

Meeting: LICENSING & REGULATORY COMMITTEE

Date of Meeting: 7th June 2010

Title of Report: SEX ESTABLISHMENT (SEX SHOP) LICENCE –
SCANDALS ADULT SUPERSTORE, 304 DERBY ROAD, BOOTLE L20 8LN

Report of: P. J. Moore
Environmental & Technical Services Director

Contact Officer: K.T. Coady,
Senior Licensing Officer
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This report contains	Yes	No
CONFIDENTIAL information		√
EXEMPT information by virtue of paragraph(s) ... of Part 1 Schedule 12A of the Local Government Act 1972		√
Is the decision of this report DELEGATED?	√	

Purpose of Report

To give consideration to an application for the grant of a Sex Establishment (Sex Shop) Licence.

Recommendation(s)

The Committee's instructions are requested.

Corporate Objective Monitoring

Corporate Objective		Positive Impact	Neutral Impact	Negative Impact
1	Creating a Learning Community		√	
2	Creating Safe Communities	√		
3	Jobs and Prosperity		√	
4	Improving Health and Well-Being		√	
5	Environmental Sustainability		√	
6	Creating Inclusive Communities		√	
7	Improving the Quality of Council Services and Strengthening Local Democracy		√	
8	Children and Young People		√	

Financial Implications

None.

List of background papers relied upon in the preparation of this report

- Application for a Sex Establishment (Sex Shop) Licence.
- Local Government (Miscellaneous Provisions) Act 1982.

Application

1. Application: Grant
- Premises: Scandals Adult Superstore,
304 Derby Road,
Bootle, L20 8LN
- Director: Mrs Lilian Kershaw
- Terms Applied For:

Days of Operation	Hours of Operation
Monday to Friday	09.00 to 20.00
Saturday	09.00 to 21.00
Sunday	10.00 to 16.00
Bank / Public Holidays	10.00 to 16.00

Area to be Licensed
Whole of Licensed Area

Background information

2. A Licence is required for any person wishing to operate either a Sex Cinema, a Sex Shop or a Sexual Entertainment Venue under the Local Government (Miscellaneous Provisions) Act 1982.
3. A Sex Shop is defined as '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 stimulating or encouraging sexual activity or acts of force or restraint which are associated with sexual activity'.
4. The most contentious part of the definition is the phrase 'significant degree'. Unfortunately, the courts have not been too helpful in defining this phrase and each case has looked at it on its own facts. One to one-and-a-half per cent of business turnover from the sale of sex items is held not to be a significant degree; other material considerations are the nature of the display articles and the nature of the articles themselves: *London Borough of Lambeth v Grewal* (1986) 84 LGR 538. In another case the judge said 'significant must mean something which signifies, which is not insignificant, perhaps something which cannot be missed under the deminimis rule': *Watford Borough Council v Private Alternatives Birth Control and Education Centres* (1985) Crim. L.R. 594.
5. Sex articles are defined as 'anything for use in connection with or for stimulating or encouraging sexual activity or acts of force or restraint which are associated with sexual activity.' A licence is not required for the sale of birth control items.
6. Members will recall that the Standard Conditions relating to Sex Establishment (Sex Shops) Licences were approved on 22nd March 2004. These Conditions were produced by utilising best practice from a number of Councils (principally Halton and Chester), as well as from the National Model of Standard Conditions for such premises.

7. Paragraph 2 of these Conditions state that: “except with the previous written consent of the Council no sex shop shall be open to the public earlier than 9am in the morning and shall be closed not later than 8pm in the evening on any day Monday to Friday and not later than 9pm in the evening on Saturdays. The sex shop shall not be open on Sundays or any Bank Holidays or any public holidays”. A copy of these Standard Conditions can be found in Annex 1 to this Report.
8. The hours requested by the applicants exceed those allowed for in the Standard Conditions. However should Members be minded to grant the application, as applied for, then the Standard Conditions would be amended for these premises only to show the hours as requested (Members will be aware that this procedure was followed in respect of “Nice ‘N’ Naughty” in the North of the Borough).

Notices

9. The application has been advertised in the prescribed manner. No public objections have been received with regard to this application.

Response to consultations

Merseyside Police

10. No objections are raised to this application.

Merseyside Fire Authority

11. No objections are raised to this application.

Environmental & Technical Services Department – Environment Section

12. No objections are raised to this application.

Environmental & Technical Services Department – Commercial Section

13. No objections are raised to this application. The Section report that the business is currently not operating from the premises and will require both planning permission and building works to enable it to be used for the business intended. The Section will inspect the premise prior to the intended opening to ensure that any conditions imposed are complied with.

Additional licensing information

14. In general the Council has discretion whether or not to grant a licence for the use of any premises, vehicle, vessel or stall to be used as a Sex Establishment.
15. When determining a licence application, the local authority must have regard to any rights the applicant may have under Article 10 (right to freedom of expression) and Article 1, Protocol 1 (protection of property) of the European Convention on Human Rights.

16. A licence cannot, however, be granted to:
- a person under 18;
 - a person who has held a licence but has had it revoked within 12 months preceding the date of application;
 - to a person, other than a body corporate, who is not resident in an EEA State or was not so resident throughout the period of six months immediately preceding the date when the application was made;
 - to a body corporate which is not incorporated in an EEA State; or
 - a person who has within the last 12 months preceding the date of the application been refused a licence in respect of the same premises.
17. The Council may refuse an application for grant, renewal or transfer on the following grounds:
- (i) that the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason;
 - (ii) that if the licence were to be granted, renewed or transferred the business to which it relates would be managed 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;
 - (iii) that the number of sex establishments, or of sex establishments of a particular kind, in the relevant locality at the time the application is determined is equal to or exceeds the number which the authority consider is appropriate for that locality;
 - (iv) that the grant or renewal of the 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, vehicle, vessel or stall in respect of which the application is made.
18. The definition of 'relevant locality' is:
- (i) in relation to the premises, the locality where they are situated; and
 - (ii) in relation to a vehicle, vessel or stall, any locality where it is desired to use it as a sex establishment.
19. A location map of the proposed premises is attached within Annex 2 to this Report.
20. An applicant whose application for the grant or renewal of a licence is refused, or whose licence is revoked, on any ground specified in Paragraph 16 above does not have a right to appeal unless the applicant seeks to show that the ground did not apply to him.
21. Similarly, an applicant whose application for the grant or renewal of a licence is refused on either ground specified in Paragraph 17 (iii) or (iv) above does not have the right to appeal the decision. In such cases the applicant can only challenge the refusal by way of judicial review.

22. The following may at any time, before the expiration of the period of 21 days following receipt of the application's determination, appeal to the magistrates' court acting for the relevant area:
- (i) an applicant for the variation of the terms, conditions or restrictions on or subject to which any such licence is held whose application is refused;
 - (ii) a holder of any such licence who is aggrieved by any term, condition or restriction on or subject to which the licence is held; or,
 - (iii) a holder of any such licence whose licence is revoked.

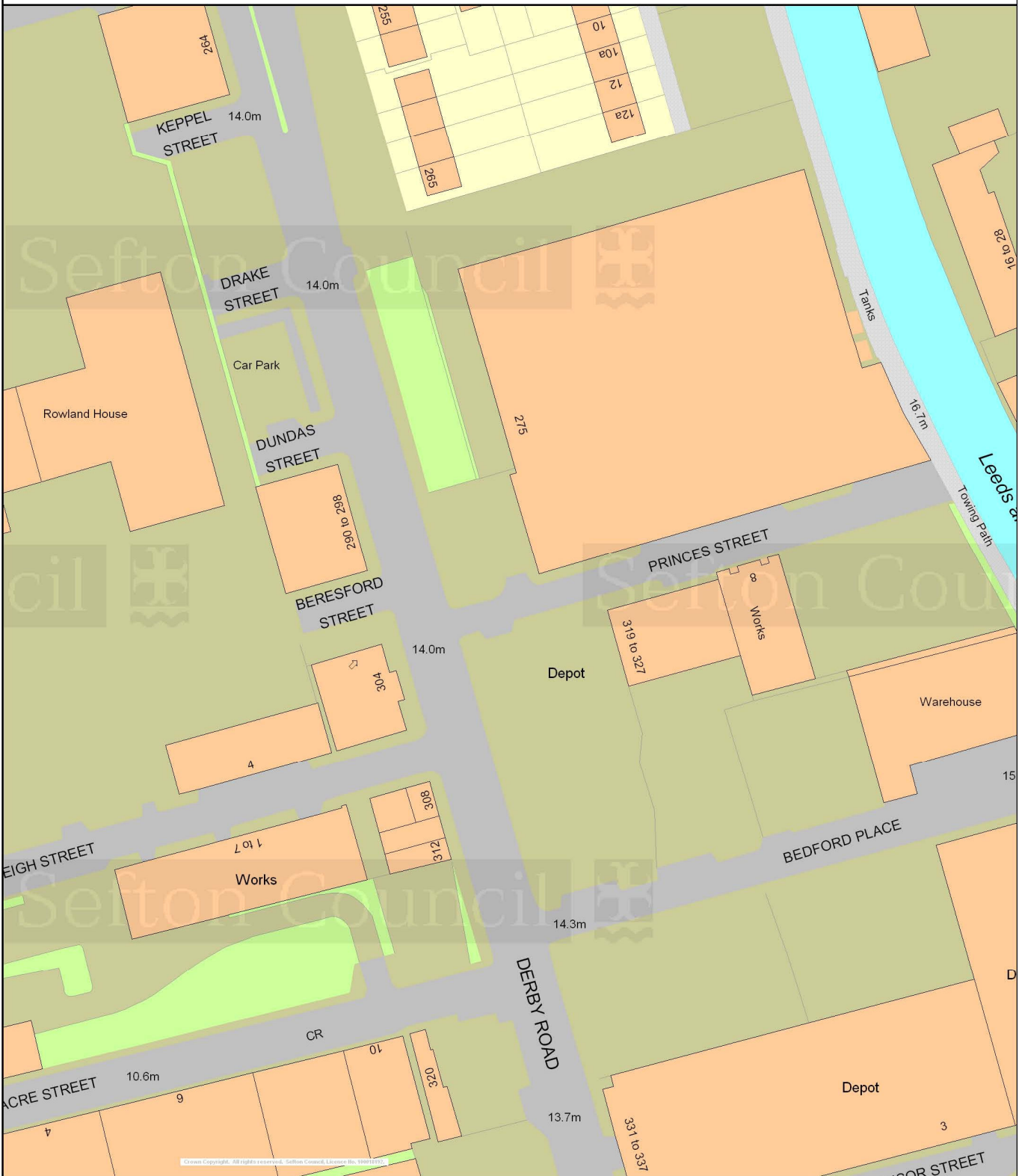
Sex Shop Licences Standard Conditions

- 1 Premises licensed as a Sex Shop under the provisions of Schedule 3 of the Local Government (Miscellaneous Provisions) Act, 1982, shall be used only for the purpose of a Sex Shop as defined in Paragraph 4 of the said Schedule 3 and shall not be used, wholly or in part, for any other purpose during the period the premises are licensed as a Sex Shop.
- 2 Except with the previous written consent of the Council no sex shop shall be open to the public earlier than 9am in the morning and shall be closed not later than 8pm in the evening on any day Monday to Friday and not later than 9pm in the evening on Saturdays. The sex shop shall not be open on Sundays or any Bank Holidays or any public holidays.
- 3 Over each entrance to the premises the Licensee shall affix and maintain in a permanent form a Notice stating that the premises are licensed as a Sex Shop under the provisions of the Local Government (Miscellaneous Provisions) Act, 1982. Such a Notice shall also carry the full name of the Licensee and the number of the licence and if the Licensee is a private or public company the Notice shall also carry the address of the registered or principal office and the full name of the Secretary of the Company. The lettering on such Notice shall be 75mm tall and at least 6.25mm thick and shall be in white on a dark background.
- 4 At each entrance there shall be prominently displayed, so as to be visible at all times to persons approaching the premises, a notice prohibiting entry to persons under 18 years of age. Such a Notice shall be in letters at least 50mm high and 6.25mm thick and shall be in dark letters on a light background.
- 5 The Licensee of every premises licensed as a Sex Shop shall ensure that all persons employed on the premises are aware of the age restriction on clients and that they exclude or remove from the premises any person attempting to evade the restriction.
- 6 The Licensee shall not display outside, near to, or within the premises any advertising material, sign or pictorial display referring to the licensed premises or the goods, articles or services provided at the premises, in such a position or manner that it is visible to any person using adjacent highways, streets, footpaths or forecourts except any notice displaying the name or trading title of the Licensee, any Notice indicating the times of opening of the premises for business, any Notice required by statute, regulation or bylaw applicable to the premises or business carried thereon or any notice prescribed by these conditions. The use of loudspeakers and displays on business vehicles is also prohibited.
- 7 The licensed premises shall be so arranged by screening or obscuring windows, doors and other openings so that the interior of the licensed premises and the displays of sex articles (as defined by the Local Government [Miscellaneous Provisions] Act, 1982) sold at the premises shall not be visible at any time to persons outside the building. The external doors shall be fitted with automatic closing devices which shall be maintained in good working order.

- 8 Except as allowed by a licence issued permitting public music under the provisions of the Local Government (Miscellaneous Provisions) Act, 1982, no music of any kind shall be played on the licensed premises and no public entertainment of any nature shall be provided or permitted by the Licensee to take place on the premises.
- 9 The Licensee shall not at any time keep or allow to be used on the premises any gaming or amusement machine whether for prizes or not.
- 10 No moving picture or display or recorded sound of any description or however provided shall be permitted on the licensed premises except for a period of not more than one minute for the sole purpose of demonstrating to a prospective purchaser or hirer of the article in question and such display shall be in a booth to which there shall be only permitted the prospective purchaser or hirer and any one person employed by the Licensee to sell or hire such articles. The Licensee shall not make any charge or permit any charge to be made for such a display.
- 11 The Licensee shall not supply or permit to be supplied to any person, other than a person employed to work on the premises, any article of food or drink whether for consumption on or off the premises.
- 12 All refuse produced on the premises and materials, goods or articles discarded for any reason shall be securely stored within the premises and delivered in sealed containers to the refuse collection service.
- 13 The Licensee shall make such provision for the reception of goods and articles for sale, hire, exchange, loan, demonstration or display at the premises so that they are received directly into the premises and not subject to storage for any period of time on any pavement, footpath, forecourt or yard nor in any vessel or vehicle etc.
- 14 The Licensee, or some responsible person nominated by him/her in writing for the purpose and approved by the Council, shall be in charge of and upon the licensed premises during the whole time they are open to the public. Such written nominations shall be continuously available for inspection by authorised officers of the Council or the Police. During the hours that the premises are open the person in charge shall wear a form of visible photographic identification.
- 15 A daily register of persons employed shall be kept stating names, addresses, position and times worked. The register is to be completed each day within thirty minutes of the premises opening for business and must be kept at the premises and be open for inspection by authorised officers of the Council or the Police
- 16 No part of the premises shall be used by prostitutes (male or female) for the purpose of solicitation or of otherwise exercising their calling or profession.
- 17 The Licensee shall ensure that no employee or other person shall seek to obtain custom for the premises by means of personal solicitation outside or in the vicinity of the premises.

- 18 The Licensee shall not in the conduct of the business employ any person:
- (a) Under the age of 18 years;
 - (b) Whose application for a licence to carry on a sex establishment, or renewal thereof, has been refused by the Council or any other licensing authority;
 - (c) Whose licence to carry on the business of a sex establishment has been revoked by the Council or any other licensing authority.
- 19 The Council shall approve the external appearance of the premises and neither the interior nor the exterior of the premises shall be altered without the approval of the Council.
- 20 All sex articles and other things displayed for; sale, supply, hire, exchange or loan within the premises shall be clearly marked to show to persons who are inside the premises the respective prices being charged.
- 21 No advertisements, other than advertisements relating to other licensed sex establishments or relating to goods sold from the premises, shall be displayed at the premises.
- 22 No part of the premises shall be used as a sex cinema.
- 23 The Licensee shall not contravene the Unsolicited Goods and Services Act, 1971.
- 24 The licence and a copy of these Conditions shall be conspicuously displayed on a part of the premises to which the public has access as specified by the Council.
- 25 A record shall be kept of all mail order transactions (if any) in such a form as agreed by the Council.
- 26 The licence is not transferable by the Licensee.
- 27 The Licensee shall forthwith notify the Council of his/her ceasing to carry on the business.
- 28 The Licensee shall inform the Council if s/he is convicted under the Obscene Publications Act, 1959, the Protection of Children Act, 1978, or the Customs and Excise Management Act, 1979 or if an order for forfeiture is made under the Obscene Publications Act, 1959 following the service of a summons on the Licensee. The Council will take into consideration any such conviction or orders for possible revocation or non-renewal of the licence.
- 29 Where the Licensee is a company, any change of Director, Company Secretary or other person responsible for the management of the company is to be notified in writing to the Council within 14 days.
- 30 Any breach of or failure to comply with the Conditions attached to this Licence may result in the revocation of the Licence.

Scandals Adult Superstore



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Scale 1/1091. Centre = 333845 E 394327 N.