

**BRISTOL CITY COUNCIL
LICENSING COMMITTEE
29 MAY 2012**

**LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982
REPORT ON THE APPLICATION FOR A SEX ESTABLISHMENT MADE BY
DARKER ENTERPRISES LIMITED IN RESPECT OF PREMISES LOCATED
AT 30 BOND STREET, BRISTOL, BS1 3LX**

Report of the Strategic Director of Neighbourhoods and City Development

Purpose Of Report

1. To seek consideration of an application for the grant of a sex establishment licence in respect of premises to trade as Private Moments, 30 Bond Street, Bristol, BS1 3LX.

Background

2. The Council has adopted the Local Government (Miscellaneous Provisions) Act 1982 which controls the licensing of sex establishments. In this instance sex establishment refers to a sex shop.

Definition of Sex Shop

3. A sex shop is defined by the above Act 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 –

- (a) sex articles or
- (b) other things intended for use in connection with, or for the purpose of stimulating or encouraging –
 - (i) sexual activity; or
 - (ii) acts of force or restraint which are associated with sexual activity

Definition of Sex Articles

4. Paragraph 4(3) of Schedule 3 to the 1982 Act defines sex article. Sex article means;

(a) anything made for use in connection with, or for the purpose of stimulating or encouraging –

- (i) sexual activity; or
 - (ii) acts of force or restraint which are associated with sexual activity
- and

(b) anything to which sub-paragraph (4) applies

(4) This sub-paragraph applies;

(a) to any article containing or embodying matter to be used or looked at or

anything intended to be used, either alone or as one of a set, for the reproduction or manufacture of any article; and

(b) to any recording of vision or sound, which

(i) is concerned primarily with the portrayal of, 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

(ii) is concerned primarily with the portrayal of, or primarily deals with or relates to, genital organs, or urinary or excretory functions.

5. The application was submitted on the 20 March 2012. The company has applied for a licence for sale of the following articles:

(i) Books

(ii) DVDs

(iii) Magazines

(iv) Videos

(v) Marital Aids

(vi) Health products, and ancillary items

6. As the applicant has indicated that he intends to sell DVDs and videos, a sex shop licence will be required by virtue of the Video Recordings Act 1984 where any recordings classified as R18 are either sold or hired out. The R18 category is a special and legally restricted classification primarily for explicit videos of consenting sex between adults.

7. The hours of operation of the premises applied for are Monday to Saturday 9.30 am to 8.00 pm, Sundays 10.30 am to 4.30 pm.

8. Copies of the application form, location map of the premises and the plan of the premises are attached as Appendices A and B respectively.

9. Observations and objections

In considering this application the Council must have regard to any observations submitted to them by the Chief Officer of Police and any objections of which notice has been sent to them under paragraph 8(15) of the adopted legislation. Paragraph 8(15) provides that:

“Any person objecting to an application for the grant, renewal or transfer of a licence under this Schedule shall give notice in writing of his objection to the appropriate authority stating in general terms the grounds of the objection, not later than 28 days after the date of the application.”

10. The Police have advised the Licensing Office that they have no observations to make regarding this application. No objections have been received from the public prior to the deadline or subsequent to it.

11. Equalities Impact Assessment

(a) Before making a decision, section 149 of the Equality Act 2010 requires that each decision-maker considers the need to promote equality for persons with the following “protected characteristics”: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation. Each decision-maker must, therefore, have due regard to the

need to:

i) eliminate discrimination, harassment, victimisation and any other conduct prohibited under the Equality Act 2010.

ii) advance equality of opportunity between persons who share a relevant protected characteristic and those do not share it. This involves having due regard, in particular, to the need to:

- remove or minimise disadvantage suffered by persons who share a relevant protected characteristic.

- take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of people who do not share it (in relation to disabled people, this includes, in particular, steps to take account of disabled persons' disabilities);

- encourage persons who share a protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

iii) foster good relations between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to tackle prejudice and promote understanding.

(b) This duty places an obligation on the Licensing Committee to ensure that the need to promote equality is taken into consideration with regard to every aspect of its decision making, this will include the circumstances of each individual application, the findings of fact once the application has been considered, including the taking into account of any objections and any response the applicant may choose to make when heard by the committee.

12. The Premises

Members will have had the opportunity to visit the premises and view plans of the layout. Members will need to consider if there are any accessibility issues and if so measure proposed to address them. Members are therefore required to have due regard to the duties described above. In particular members should consider the impact of the layout of the premises, whether they provide a high level of safety for customers, consideration should be given to CCTV coverage of the premises including the quality of the images and the monitoring arrangements. Members need to be satisfied that any frontages are appropriate and for example ensure due regard is given to the potential for what is proposed to impact on the need to foster good relations between persons who share a relevant characteristic and those who do not.

13. Determination of application.

Members are advised that the legislation makes details provision with regard to consideration of such applications and the circumstances in which they can be granted or refused. The salient points of which may be summarised as follows:

(i) In considering the application, the Council must have regard to any observations submitted to them by the Chief Officer of Police and any

objections of which notice has been sent to it under the schedule's provisions.
(ii) The Council must give the applicant an opportunity of appearing before and being heard by the Licensing Committee before refusing to grant a licence.

(iii) Subject to the provisions governing appeals, the Council has a discretion to refuse an application for the renewal of a licence on one or more grounds which are specified in sub-paragraph (3) of paragraph 12 of the Schedule, being –

(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, renewed or transferred, 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 had 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 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.

(iv) Sub paragraph (5) provides that the 'relevant locality' means – "in relation to the premises, the locality where they are situated."

14. At its meeting on the 23 November 2011 the committee decided that the City Centre was a relevant locality for the purpose of Ground c. It was resolved that the appropriate number of sex establishments of a particular kind for this locality should be:

Sex Shops - 2

Sex Cinemas – 0

Sexual Entertainment Venues (SEVs) – 2

15. There is currently one licensed sex shop in the City Centre locality, therefore if the Council follows its current policy this ground of refusal will not be triggered.

16. In making recommendations in the report your officers have considered all the grounds except that concerned with the layout, character or condition of the premises which Members are advised to inspect in a site visit prior to this meeting taking place.

17. The legislation confers a power on the Council to prescribe standard conditions. The Council has adopted standard conditions which are attached at Appendix D.

Legal Implications

18. The key provisions are reflected in the main body of the report.

19. The committee should focus its consideration of the application on whether or not any of the grounds for refusal arise in this case. The report accurately sets out those grounds. It will be a matter of fact and judgement in respect of each ground whether or not they are capable of applying in the particular application under consideration and where they are available a matter for determination by the committee whether or not to exercise its discretion to refuse the application.

20. The Act requires that an opportunity of appearing before and being heard by a committee or sub committee must be afforded to an applicant before refusing to grant, renew or transfer a licence etc.

Pauline Powell
Senior Solicitor
For Head of Legal Services

APPENDICES

Appendix A – Application form

Appendix B - Plan of premises

Appendix C – Conditions attached to such premises

RECOMMENDED: It is recommended that the application be granted subject to the standard conditions.

LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985

Background papers: Application,

Contact Officer: Myra McSherry, Licensing Administration Manager

Neighbourhoods

Telephone: 01179142500



BRISTOL CITY COUNCIL
LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982
APPLICATION FOR A LICENCE FOR A SEX ESTABLISHMENT

- A. NATURE OF APPLICATION : GRANT
B. DETAILS OF APPLICANT

1. Full name DARKER ENTERPRISES LIMITED
Former name (if any) NONE

2. (To be completed if applicant is an individual)
Date of birth: N/A
Permanent address: N/A

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.....
.....
.....

Tel. No. N/A
Is the applicant resident in UK? N/A
Has the applicant been resident in UK for the six months
Immediately preceding the date of this application? N/A

3. (To be completed if the applicant is a body corporate or unincorporated body
The applicant is a body corporate
Address of registered office:

UNIT 11B, TRADE CITY,
ASHTON ROAD, HAROLD HILL,
ESSEX, RM3 8UJ

PAGE TWO OF THE APPLICATION FORM HAS BEEN REMOVED AS IT
CONTAINS PERSONAL DATA

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4. Has the applicant held a licence for a sex establishment in the twelve months immediately preceding the date of this application? YES

If yes, give the address of premises: PLEASE SEE ATTACHMENT 1

.....

Has the licence been revoked? NO

5. Has the applicant been refused a licence in respect of the premises which are the subject of this application within the twelve months immediately preceding the date of this application? NO

6. Has the applicant been convicted of a criminal offence? NO

If yes, give full details:

C. DETAILS OF PREMISES (Detailed plans of layout should accompany this application)

1. (To be completed if application relates to premises)

Full address: PRIVATE MOMENTS
30 BOND STREET
BRISTOL
BS1 3LX

2. (To be completed in any other case)

Is the application in respect of a vehicle / vessel / stall /other: N/A
.....

Give full details:

.....
.....
.....

Location:

3. What interest has the applicant in the property (e.g leasehold/freehold,etc)?

NEW 10 YEAR LEASE TO BE GRANTED SUBJECT TO OBTAINING A SEX SHOP
LICENCE FROM BRISTOL CITY COUNCIL
.....

4. Are all or part of the premises the subject of this application?

GROUND FLOOR/MEZENANE FLOOR

5. What name are the premises to be known by?

PRIVATE MOMENTS

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Answer the following questions in respect of each of the aforementioned:

Has he/ she held a licence for a sex establishment in the twelve months immediately preceding the date of this application?

NO

If yes, give address of premises:

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.....
.....
.....

Has the licence been revoked?

N/A

Has he/ she been refused a licence in respect of the premises which are the subject of this application within the twelve months immediately preceding the date of this application?

N/A

Has he/ she been convicted of a criminal offence?

NO

If yes, give full details:

If an individual – is he/she resident in UK?

N/A

Has he/ she been resident in UK for the six months immediately preceding the date of this application?

N/A

If a body corporate – is it incorporated in UK?

YES

4. What articles are to be offered for sale?

BOOKS, DVDs, MAGAZINES, VIDEOS, MARITAL AIDS,
HEALTH PRODUCTS AND ANCILLIARY ITEMS

.....
.....
.....
.....

5. (If a sex shop) are any part of the premises to be used for displaying films, videos or other moving pictures? NO

6. What advertisements or displays are to be exhibited?

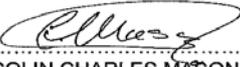
Give details:

ONLY THOSE PREVIOUSLY APPROVED BY THE COUNCIL

Any person who, in connection with an application for the grant, renewal or transfer of a licence for a sex establishment makes a false statement which he knows to be false in any material respect or which he does not believe to be true shall be liable to prosecution under paragraph 21 of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 and on summary conviction shall be liable to a fine of up to £10,000

Declaration

I COLIN CHARLES MASON declare that the information given above is true and complete to the best of my knowledge and belief.

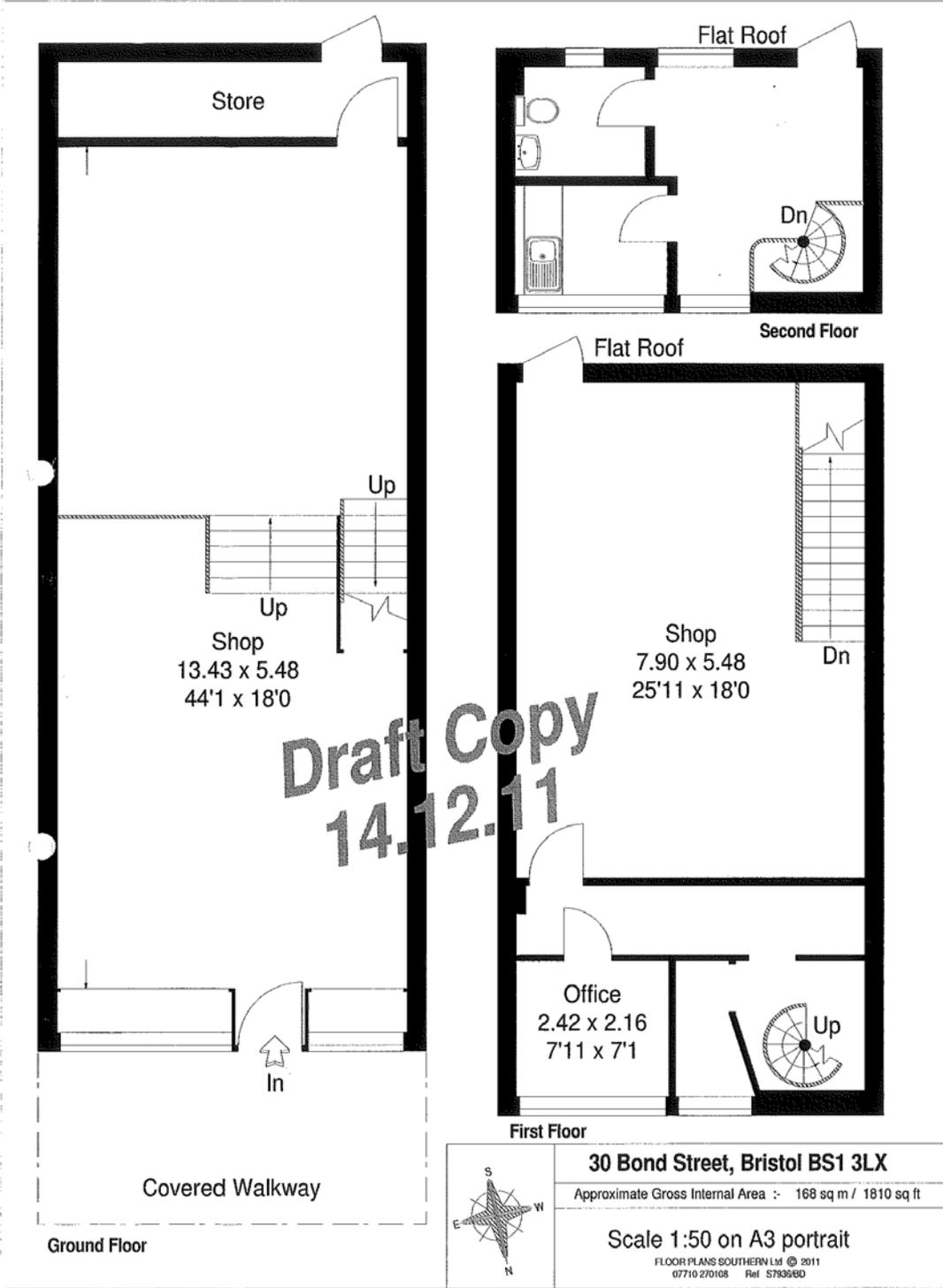
Signed .....
COLIN CHARLES MASON – DIRECTOR
For and on behalf of DARKER ENTERPRISES LIMITED - APPLICANT
(If the applicant is a company, signatory should state his position in the company and his authority for signing)

Date 20th March 2012 (Date of application)

The following should accompany this application:

1. Three passport-size photographs of the applicant and any person responsible for management of the premises at any time.
2. A plan or plans of the premises to the scale of 1:50 or thereabout with details of layout.
3. The appropriate fee. **£8,080.00**
4. Birth Certificate of applicant (if individual)
5. Certificate of incorporation (if corporate body)

PLAN OF PREMISES



STANDARD CONDITIONS

BRISTOL CITY COUNCIL

**STANDARD CONDITIONS APPLICABLE TO
LICENCES FOR SEX ESTABLISHMENTS**

In these Conditions the following expressions shall have the following meanings:

- (i) 'The Council' – The City Council of Bristol.
 - (ii) 'Sex Establishment', 'sex cinema', 'sex shop', and 'sex article', shall have the meanings given them in Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982.
 - (iii) 'Premises' any vehicle, vessel, stall or premises (which shall include any building, any part thereof, forecourt, yard or storage place in connection with any building) which is the subject of a licence granted under Schedule 3 aforesaid.
 - (iv) 'Special Conditions' any terms, conditions or restrictions contained or referred to in the Schedule to a licence granted under Schedule 3 aforesaid.
1. A sex establishment shall not be open to the public before 9 a.m. and shall not be kept open after 8.00 p.m.
 2. A sex establishment shall not be open to the public on Sundays or bank holidays or any public holidays.
 3. The licensee shall ensure that the public are not admitted to any part or parts of the premises which have not been licensed by the Council.
 4. No part of the premises shall be used by male or female prostitutes for the purposes of soliciting.
 5. The licensee shall notify the Council in writing of the person responsible for management of a sex establishment at any time and no person may be responsible for such management unless he is approved by the Council.
 6. The name of the person responsible for management of a sex establishment shall be prominently displayed on the premises throughout the time of his management.
 7. Where the licensee is a body corporate or an unincorporated body any change of director, company secretary or other person responsible for management of the body shall be notified to the City Clerk in writing within 14 days of the change.
 8. The licensee shall not let, licence or otherwise dispose of any part of

- the premises.
9. No display, advertisement or notice of any kind shall be exhibited so as to be visible from outside the premises unless approved in writing by the Council.
 10. Neither the licensee nor his servant or agent shall personally solicit custom for a sex establishment outside or in the vicinity of a sex establishment.
 11. There shall be no change of user from a sex cinema to a sex shop or from a sex shop to a sex cinema without written consent from the Council.
 12. No sex articles or other things intended for the 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 shall be displayed, sold, hired, exchanged, loaned or demonstrated in a sex cinema.
 13. All sex articles and other things displayed for sale, hire, exchange or loan in a sex shop shall be clearly marked with their prices.
 14. All printed matter offered for sale, hire, exchange, or loan shall be available for inspection prior to purchase.
 15. Alterations or additions either internal or external shall not be made to the licensed premises without written consent from the Council.
 16. The licensee shall take all reasonable precautions for the safety of the public and employees.
 17. The licensee shall comply with any fire prevention and safety measures which may be required by the Council.
 18. In the event of any inconsistency between these conditions and any special conditions of the licence the special conditions shall prevail.
 19. Where in these Conditions reference is made to 'approval' or 'consent' by the Council this shall be approval or consent in writing from the City Clerk and no approval given under any other powers of the Council will be sufficient, e.g. planning permission approval under building regulations, and approval given under any other powers exercised by the Council shall not preclude the necessity for approval or consent in writing under these Conditions.