detailed proposals for the external appearance of the licensed premises shall be agreed with the Council's Licensing Officer within 14 days of the notification of the determination of the application for a licence and shall be subject to ratification by the Council's Licensing and Public Safety Panel prior to the commencement of business at the licensed premises.
17. No illuminated signs or exterior lights shall be affixed to the licensed premises unless approved by the Licensing Officer and subject to planning permission.
18. The holder of a sex cinema licence shall observe such regulations and conditions as may be approved by the Council from time for cinemas having a licence under the Cinemas Act 1985 as shall be applied by the Council by special condition to the sex establishment licence, giving such reference to the said Cinema licence conditions as may be deemed appropriate and the regulations and conditions shall have the same force and effect as if the same were severally contained in these regulations.
19. The licence holder shall not knowingly allow the licensed premises to be the habitual resort of a reputed prostitute or the habitual resort or meeting place of reputed prostitutes, whether the object of their so resorting or meeting is or is not prostitution.
20. If the Council notifies the licence holder, occupier or other person having at the time the care and management of the premises in writing by delivering notice at the licensed premises that any particular sex article, advertisement or matter shall not be displayed the same shall be withdrawn from view forthwith.

21. No film or video material shall be kept at the sex establishment except such film or video material that bears a reproduction of the Certificate of the British Board of Film Certification.
22. The licence holder shall comply with all fire and safety requirements of the Council and maintain and keep available for use all specified fire fighting equipment and extinguishers.
23. The external doors of the licensed premises shall be fitted with self-closing mechanisms and such mechanisms shall be maintained in good order. No external door shall be fixed in the open position at any time during the permitted hours. A "lobby" area will be installed, the style and design to be approved by the Licensing Officer.
24. Applicants for the grant, 'renewal or transfer of a sex establishment licence or waiver thereof shall make their application on the form approved from time to time by the Council returnable to the office of the Solicitor to the Council together with the approved fee (where a sex establishment licence is required). A copy of the application in all cases shall be sent to the Chief Constable of Hampshire Constabulary, West Hill, Winchester not later than 7 days after the date of the application to the Council.
25. Applicants for the grant, renewal or transfer of a sex establishment licence shall advertise notice of their application in the form approved by the Council and in accordance with the prescribed dimensions by publishing the advertisement in a local newspaper circulating in Southampton not later than 7 days after the date of the application. A copy of the advertisement as published and date of publication shall be lodged with the Council forthwith.
26. Applicants for the grant, renewal or transfer of a sex establishment licence shall display a notice in the form approved by the Council and furnish two completed copies to the Council forthwith so that a copy may be sent to the appropriate public library. The Notice shall be displayed at the premises to be licensed for 21 days beginning with the date of the application to the Council and in a place where the notice can be inspected and conveniently read by the public from outside the premises.
27. A police officer or an authorised officer of the Council may at any reasonable time enter and inspect any premises in respect of which a sex establishment licence is for the time being in force.
28. The licence holder or some responsible person, being 21 years of age or over, nominated by him in writing shall be in attendance at the premises at all such times as the premises are open to the public and any nomination shall be produced to any police officer or authorised officer of the Council and give the name and address of the person nominated.

29. A closed circuit television system shall be installed in the licensed premises to the satisfaction of the Council's Licensing Officer. The system shall efficiently record the operation of the licensed premises and shall automatically indicate the date and time of the events recorded to a standard that would be acceptable as evidence in the Courts. All closed circuit television recordings shall be retained for a minimum of 28 days and shall be made available at the licensed premises for inspection by a police officer or an authorised officer of the Council.
30. The licensee shall notify the Council and Hampshire Constabulary of the name, address and date of birth of any manager or employee involved in the operation of the business at the licensed premises within seven days of them commencing employment. The City Council shall reserve the right to object to any person being involved in the operation of the business at the licensed premises where it considers them unsuitable, in particular by reason of relevant unspent criminal convictions.
31. The licensee shall produce and maintain a list of all stock carried at the licensed premises and shall make it available to a police officer or authorised officer of the Council on demand.
32. The rear door of the premises will be closed to customers save as required as an emergency exit in pursuance to Fire and Health and Safety Regulations.

**SUPPORTING DOCUMENTATION**

**Appendices**

1.	Procedure for hearing the application
2.	Application for renewal of a sex shop licence for Hidden Assets, 439 Millbrook Road West, Southampton
3.	Letter from applicant requesting variation of current licence conditions
4.	Photographs of lingerie displays in front windows of two city centre shops
5.	Photographs of the current frontage of 439 Millbrook Road West
6.	Three letters of objection to the application for renewal
7.	Current licence conditions for 439 Millbrook Road West

**Documents In Members' Rooms**

1.	None.
2.	

**Background Documents**

Title of Background Paper(s)

Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)

1.	Application for a sex shop licence	
2.	Responses from Officers, Police and Fire & Rescue Service	
3.	Objections (consent to identification)	
4.	Transcripts of objections (no consent to identification)	

**Background documents available for inspection at:** Licensing Office, Southbrook Rise

**FORWARD PLAN No:**

**KEY DECISION?**

**WARDS/COMMUNITIES AFFECTED:**