

FOR: SPECIAL REGULATORY AND LICENSING COMMITTEE

Date: 15TH August 2012

Agenda Item: 3

**Contact Officers : Tim Matthews
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SUBMISSION BY TIM MATTHEWS - ENVIRONMENTAL HEALTH MANAGER.

**THE LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982
LICENSING OF SEX ESTABLISHMENTS
APPLICATION BY COCKTAILS LTD FOR A VARIATION OF CURRENT LICENCE
CONDITIONS**

1. Purpose Of Report

- 1.1 To consider and determine an application for the variation of the current licence for a Sex Establishment operated by Pulse and Cocktails situated at A 38 Northbound, Fradley as submitted by Cocktails Ltd detailed within the report.

2. Summary Of Background And Matters For Consideration

- 2.1 Under the Local Government (Miscellaneous Provisions) Act 1982 (The Act) Schedule 3, a Local Authority can adopt by resolution, arrangements for the licensing control of Sex Establishments (sex shops and sex cinemas). It is then an offence to use such premises for such purposes except in accordance with a Licence for which a fee and appropriate conditions are required.
- 2.2 At a meeting of the Public Health and Technical Services Committee on the 12th January 1983 these powers were adopted. It was resolved that the powers were to be vested to the Committee.
- 2.3 The definition of a Sex Shop means a 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 similar.
- 2.4 A revised policy and 43 conditions for Sex Establishments were approved with a fee structure at the meeting of the Regulatory and Licensing Committee held on the 29th November 2005.
- 2.5 In August 2011 an application was received from a Company based in Rotherham, Cocktails Ltd to open a Sex Establishment (Sex Shop) within the district.

- 2.6 This company has been operating since 1997 and are currently operating 23 stores within the UK.
- 2.7 A hearing of the Licensing Consents Appeals Committee took place on the 17th October 2011 where a detailed application and submissions were made and objections heard.
- 2.8 Resulting from this hearing a Sex Establishment licence and 44 associated conditions were subsequently granted on the 8th December 2011 to Cocktails Ltd to operate the premises situated at Fradley A38 Northbound.
- 2.9 These premises have now been in operation since before Christmas 2011 employing local staff having refurbished the previously derelict building.
- 2.10 Subsequently to these events an application letter has now been received on the 19th June 2012 from a Director of the operating company requesting approval from the Council to ***alter the appearance of the outside of the premises to allow window displays and graphics***. Essentially the request is seeking to improve the overall external appearance and by so doing increase footfall and sales.
- 2.11 Further details of the request including images of current and proposed external appearance of the building and other supporting evidence are as set out in the letter of application and attachments as detailed at **Appendix A**.
- 2.12 The current licence and conditions for the premises are detailed at **Appendix B**.
- 2.13 The Act section 18 (1) allows the holder of a licence to apply for any variation of the terms, conditions or restrictions on or subject to which the licence is held as may be specified in the application.
- 2.14 The appropriate authority (Council) may
- Make the variation specified in the application ; or
 - Make such variations as they think fit ; or
 - Refuse the application
- 2.15 The matter for consideration is essentially that of the current and desired external appearance of the premises. Certain conditions of the current licence specifically relate to this matter and these have been highlighted for ease of reference.
- 2.16 There is no requirement under the Act to advertise a variation of the licence, only for application, renewal or transfer of a licence. Therefore there is no formal mechanism to seek objections by this process although due to the nature of the application public advertisements will be required for certain aspects of the application for the planning process for advertising consent.
- 2.17 Accordingly local Members for this are have been notified as have the Parish Council to ensure knowledge of the application and process.
- 2.18 If this application for the variation of the licence is refused, the applicant would have the right of appeal against that decision to the Magistrates Court.

3. Financial Implications

- 3.1 In the event that the application to vary this licence is refused any potential appeal to the Magistrates Court may have financial implications for both parties.

4. Strategic Plan Implications

- 4.1 The provision of good quality services by the Council is a key objective.
- 4.2 The licensing and enforcement activities undertaken contribute to the delivery of a strategic objectives of “Supporting People” and “Boosting Business and our Economy”

5. Sustainability Issues

- 5.1 The services provided by Environmental Health, including licensing enforcement activities contributes to the well-being and safety of our residents and towards protecting and providing a high quality and sustainable environment for this and future generations.

6. Human Rights Issues

- 6.1 Article 6 of the Human Rights Act 1998 states that, in determination of a person’s civil rights and obligations, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.
- 6.2 Article 8 states that everyone has the right to respect for his private and family life, his home and his correspondence.
- 6.3 Part II, Article 1 of the Act states that every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

7. Crime And Community Safety Issues

- 7.1 Some of the original objections received at the application hearing in 2011 suggested that by the granting of a Sex Establishment Licence for these premises this will attract unsuitable people and will encourage sex offenders and paedophiles. No complaints or concerns about these premises have been received since the licence was granted.

8. Risk Management Issues

- 8.1 There is a risk to the Council in respect of legal challenge to any decision made and to the current policy and conditions if not considered to be reasonable and proportionate.

9. Recommendation

- 9.1 That Members consider and determine the application for a variation of the current Sex Establishment licence and conditions for Pulse and Cocktails at A 38 Northbound, Fradley submitted by Cocktails Ltd taking into consideration the application, any objections received, their relevance and the Council Policy for the licensing of such premises.

Background Documents:

Appendix A - Application letter and supporting documents

Appendix B - Current Sex Establishment Licence and conditions for the premises