

Licensing (General) Sub-Committee

Wednesday, 2nd June 2010
at 10.30 am

PLEASE NOTE TIME OF MEETING

Conference Room 3 - Civic Centre

This meeting is open to the public

Members

Councillor Parnell (Chair)
Councillor Drake
Councillor Fitzgerald
Councillor McEwing
Councillor Norris
Councillor Thomas
Councillor Willacy

Contacts

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PUBLIC INFORMATION

Terms of Reference

The Sub-Committee deals with licenses, permits and forms of consent (other than those for which the Council is responsible under the Licensing Act 2003), including

- Hackney carriage and private hire drivers, vehicles and operators
- Public music and dancing
- Amusements with prizes
- Street trading
- Sex establishments

Relevant Representations

Those who have made relevant representations may address the meeting about the matter in which they have an interest with the consent of the Chair.

•Southampton City Council's Six Priorities

- Providing good value, high quality services
- Getting the City working
- Investing in education and training
- Keeping people safe
- Keeping the City clean and green
- Looking after people

Smoking policy –

The Council operates a no-smoking policy in all civic buildings.

Mobile Telephones – please turn off your mobile telephone whilst in the meeting.

Fire Procedure – in the event of a fire or other emergency a continuous alarm will sound and you will be advised by Council officers what action to take.

Access – access is available for disabled people. Please contact the Democratic Support Officer who will help to make any necessary arrangements.

Dates of Meetings: Municipal Year 2010/11

2010	2011
2 JUNE	12 JANUARY
30 JUNE	9 FEBRUARY
28 JULY	9 MARCH
1SEPTEMBER	6 APRIL
29 SEPTEMBER	
27 OCTOBER	
25 NOVEMBER	
15 DECEMBER	

CONDUCT OF MEETING

Terms of Reference

The terms of reference of the Audit Committee are contained in Article 8 and Part 3 (Schedule 2) of the Council's Constitution.

Business to be discussed

Only those items listed on the attached agenda may be considered at this meeting.

Rules of Procedure

The meeting is governed by the Council Procedure Rules as set out in Part 4 of the Constitution.

Quorum

The minimum number of appointed Members required to be in attendance to hold the meeting is 3.

Disclosure of Interests

Members are required to disclose, in accordance with the Members' Code of Conduct, **both** the existence **and** nature of any "personal" or "prejudicial" interests they may have in relation to matters for consideration on this Agenda.

Personal Interests

A Member must regard himself or herself as having a personal interest in any matter

- (i) if the matter relates to an interest in the Member's register of interests; or
- (ii) if a decision upon a matter might reasonably be regarded as affecting to a greater extent than other Council Tax payers, ratepayers and inhabitants of the District, the wellbeing or financial position of himself or herself, a relative or a friend or:-
 - (a) any employment or business carried on by such person;
 - (b) any person who employs or has appointed such a person, any firm in which such a person is a partner, or any company of which such a person is a director;
 - (c) any corporate body in which such a person has a beneficial interest in a class of securities exceeding the nominal value of £5,000; or
 - (d) any body listed in Article 14(a) to (e) in which such a person holds a position of general control or management.

A Member must disclose a personal interest.

Continued/.....

Prejudicial Interests

Having identified a personal interest, a Member must consider whether a member of the public with knowledge of the relevant facts would reasonably think that the interest was so significant and particular that it could prejudice that Member's judgement of the public interest. If that is the case, the interest must be regarded as "prejudicial" and the Member must disclose the interest and withdraw from the meeting room during discussion on the item.

It should be noted that a prejudicial interest may apply to part or the whole of an item.

Where there are a series of inter-related financial or resource matters, with a limited resource available, under consideration a prejudicial interest in one matter relating to that resource may lead to a member being excluded from considering the other matters relating to that same limited resource.

There are some limited exceptions.

Note: Members are encouraged to seek advice from the Monitoring Officer or his staff in Democratic Services if they have any problems or concerns in relation to the above.

Principles of Decision Making

All decisions of the Council will be made in accordance with the following principles:-

- proportionality (i.e. the action must be proportionate to the desired outcome);
- due consultation and the taking of professional advice from officers;
- respect for human rights;
- a presumption in favour of openness, accountability and transparency;
- setting out what options have been considered;
- setting out reasons for the decision; and
- clarity of aims and desired outcomes.

In exercising discretion, the decision maker must:

- understand the law that regulates the decision making power and gives effect to it. The decision-maker must direct itself properly in law;
- take into account all relevant matters (those matters which the law requires the authority as a matter of legal obligation to take into account);
- leave out of account irrelevant considerations;
- act for a proper purpose, exercising its powers for the public good;
- not reach a decision which no authority acting reasonably could reach, (also known as the "rationality" or "taking leave of your senses" principle);
- comply with the rule that local government finance is to be conducted on an annual basis. Save to the extent authorised by Parliament, 'live now, pay later' and forward funding are unlawful; and
- act with procedural propriety in accordance with the rules of fairness.

AGENDA

Agendas and papers are available on the Council's website at
www.southampton.gov.uk

1 ELECTION OF VICE-CHAIR

To elect a Vice-Chair to the Sub-Committee for the 2010/11 Municipal Year.

2 APOLOGIES AND CHANGES IN MEMBERSHIP (IF ANY)

To note any changes in the membership of the Sub-Committee made in accordance with Council Procedure Rule 4.3.

3 DISCLOSURE OF PERSONAL AND PREJUDICIAL INTERESTS

In accordance with the Local Government Act 2000, and the Council's Code of Conduct adopted on 16th May 2007, Members to disclose any personal or prejudicial interests in any matter included on the agenda for this meeting.

NOTE: Members are reminded that, where applicable, they must complete the appropriate form recording details of any such interests and hand it to the Cabinet Administrator prior to the commencement of this meeting.

4 STATEMENT FROM THE CHAIR

5 MINUTES OF THE PREVIOUS MEETING (INCLUDING MATTERS ARISING)

To approve and sign as a correct record the Minutes of the meeting held on 7th April 2010 and to deal with any matters arising, attached.

6 EXCLUSION OF THE PRESS AND PUBLIC

At a predetermined point during the consideration of item 7 the Sub-Committee may move into private session in order to receive legal advice when determining issues. The press and the public, unless otherwise excluded by Category 4 of paragraph 10.4 of the Council's Access to Information Procedure Rules, will be invited to return immediately following that private session at which time the matter will be determined and the decision of the Sub-Committee will be announced.

Chair to move that in accordance with the Council's Constitution, specifically the Access to Information Procedure Rules contained within the Constitution, the press and public be excluded from the meeting in respect of item 8 based on Categories 1 and 2 of paragraph 10.4 of the Access to Information Procedure Rules.

The information contained therein is potentially exempt as it relates to individual personal details and information held under the Data Protection Act 1998. Having applied the public interest test it is not appropriate to disclose this information as the individuals' legal expectation of privacy outweighs the public interest in the exempt information.

7 APPLICATION FOR RENEWAL OF A SEX SHOP LICENCE - A TASTE OF AMSTERDAM, 437 MILLBROOK ROAD WEST

Report of the Solicitor to the Council regarding an Application for the Renewal of a Sex Shop Licence in respect of A Taste of Amsterdam, 437 Millbrook Road West, Southampton, SO15 0HX, attached.

8 APPLICATION FOR A SEX SHOP LICENCE - ADULT GIFT SHOP, 90 HOWARD ROAD

Confidential report of the Solicitor to the Council regarding an Application for a Sex Shop Licence - in respect of Adult Gift Shop, 90 Howard Road, attached.

Monday, 24 May 2010

SOLICITOR TO THE COUNCIL

LICENSING (GENERAL) SUB – COMMITTEE
MINUTES OF THE MEETING HELD ON WEDNESDAY, 7TH APRIL 2010

Present: Councillors Parnell (Chair), Cunio, Norris, Osmond and Willacy.

Apologies Councillors Mrs Blatchford, Fitzgerald and Galton

27. APOLOGIES/ CHANGES IN MEMBERSHIP

The Panel noted that Councillor Osmond was in attendance as a nominated substitute for Councillor Fitzgerald in accordance with Council Procedure Rule 4.3.

28. MINUTES OF THE PREVIOUS MEETINGS (INCLUDING MATTERS ARISING)

RESOLVED that the Minutes of the meeting held on 11th March 2010 be signed as a correct record. (Copy of the minutes circulated with the agenda and appended to the signed minutes).

29. EXCLUSION OF THE PRESS AND PUBLIC

RESOLVED that the press and public, unless otherwise excluded by Category 4 of paragraph 10.4 of the Council's Access to Information Procedure Rules be excluded from the meeting in respect of Minute No 30 and be invited to return immediately following private session at which time the matter be determined and the decision of the Panel be announced.

30. APPLICATION FOR A SEX SHOP LICENCE – HIDDEN DESIRES, 103 ST. MARY STREET

The Sub-Committee considered the report of the Solicitor to the Council detailing a request for the renewal of a sex shop licence together with a request to vary conditions 10 and 16(b) on the current licence in respect of Hidden Desires 103 St Mary Street. (Copy of report circulated with agenda and appended to signed minutes).

The Mr Smith (Applicant) was present and with the consent of the Chair addressed the meeting.

The Sub-Committee considered the decision in confidential session in accordance with Category 4 of Paragraph 10.4 of the Council's Access to Information Procedure Rules.

RESOLVED

- (i) that the application for renewal of a sex shop licence in respect of Hidden Desires, 103 St Mary Street be granted subject to the continuance of all the standard conditions as set out in the report, subject to the variation of Condition 16(b) as requested allowing a change of colour of the frontage of the premises from brown to navy

blue with exact colour shades to be agreed with the Licensing Officer; and

- (ii) that the application for variation of Condition 10 regarding the placing of additional signage on the side window of the premises be refused and the applicant be advised to consult the Licensing Officer on other alternatives which would be in keeping with Condition 10.

REASON FOR THE DECISION

There was no compelling evidence presented to the Sub-Committee that would justify refusal of the application for renewal of the licence.

The Panel took the view that application for a variation of Condition 16(b) was within the terms of that standard condition while the application for a variation of Condition 10 was 'beyond' the scope of that condition.

APPENDIX 1

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.

DECISION-MAKER:	LICENSING (LICENSING GENERAL) SUB-COMMITTEE		
SUBJECT:	APPLICATION FOR RENEWAL OF A SEX SHOP LICENCE – A TASTE OF AMSTERDAM, 437 MILLBROOK ROAD WEST		
DATE OF DECISION:	2 JUNE 2010		
REPORT OF:	SOLICITOR TO THE COUNCIL		
AUTHOR:	Name:	JOHN WHITE	Tel: 023 8083 2749
	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. Martin Peter Castle in respect of A Taste of Amsterdam, 437 Millbrook Road West, Southampton, SO15 0HX.

RECOMMENDATIONS:

- (i) For the Sub-Committee to consider and determine the application for the renewal of the sex shop licence in respect of A Taste of Amsterdam, 437 Millbrook Road West, Southampton, SO15 0HX.

REASONS FOR REPORT RECOMMENDATIONS

1. Under the Council's current scheme of delegation, the determination of applications for the renewal of sex shop licences is a matter for the Sub-Committee and is not delegated to officers.

CONSULTATION

2. 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.
3. 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.
4. 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.
5. No objections have been received from residential, business and institutional addresses within the period of notice.
6. Hampshire Constabulary have confirmed that they have no objection to the application.

ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

7. None.

DETAIL

BACKGROUND INFORMATION

8. Southampton City Council first adopted the provisions of Part II of the Local Government (Miscellaneous Provisions) Act 1982 with effect from 16 March 1983.
9. In April 1984, the Council determined the relevant localities in respect of the premises then under consideration.
10. 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.
11. 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.
12. 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, in February 2003.
13. The Licensing and Public Safety Panel subsequently considered two separate applications in respect of premises at 437 Millbrook Road West and 439 Millbrook Road West in July 2003 and resolved to grant both licences subject to conditions.
14. At present there are a total of four licensed sex shops currently operating within Southampton, including A Taste of Amsterdam at 437 Millbrook Road West. The other three premises are located at 439 Millbrook Road West, 16 Hanover Buildings and 103 St. Mary Street.

THE APPLICATION AND RELEVANT LOCALITY

15. An application (attached as appendix 2) has been received for a renewal of a sex establishment licence in respect of the premises at 437 Millbrook Road West.
16. The Council has not previously considered the issue of determining an appropriate number of sex establishments within a "relevant location" which would include these premises.
17. However, two such areas (which do not include these premises) have previously been decided by the Council and the background information relating to this is set out above.

APPLICATION DETAILS

18. The application is for the renewal of the sex shop licence in respect of 437 Millbrook Road West. The applicant is Mr. Martin Peter Castle, of whom further details are given in the renewal application that is attached to this report as Appendix 2.

19. The applicant has held the licence in respect of 437 Millbrook Road West since the original grant of it in July 2003, with the licence being renewed annually upon anniversary of grant.
20. No changes to the current licence conditions are requested in this renewal application.
21. Notice of the application was placed in the Southern Daily Echo on 12 March 2010.
22. The applicant has confirmed via affidavit that notice of this application was exhibited on the front window of 437 Millbrook Road West for 21 days.
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 breaches of licence conditions or concerns about the manner in which this shop has operated have been identified within the last year.
24. The applicant has been invited to attend the Sub-Committee's meeting.

PROPOSED TRADING ACTIVITIES

25. The renewal of the licence is sought under the same terms and conditions as are currently in place in respect of the premises. No request to vary the current licence conditions has been made.
26. At present, the premises are permitted to trade on Mondays to Saturdays between 9:00 a.m. and 8:00 p.m. on each of those days and sell by retail goods including: lingerie and other clothing items, videos, DVDs, magazines and other marital aids.
27. British Board of Film Classification (BBFC) Restricted 18 (R18) classified video recordings are also sold at the premises (such video recordings may contain pornographic images). The Video Recordings Act 2010 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.
28. It is understood that should the renewal application be granted then the applicant will continue with such trading activities.
29. 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.
30. 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.
31. A copy of the current licence issued in respect of 437 Millbrook Road West is attached as Appendix 3.

THE LEGISLATION – DEFINITIONS

32. Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 sets out the framework for the consideration of applications for sex shop licences.
33. 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.

34. 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.
35. 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”.
36. 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

37. 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.
38. The names and addresses of objectors must be kept confidential unless the objectors indicate otherwise.
39. 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.
40. 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.
41. 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

42. 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.

43. In addition, the full address of the premises must be given.
44. 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.
45. 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.
46. 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.
47. 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.
48. 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

49. 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.
50. 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.
51. At the hearing itself, the Sub-Committee has a discretion to allow objections to be heard subject to:
52.
 - 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.
53. 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

54. 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.

55. 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.

56. A copy of the standard conditions made by the City Council appears at Appendix 4 to this report.

57. 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.

58. 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".

THE LEGISLATION – CRITERIA

59. Written reasons must be given to the applicant within seven days of the applicant requesting the information from the City Council.

60. Paragraph 12 of Schedule 3 to the Act sets out both mandatory and discretionary grounds for the refusal of an application for a licence.

61. 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.

62. The Sub-Committee may refuse an application for the grant of a licence on one or more of the following grounds:

- 63. 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 to:

- (i) the character of the relevant locality; or
- (ii) the use to which any premises in the vicinity are put; or
- (iii) the layout, character or condition of the premises in respect of which the application is made.

64. The Act provides that nil may be an appropriate number of premises in “the relevant locality.”
65. The “relevant locality” is defined by the Act as meaning, in relation to the premises, the locality in which it is situated.
66. 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 53 of this Report) it is felt that the number and / or proximity of premises may be inappropriate.
67. In assessing the application, Members should consider any objections in 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.
68. Members, in determining the application, should consider each of these issues and determine whether grant or refusal is appropriate and if so, why.
69. 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

70. 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.
71. 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 months
unless the applicant seeks to show that the ground did not apply to him.

72. 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.
73. Appeal against the decision of a Magistrates' Court may be made to the Crown Court.
74. 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

75. There are no financial implications.

Revenue

76. Not applicable.

Property

77. Not applicable.

Other

78. 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:

79. Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 sets out the City Council's power to renew a sex shop licence.

Other Legal Implications:

THE LEGISLATION - CRIME AND DISORDER ACT 1998

80. 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

81. 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

82. 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 a sex shop renewal the application
2.	Application for renewal of a sex shop licence for A Taste of Amsterdam, 437 Millbrook Road West, Southampton
3.	Current licence for A Taste of Amsterdam, 437 Millbrook Road West, Southampton
4.	Sex shop standard conditions

Documents In Members' Rooms

1.	None
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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.	Response from Police	

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

FORWARD PLAN No: N/A **KEY DECISION?** N/A

WARDS/COMMUNITIES AFFECTED:	ALL
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Appendix 2

LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT
1982, SECTION 2APPLICATION 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?~~
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.

MARTIN PETER CASTLE

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.

437a MILLBROOK ROAD WEST
SOUTHAMPTON HAMPSHIRE SO15 0HX

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

SEX SHOP

5. Is the application in respect of

- (a) premises; or
 (b) ~~a vehicle; or~~
 (c) ~~a vessel; or~~
 (d) ~~a stall?~~

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.

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

437 MILLBROOK ROAD WEST SOUTHAMPTON SO15 0HX

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

YES

11 MAR 2010

-
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?

A TASTE OF AMSTERDAM

-
13. If the applicant is an individual give the following information:

-
- | | | |
|-----|-----------------|---------------|
| (a) | Date of birth; | 19 March 1967 |
| (b) | Place of birth; | SOUTHAMPTON |
| (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.
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AS PER LAST YEAR'S APPLICATION AND ANSWERS TO
 QUESTIONS 2, 3 AND 13

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).

~ / A

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
		21A	

18. Has the applicant a financial interest in the business which is the subject of this application? If 'yes' to what extent? YES - PROPRIETOR
19. Is the whole of the business owned by the applicant? YES
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. N/A
21. Is the applicant concerned in any other way financially or otherwise with any other business? YES - AS PER PREVIOUS APPLICATIONS
22. If the answer to Question 21 is 'yes' give full details of the other business and the nature and extent of the connection. PROVIDED IN PREVIOUS YEARS' APPLICATIONS
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
24. Supply scale plans of the premises clearly showing the interior layout and the use of each part (see note C). PROVIDED IN PREVIOUS YEARS' APPLICATIONS.
25. What means are to be taken to prevent the interior of the premises being visible to persons outside the premises? EXPLANATION AND DIAGRAMS INCLUDED IN PREVIOUS APPLICATION
26. Give details of the times during which it is proposed to open the premises:-
- (a) Days of the week AS IT CURRENTLY IS.
- (b) Hours of the day NO CHANGES ARE SOUGHT.

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
<p>SAME AS PREVIOUS APPLICATIONS. THERE HAVE BEEN NO CHANGES.</p>							

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
			AS PER PREVIOUS APPLICATIONS. THERE HAVE BEEN NO CHANGES.	

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 Conviction	Sentence
				W 2 0 2		

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?

NO

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.)

NO THANK YOU .

THIS IS A WELL ESTABLISHED AND
PROPERLY RUN BUSINESS .

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 MARTIN PETER CASTLE
declare that the information given above is true and complete in every respect
Dated this 10 day of MARCH 2010
Signature _____
Name of Signatory (BLOCK CAPITALS) MARTIN PETER CASTLE
Designation of Signatory (BLOCK CAPITALS) PROPRIETOR

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

Appendix 3



2009/00506/19SEXE

**LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982,
SECTION 2**

SOUTHAMPTON CITY COUNCIL by virtue of the powers contained in section 2 and schedule 3 of the
Local Government (Miscellaneous Provisions) Act 1982

HEREBY GRANTS to

Martin Peter Castle

of 437a Millbrook Road West, Southampton, SO15 0HX

a licence to use the premises known as



and situate at

437 Millbrook Road West

in the City of Southampton as a

SEX SHOP

until the 24th day of March 2010

SUBJECT: (a) to the regulations for Sex Establishments made by the said Council and in force at
the date hereof

and (b) to conditions nos. 1 to 32, which said standard conditions, as varied, are
incorporated in the list of conditions and restrictions, annexed hereto.

The licence fee of £7500.00 has been received for and on behalf of the Council.

Dated this 25th March 2009

Mr. M.P Castle
Taste of Amsterdam
437 Millbrook Road West
Southampton
SO15 0HX

Solicitor to the Council
for and on behalf of
Southampton City Council

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437-TOA-March 2009



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, Christmas Day and every Sunday and public holiday 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.

437-TOA-March 2009

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.

LL19/0012 – March 2009

Appendix 4**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.
- "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, Christmas Day and every Sunday and public holiday 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 6:00 p.m. |
| Tuesdays | 9:00 a.m. to 6:00 p.m. |
| Wednesdays | 9:00 a.m. to 6:00 p.m. |
| Thursdays | 9:00 a.m. to 6:00 p.m. |
| Fridays | 9:00 a.m. to 6:00 p.m. |
| Saturdays | 9:00 a.m. to 6:00 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) see any television broadcast or the replaying of any video tape or film or other like matter 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.
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. The exterior of the licensed premises shall be of materials approved by the Council.
17. No illuminated signs or exterior lights shall be affixed to the licensed premises unless approved by the Council.
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.
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 Head of Legal & Democratic Services 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.

DECISION-MAKER:	LICENSING (LICENSING GENERAL) SUB-COMMITTEE		
SUBJECT:	APPLICATION FOR RENEWAL OF A SEX SHOP LICENCE – A TASTE OF AMSTERDAM, 437 MILLBROOK ROAD WEST		
DATE OF DECISION:	2 JUNE 2010		
REPORT OF:	SOLICITOR TO THE COUNCIL		
AUTHOR:	Name:	JOHN WHITE	Tel: 023 8083 2749
	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. Martin Peter Castle in respect of A Taste of Amsterdam, 437 Millbrook Road West, Southampton, SO15 0HX.

RECOMMENDATIONS:

- (i) For the Sub-Committee to consider and determine the application for the renewal of the sex shop licence in respect of A Taste of Amsterdam, 437 Millbrook Road West, Southampton, SO15 0HX.

REASONS FOR REPORT RECOMMENDATIONS

1. Under the Council's current scheme of delegation, the determination of applications for the renewal of sex shop licences is a matter for the Sub-Committee and is not delegated to officers.

CONSULTATION

2. 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.
3. 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.
4. 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.
5. No objections have been received from residential, business and institutional addresses within the period of notice.
6. Hampshire Constabulary have confirmed that they have no objection to the application.

ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

7. None.

DETAIL

BACKGROUND INFORMATION

8. Southampton City Council first adopted the provisions of Part II of the Local Government (Miscellaneous Provisions) Act 1982 with effect from 16 March 1983.
9. In April 1984, the Council determined the relevant localities in respect of the premises then under consideration.
10. 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.
11. 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.
12. 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, in February 2003.
13. The Licensing and Public Safety Panel subsequently considered two separate applications in respect of premises at 437 Millbrook Road West and 439 Millbrook Road West in July 2003 and resolved to grant both licences subject to conditions.
14. At present there are a total of four licensed sex shops currently operating within Southampton, including A Taste of Amsterdam at 437 Millbrook Road West. The other three premises are located at 439 Millbrook Road West, 16 Hanover Buildings and 103 St. Mary Street.

THE APPLICATION AND RELEVANT LOCALITY

15. An application (attached as appendix 2) has been received for a renewal of a sex establishment licence in respect of the premises at 437 Millbrook Road West.
16. The Council has not previously considered the issue of determining an appropriate number of sex establishments within a "relevant location" which would include these premises.
17. However, two such areas (which do not include these premises) have previously been decided by the Council and the background information relating to this is set out above.

APPLICATION DETAILS

18. The application is for the renewal of the sex shop licence in respect of 437 Millbrook Road West. The applicant is Mr. Martin Peter Castle, of whom further details are given in the renewal application that is attached to this report as Appendix 2.

19. The applicant has held the licence in respect of 437 Millbrook Road West since the original grant of it in July 2003, with the licence being renewed annually upon anniversary of grant.
20. No changes to the current licence conditions are requested in this renewal application.
21. Notice of the application was placed in the Southern Daily Echo on 12 March 2010.
22. The applicant has confirmed via affidavit that notice of this application was exhibited on the front window of 437 Millbrook Road West for 21 days.
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 breaches of licence conditions or concerns about the manner in which this shop has operated have been identified within the last year.
24. The applicant has been invited to attend the Sub-Committee's meeting.

PROPOSED TRADING ACTIVITIES

25. The renewal of the licence is sought under the same terms and conditions as are currently in place in respect of the premises. No request to vary the current licence conditions has been made.
26. At present, the premises are permitted to trade on Mondays to Saturdays between 9:00 a.m. and 8:00 p.m. on each of those days and sell by retail goods including: lingerie and other clothing items, videos, DVDs, magazines and other marital aids.
27. British Board of Film Classification (BBFC) Restricted 18 (R18) classified video recordings are also sold at the premises (such video recordings may contain pornographic images). The Video Recordings Act 2010 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.
28. It is understood that should the renewal application be granted then the applicant will continue with such trading activities.
29. 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.
30. 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.
31. A copy of the current licence issued in respect of 437 Millbrook Road West is attached as Appendix 3.

THE LEGISLATION – DEFINITIONS

32. Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 sets out the framework for the consideration of applications for sex shop licences.
33. 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.

34. 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.
35. 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”.
36. 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

37. 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.
38. The names and addresses of objectors must be kept confidential unless the objectors indicate otherwise.
39. 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.
40. 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.
41. 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

42. 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.

43. In addition, the full address of the premises must be given.
44. 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.
45. 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.
46. 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.
47. 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.
48. 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

49. 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.
50. 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.
51. At the hearing itself, the Sub-Committee has a discretion to allow objections to be heard subject to:
52.
 - 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.
53. 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

54. 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.

55. 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.

56. A copy of the standard conditions made by the City Council appears at Appendix 4 to this report.

57. 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.

58. 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".

THE LEGISLATION – CRITERIA

59. Written reasons must be given to the applicant within seven days of the applicant requesting the information from the City Council.

60. Paragraph 12 of Schedule 3 to the Act sets out both mandatory and discretionary grounds for the refusal of an application for a licence.

61. 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.

62. The Sub-Committee may refuse an application for the grant of a licence on one or more of the following grounds:

- 63. 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 to:

- (i) the character of the relevant locality; or
- (ii) the use to which any premises in the vicinity are put; or
- (iii) the layout, character or condition of the premises in respect of which the application is made.

64. The Act provides that nil may be an appropriate number of premises in “the relevant locality.”
65. The “relevant locality” is defined by the Act as meaning, in relation to the premises, the locality in which it is situated.
66. 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 53 of this Report) it is felt that the number and / or proximity of premises may be inappropriate.
67. In assessing the application, Members should consider any objections in 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.
68. Members, in determining the application, should consider each of these issues and determine whether grant or refusal is appropriate and if so, why.
69. 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

70. 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.
71. 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 months
unless the applicant seeks to show that the ground did not apply to him.

72. 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.
73. Appeal against the decision of a Magistrates' Court may be made to the Crown Court.
74. 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

75. There are no financial implications.

Revenue

76. Not applicable.

Property

77. Not applicable.

Other

78. 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:

79. Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 sets out the City Council's power to renew a sex shop licence.

Other Legal Implications:

THE LEGISLATION - CRIME AND DISORDER ACT 1998

80. 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

81. 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

82. 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 a sex shop renewal the application
2.	Application for renewal of a sex shop licence for A Taste of Amsterdam, 437 Millbrook Road West, Southampton
3.	Current licence for A Taste of Amsterdam, 437 Millbrook Road West, Southampton
4.	Sex shop standard conditions

Documents In Members' Rooms

1.	None
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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.	Response from Police	

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

FORWARD PLAN No: N/A **KEY DECISION?** N/A

WARDS/COMMUNITIES AFFECTED:	ALL
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Agenda Item 8

by virtue of paragraph number 1, 2 of the Council's Access to information Procedure Rules

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