



## LICENSING AND SAFETY COMMITTEE 24 JANUARY, 2006

### REPORT OF HEAD OF PUBLIC PROTECTION

#### APPLICATION TO RENEW SEX SHOP LICENCE UNIT 5, FREDERICK STREET, WALSALL

##### 1.0 Purpose of report

To seek determination of an application to renew the sex shop licence in respect of Unit 5, Frederick Street, Walsall.

##### 2.0 Recommendation

- 2.1 The Committee is requested to determine the renewal application having regard to the information contained in this report and representations made at the meeting. (A copy of the report has been sent to all parties.)

**Note:** A copy of the procedure to be followed is attached at Appendix A. The procedure is to assist in the regulation of the meeting, however, Members can, of course, take a flexible approach to the procedure if they feel it is necessary and in the interests of natural justice and fairness.

- 2.2 The Committee is requested to consider authorising officers to grant future renewals of Sex Establishment Licences in cases where no objections have been received.

##### 3.0 Financial implications:

- 3.1 Within budget – yes.

- 3.2 The fee for a sex shop licence is £2,000.00, payable upon application. It is at the Committee's discretion whether or not to refund part of the fee should the application be refused.

##### 4.0 Policy implications

Within Council policy – yes.

## **5.0 Legal implications**

5.1 Legal Services consulted - yes. The report contains the same legal advice given on previous applications.

5.2 The issue of sex shop licences are dealt with in accordance with the provisions of Section 2 and Schedule 111 of the Local Government (Miscellaneous Provisions) Act, 1982 (the Act).

## **6.0 Equal opportunity implications**

In accordance with the interests of natural justice and fairness, all relevant parties have been invited to the meeting in order to address Members on the application.

## **7.0 Environmental impact**

There are a number of conditions which can be imposed on licences to control the visual impact of the premises in terms of control of displays, advertisements etc.

## **8.0 Wards affected**

The premises fall within the St. Matthews Ward.

## **9.0 Consultees**

In considering applications for a sex shop licence, the authority shall have regard to any observations submitted to them by the Chief Officer of Police and any representations from members of the public. Accordingly, a public notice must be placed, and the Police consulted. The Fire Service, Planning and Environmental Health Officers are also consulted to ensure that the premises are suitable. In addition, Ward Councillors are consulted on all applications.

## **10.0 Contact officer**

## **11.0 Background papers**

Application  
Correspondence from consultees

J. SUNLEY,  
Head of Public Protection.

## **Background and report detail**

### **1.0 Introduction**

- 1.1 As from 1 January, 1983, Section 2 and Schedule 111 of the Local Government (Miscellaneous Provisions) Act, 1982 (the Act) was adopted by Walsall MBC. Since then, it has been an offence to use premises in Walsall as a sex establishment without the benefit of a licence issued by this Authority. (A sex establishment means a sex cinema and/or a sex shop). Any licence under the schedule remains in force for one year or for such shorter period specified in the licence as the Council thinks fit.
- 1.2 An application to renew the sex establishment licence has been received in respect of Unit 5, Frederick Street, Walsall. A location map is attached at Appendix B.
- 1.3 The applicant has requested that approval be granted for the establishment to be open Monday to Saturday – 10 am to 8 pm, including bank holidays. The current licence allows for the premises to be opened Monday to Saturday – 10 am to 6 pm excluding bank holidays.
- 1.4 The applicant has declared that, in accordance with the Act, he has advertised the fact that he has applied for a licence both in the Express and Star and, for a period of 21 days on the premises.

### **2.0 Consultations**

- 2.1 In accordance with the legislation and accepted practice, comments on the application have been sought from the Police Licensing Officer; the Paedophile and Pornographic Unit at Birmingham Police (PPU); the Fire Service; Environmental Health Officers and Ward Councillors.
- 2.2 The PPU has advised that providing the premises retain a plain and non-offensive frontage with no view to the interior, they have no objections.
- 2.3 The local Police Licensing Officer, the Fire Officer and Environmental Health have no objections to the renewal of a licence.

### **3.0 Representations**

- 3.1 No objections have been received to the application and no observations have been received from Ward Councillors.
- 3.2 In the light of the above, the Committee may wish to consider authorising officers to grant future renewals of Sex Establishment Licences in cases where no objections are received.

#### 4.0 **Legal implications**

- 4.1 As already mentioned, from 1 January, 1983, Section 2 and Schedule 111 of the Local Government (Miscellaneous Provisions) Act, 1982 (the Act) was adopted by Walsall M.B.C. Since then, it has been an offence to use premises in Walsall as a sex establishment, without the benefit of a licence issued by this authority. A licence can be granted for up to 12 months. A sex establishment means a sex cinema and/or a sex shop.
- 4.2 Applications should be dealt with in accordance with the legislation, having regard to the interests of natural justice and fairness and consideration on its own merits. Members should have regard to the suitability of the applicant and the locality rather than the principle of the existence of the shop itself.
- 4.3 Applications may be refused on the following grounds:-
- (a) The unsuitability of the applicant to hold such a licence by reason of having been convicted of an offence or for any other reason;
  - (b) If the licence was granted, the business to which it relates would be managed, or for the benefit of, a person other than the applicant who would himself be refused a licence;
  - (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 (and this may be nil);
  - (d) That the grant 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, vehicle, vessel or stall in respect of which the application applies.
- 4.4 The applicant does have a right of appeal to the Magistrates Court against refusal on grounds (a) and (b) above.
- 4.5 The Committee has a duty to grant the licence if it is not reasonably satisfied that one or more of the reasons for refusal are relevant to the application.

## 5.0 **Conditions**

- 5.1 The Act does give some guidance with regard to the type of conditions which can be imposed on licences and, accordingly, the Committee has agreed standard conditions which, unless expressly excluded or varied, are attached to all sex shop licences. These are attached at Appendix C.
- 5.2 A right of appeal exists to the Magistrates Court against any terms and conditions attached to the grant of licences.

**WALSALL METROPOLITAN BOROUGH COUNCIL**

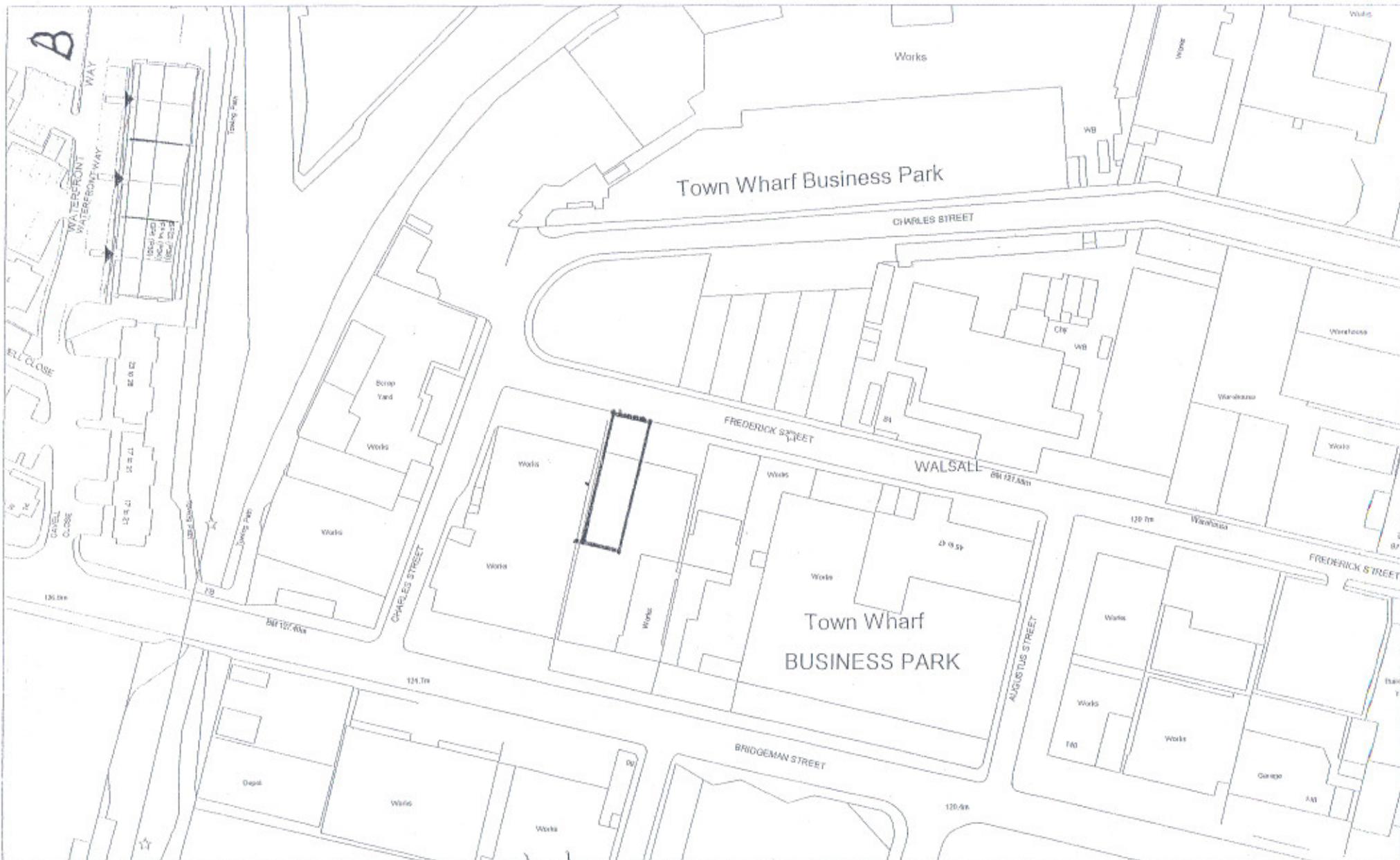
**LICENSING AND SAFETY COMMITTEE**

**PROCEDURE FOR GUIDANCE WHEN DETERMINING  
SEX ESTABLISHMENT LICENCE APPLICATIONS**

- (1) Introduction of report.
- (2) Applicant or representative will be requested to confirm he/she has received a copy of the report and understands the procedure to be followed.
- (3) Applicant to present his case to the Committee.
- (4) Questions by Members of the Committee.
- (5) Questions from objectors (if any).
- (6) Consultees will be asked to address the Committee (if appropriate) and respond to questions from Members.
- (7) Applicant will be asked if he wishes to make a final statement.
- (8) Parties will withdraw from the room whilst the Committee considers the representations made.
- (9) Parties will be recalled and a decision will be made by the Committee.
- (10) Applicant advised that the decision will be confirmed in writing and advised of right of appeal, if appropriate.

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**NOTE:** At any time during this procedure, the Committee's Legal Adviser may Ask for and respond to points of clarification.



**Walsall**  
Metropolitan Borough Council

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**WALSALL METROPOLITAN BOROUGH COUNCIL**

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

**(SECTION 2 AND SCHEDULE 3)**  
**LICENSING OF SEX ESTABLISHMENTS**

**CONDITIONS OF LICENCE FOR SEX SHOP**

**Contact**

Any queries or points of clarification on the application of these conditions should be directed to:-

Constitutional Services, Walsall M.B.C., Civic Centre, Darwall Street,  
Walsall, WS1 1TP.  
(01922) 652017/652014

**Interpretation**

In these conditions:-

“The Council” means the Walsall Metropolitan Borough Council

“The Fire Service” or “Fire Officer” means the Chief Fire Officer,  
West Midlands Fire Service, Fire Safety Department, Retreat Street,  
Wolverhampton, WV3 0RG.  
(01902) 712016

“The Chief Officer of Police” or “Police Officer” means the Chief Constable, West  
Midlands Police (01922) 439000

“The Licensee” means the person in whose name the licence is held.

**INTRODUCTION**

These conditions are imposed by the Council pursuant to its powers under Paragraph 13(1) of Schedule 3 to the above Act and apply to all premises licensed as a “Sex Shop” as defined by the Act save and insofar as they do not conflict with any special conditions forming part of the licence nor with the provisions of the Act itself.



**THE FOLLOWING CONDITIONS SHALL APPLY TO ALL SEX SHOP LICENCES ISSUED BY THE COUNCIL** (additional conditions, if any, relating to particular premises, will be included on individual licence documents):-

**Management of the Premises**

- (1) The licensee, or some responsible person nominated by him and approved in writing by the Council for the purpose of managing the sex establishment ("the manager"), shall have personal responsibility for and be present on the premises at all times when the premises are open to the public and shall ensure compliance with these and any special conditions of the licence.
- (2) Where the licensee is a body corporate or an unincorporated body, any change of Director, Company Secretary or other person responsible for the management of the body, shall be notified, in writing, to the Council within 14 days of such change and such written details as the Council may require in respect of the change of personnel shall be furnished within 14 days of a request in writing from the Council.
- (3) A copy of the licence and any special conditions attached shall, at all times, be displayed in a conspicuous position on the premises, so as to be available for inspection by the Police, the Fire Authority and authorised officers of the Council.
- (4) The name of the person responsible for the management of the sex establishment, whether the licensee or Manager, shall be displayed in a conspicuous position within the premises throughout the period during which he is responsible for the conduct of the premises.
- (5) The licensee shall retain control over all parts of the premises and shall not let, licence or part with possession of any part.
- (6) The licensee shall ensure that the public are not admitted to any part of the premises that has not been licensed.
- (7) No person under the age of 18 shall be admitted to the premises and a notice to this effect, in accordance with Condition 18, shall be displayed on the outside of the premises.
- (8) Neither the licensee, nor any employee or agent, shall personally solicit custom for the sex establishment outside or in the vicinity of the sex establishment.
- (9) The licensee shall ensure that during the hours that the premises are open for business, every employee wears a badge indicating his name and that he is an employee.

### **Safety**

- (10) The licensee shall take all reasonable precautions for the safety of the public and employees.
- (11) The licensee shall comply with any fire prevention and safety measures which may be required by the Council.

### **Opening Hours**

- (12) The licensed premises shall not open or be used for the purpose for which the licence is granted outside the hours indicated on the licence document.
- (13) The licensed premises shall not be open or used at all on Sundays, Good Friday or the 24 hour period comprising Christmas Day.

### **Conduct of Premises**

- (14) A sex shop shall be conducted primarily for the purpose of the sale of goods by retail.
- (15) All sex articles and other things displayed for sale, hire, exchange or loan within a sex establishment, shall be clearly marked to show the price being charged.
- (16) All printed matter offered for sale, hire, exchange or loan within a sex establishment shall be available for inspection prior to purchase and a notice to this effect shall be displayed in a conspicuous position within the premises.

### **External Appearance**

- (17) The holder of a Sex Establishment Licence may exhibit on the outside of the premises the name of the business and a notice, capable of being enclosed by a rectangle one square metre in area, consisting of the words "Licensed Sex Establishment".
- (18) The holder of a Sex Establishment Licence shall exhibit on the outside of the premises a notice, capable of being enclosed by a rectangle one square metre in area, of the times of opening and of the words "No person under the age of 18 shall be admitted to the premises".

### **Window, Fascia Board Advertisement and Displays**

- (19) The licence holder shall obscure all windows and doors so that the interior of the premises shall not be visible to passers-by.

- (20) The windows, doors, fascia board, walls and all external parts of the premises, including the roof, shall not contain any form of writing, sign or display save for:-
- (a) The address of the premises;
  - (b) The licensed name of the premises;
  - (c) The form of warning notice required to be displayed by virtue of the provisions of Section 1(6) of the Indecent Displays (Control) Act, 1981;
  - (d) A notice stating the opening hours of the establishment;
  - (e) In the case of a licence granted to a body corporate:-
    - (i) If the licence name is not the same as the full name of the body corporate, then such corporate name; and
    - (ii) If the premises are also the body's registered office for the purpose of The Companies Acts, then an indication in a form acceptable to the Company that such is the case;
  - (f) The wording "PRIVATE SHOP" or "ADULT SHOP" but no other indication as to the nature of the business carried on at the licensed premises.
- (21) The lettering used in respect of such permitted items:-
- (a) Shall be of such colour and style as may be approved by the Council;
  - (b) In the case of the permitted items "a", "b", "c" and "e", the lettering used shall not exceed one foot in height for each letter, provided also that if different sizes of letters are used in respect of different items, that used in respect of item "f" shall not exceed the height of any other lettering.

### **State, Condition and Layout of the Premises**

- (22) External doors shall be closed at all times other than when persons are entering or leaving the premises. The external doors shall be fitted with a device to provide for their automatic closure and such devices shall be maintained in good working order.
- (23) The premises shall be fitted with an inner entrance door or screen so that no part of the interior of the premises, or any of the contents of the premises, shall be visible when persons are entering or leaving the premises.
- (24) No access shall be permitted through the premises to any other premises adjoining or adjacent, except in the case of emergency.

- (25) Any facilities in sex shops for previewing films, video recordings or other similar material, shall be physically separated from the display area of the shop in such a manner that no material being displayed by way of preview shall be visible or audible outside the preview area.

### **Licensed Name**

- (26) The Council, at the time of granting the licence in respect of the premises, shall appoint a name referred to as "The Licensed Name" by which it is intended that the premises shall be known and the licence holder shall ensure that the premises are known solely by that name and by no other.
- (27) An application in respect of a change of licence name shall be made to the Council in writing not less than 28 days prior to the proposed change and the Council shall have an absolute and unfettered discretion to allow or refuse such change.

### **Change of Location and Alterations to Premises**

- (28) In the case of licensed premises which are a vessel or stall, the licence holder shall not move the licensed vessel or stall from the location specified in the licence unless he shall first give the Council not less than 28 days notice, in writing, of such intended removal and the Council may require him to lodge such written application as it may deem appropriate and pay such fee as it may deem reasonable in respect of such application provided that this requirement shall not apply to a vessel or stall which habitually operates from a fixed location but which is regularly moved (whether under its own propulsion or otherwise) from another place such location as is specified in the licence and which is not used for the purposes for which the licence is granted and any other location than that which is specified.
- (29) In the case of a business conducted from fixed premises, no alteration of any kind shall be made to the interior or the exterior of the premises, including any change in the permitted signs displayed thereat or in the manner in which the windows and doors are obstructed unless the licence holder shall first obtain the written consent of the Council.

### **Variation of Conditions**

- (30) The Council may, at any time, waive, modify or vary these conditions or impose additional conditions in any particular case.

R.F. WILLIAMS,  
Head of Democratic Services.

April, 2000