

# Public Document Pack



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## **LICENSING COMMITTEE (MISCELLANEOUS)**

**DATE: TUESDAY 24 AUGUST 2010**  
**TIME: 10.00 AM**  
**PLACE: COUNCIL HOUSE, PLYMOUTH (NEXT TO THE CIVIC CENTRE)**

### **Members –**

Councillor Mrs Bowyer, Chair  
Councillor Delbridge, Vice Chair  
Councillors Browne, Drean, K Foster, Gordon, King, Lock, Dr. Mahony,  
Mrs Nelder, Mrs Nicholson, Rennie, Reynolds and Wright

***Members are invited to attend the above meeting to consider the items of business overleaf***

***Members and Officers are requested to sign the attendance list at the meeting.***

**BARRY KEEL**  
CHIEF EXECUTIVE

## **LICENSING COMMITTEE (MISCELLANEOUS)**

### **PART I (PUBLIC MEETING)**

#### **AGENDA**

**1. APOLOGIES**

To receive apologies for non-attendance submitted by Committee Members.

**2. DECLARATIONS OF INTEREST**

Members will be asked to make any declarations of interest in respect of items on this Agenda.

**3. MINUTES**

**(Pages 1 - 20)**

To confirm the minutes of the meetings held on the following dates:

Licensing Committee Miscellaneous -

- 15 June 2010

Licensing Sub Committee (Miscellaneous) -

- 29 June 2010
- 27 July 2010
- 3 August 2010

**4. CHAIR'S URGENT BUSINESS**

To receive reports on business which, in the opinion of the Chair, should be brought forward for urgent consideration.

**5. APPLICATION FOR CONSENT - PRIVATE SHOP, 31  
ATHENAEUM STREET, PLYMOUTH**

**(Pages 21 - 28)**

The Director for Community Services will submit a report on an application for consent.

**6. EXEMPT BUSINESS**

To consider passing a resolution under Section 100A(4) of the Local Government Act 1972 to exclude the press and public from the meeting for the following item(s) of business on the grounds that it (they) involve(s) the likely disclosure of exempt information as defined in paragraph(s) of Part 1 of Schedule 12A of the Act, as amended by the Freedom of Information Act 2000.

## **PART II (PRIVATE COMMITTEE)**

### **MEMBERS OF THE PUBLIC TO NOTE**

that under the law, the Committee is entitled to consider certain items in private. Members of the public will be asked to leave the meeting when such items are discussed.

Nil.

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## **Licensing Committee (Miscellaneous)**

**Tuesday 15 June 2010**

### **PRESENT:**

Councillor Mrs Bowyer, in the Chair.  
Councillor Delbridge, Vice Chair.  
Councillors Lock, Mrs Nelder, Mrs Nicholson, Rennie and Wright.

Apologies for absence: Councillors Bowie, Browne, Drean, K Foster, Gordon and Dr. Mahony

Also in attendance: Andy Netherton – Principal Environmental Health Officer, Ann Gillbanks – Senior Lawyer and Peter Clemens – Senior Licensing Officer.

The meeting started at 10.00 am and finished at 10.20 am.

*Note: At a future meeting, the committee will consider the accuracy of these draft minutes, so they may be subject to change. Please check the minutes of that meeting to confirm whether these minutes have been amended.*

### 1. **APPOINTMENT OF CHAIR AND VICE CHAIR**

It was agreed that Councillor Mrs Bowyer is appointed as Chair and Councillor Delbridge is appointed as Vice Chair for the current municipal year.

### 2. **DECLARATIONS OF INTEREST**

There were no declarations of interest in accordance with the code of conduct.

### 3. **MINUTES**

It was resolved that the following minutes be approved as a correct record:

13 April 2010	Licensing Committee Miscellaneous
30 March 2010	Licensing Sub Committee
13 April 2010	Licensing Sub Committee
20 April 2010	Licensing Sub Committee

### 4. **CHAIR'S URGENT BUSINESS**

There were no items of Chair's Urgent Business.

5. **UPDATE ON LEGISLATIVE AND POLICY DEVELOPMENT FOR 2010-2011**

Andy Netherton, the Principal Environmental Health Officer, provided the Committee with an update on legislative and policy development.

Members were informed that –

- (i) any elected Member of the Licensing Authority may now make representations or request variations to Licenses;
- (ii) the following legislative changes were to be incorporated into licence operating schedules from 6 April 2010:
  - a ban on irresponsible drinks promotions
  - a ban on dispensing direct into the mouth
  - free access to tap water
- (iii) from 1 October 2010 new mandatory conditions were to be added to licence operating schedules:
  - age verification policy
  - opportunity for patrons to choose smaller measures of alcohol
- (iv) there was a new power for licensing authorities to restrict sales of alcohol between 3am and 6am; section 172A gives the licensing authority the power to make an early morning alcohol restriction order. The effect of the order was to suspend any authorisation of the sale of alcohol between 3am and 6am; this would include premises licenses, club premises certificates and temporary events notices. The provisions would come into force once the Secretary of State had set the necessary order; Members may only wish to make such an order when representations had been received from the Police;
- (v) legislation has amended the Licensing Act 2003 to remove venues that previously required licensing under the Licensing Act, such as lap dancing; the Council must now decide whether to adopt the Local Government (Miscellaneous Provisions) Act 1982 and regulate these activities in the same way as sex shops;
- (vi) Government consultation has been completed on the question of if a small music venue had less than 100 patrons it would be exempt from licensing for regulated live music; Local Authorities Coordinators of Regulatory Services (LACORS) have also made a response to this consultation;
- (vii) the Licensing Act 2003 - Licensing Policy was due for renewal in January 2011. Consultation had now commenced and would run until September 2010. This would include a review of the Cumulative Impact Policy. Officers were also about to consult on the new sex establishment policy.

Members noted the update.

6. **INFORMATION REGARDING DELEGATED DECISIONS FOR APPLICATIONS FOR THE GRANT/VARIATION OF PREMISES LICENCES AND CLUB PREMISES CERTIFICATES**

Peter Clemens, the Senior Licensing Officer, provided the Committee with an update on information upon premises licences that had been mediated by Licensing officers.

The Committee noted the update.

7. **EXEMPT BUSINESS**

There were no items of exempt business.

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## **Licensing Sub Committee (Miscellaneous)**

**Tuesday 29 June 2010**

### **PRESENT:**

Councillor Mrs Bowyer, in the Chair.  
Councillor Lock, Vice Chair.  
Councillor Rennie.

Also in attendance: Sharon Day – Lawyer, Marie Price – Licensing Officer

The meeting started at 10.00 am and finished at 2.00 pm.

*Note: At a future meeting, the committee will consider the accuracy of these draft minutes, so they may be subject to change. Please check the minutes of that meeting to confirm whether these minutes have been amended.*

### **1. APPOINTMENT OF CHAIR AND VICE-CHAIR**

Agreed that Councillor Mrs Bowyer was appointed as Chair and Councillor Lock appointed as Vice Chair for this meeting.

### **2. DECLARATIONS OF INTEREST**

There were no declarations of interest in accordance with the code of conduct.

### **3. CHAIR'S URGENT BUSINESS**

There were no items of Chair's Urgent Business.

### **4. TRANSFER OF PREMISES LICENCE AND VARY LICENCE TO SPECIFY INDIVIDUAL AS PREMISES SUPERVISOR**

The Committee having –

- (i) considered the report from the Director for Community Services;
- (ii) considered representations from Devon and Cornwall Constabulary that to grant the licence would undermine the crime prevention licensing objective on the following grounds;
  - that the applicant had associations with previous management responsibilities at premises which had its premises licence revoked by the licensing committee and which indicated that it will not be possible to meaningfully engage in the licensing objectives;
  - that 71 Union Street was renamed and re opened as Jumping Jacks. This fact was advertised at the premises in New

George Street Plymouth which used to go by this name (photographic evidence of this was produced). The premises licence for New George Street was revoked on the 21 July 2009 following a review hearing as a result of ongoing management problems at the premises.

- the same people are associated with both premises. This was demonstrated by the fact that:

- Mr Willoughby had been working at the premises at New George Street on the 26 June 2009 when there had been a serious assault at the premises;
- on the 7 July 2009 the Premises Licence Holder at New George Street had confirmed that the duty manager would be Mark Willoughby. On speaking with him he confirmed he would be taking over the premises once his CRB check had come through;
- a copy of the application to transfer premises licence and DPS in respect of 111 New George Street, Plymouth into the name of Mark Willoughby was produced. This application was objected to at the time by the police;
- a copy of a letter dated 14 July 2009 was produced from a Mrs Williams confirming that Mr Willoughby had taken on the premises but due to the fact that he didn't hold a personal licence the DPS would be Mr Williams until such time as Mr Willoughby obtained his personal licence;
- a statement from Mr Willoughby confirming he was taking on the premises;

when Mr McIndoe attended the premises at 71 Union Street, Plymouth, both Mr Willoughby and Mr Williams were present and Mr Williams confirmed he owned a business interest in the premises;

- a time line showed incidents occurring at the premise since it started trading on the 28 May 2010:
  - 31 May 2010 - complaint of sexual assault at the premises;
  - 6 June 2010 – a report of a fight at the premises and assault of door supervisor by having glass thrown in her face;

- 6 June 2010 complaint of assault after male sustained broken arm following ejection.
  - 13 June 2010 – two males attempted to storm the front door of the venue but were stopped and ejected by door staff
  - 19 June 2010 – assault on member of door staff
  - 19 June 2010 – large scale disorder outside premises. Information was given that despite requests to close the premises to new customers to prevent further disorder the co owner of the premises tried to negotiate rather than complying. He did eventually comply after being warned that if he did not the Police would have to consider using their closure powers under the Licensing Act. Once closed the crowd dispersed. Mr Willoughby was said to be too busy serving to come and speak with the Police.
  - CCTV footage was shown of the above incidents of disorder and tied and linked to the premise on the 19 June 2010;
  - a copy of a letter was provided showing that the premises are defined as a problem premises by the Police.
  - 71 Union Street had had problems with disorder in the past and since it had been closed these problems had stopped, however with the opening of Jumping Jacks the problems have recurred.
  - the Police had identified that the same customer base had transferred from New George Street to Union Street;
- (v) heard from the applicant and his representatives in support of the application and in particular that :
- the disorder on the 19 June was down to the Police not doing their job properly because had they arrested the alleged offender after the first assault of the three assaults the problems would not have occurred;
  - that a female police officer had said she would be writing a report commending the work of the door staff over a recent weekend;
  - they pointed out various errors in the police evidence in relation to dates and also alleged mistaken identity;
  - Mr Willoughby had never been a door man and it was denied

that he had heart problems;

- Mr Willoughby did not have any management responsibility for 111 New George Street and his application for DPS and transfer of premises licence at those premises only had effect for 6 days before the licence was revoked and it was hard to see how he could have contributed to the problems at those premises;
- he was asked to carry out an audit at 111 New George Street due to problems that were occurring at those premises;
- in relation to the time line of incidents from the police and the CCTV it was pointed that one of the incidents shown on the 13 June related to the kebab shop next door and not their premises (members noted this and disregarded this portion of the CCTV evidence in their decision making);
- additionally in relation to the two sexual assaults they alleged that these had been withdrawn, the 13/6/10 incident did not have a log number, after the glassing incident they had undertaken a review of security and taken steps to use polycarbonate drinking vessels;
- in relation to the closure of the premises on the 19 June Mr Willoughby stated that he was unaware of the police request to close the premises and this decision had been made by the head doorman. It was only later that he became aware of it and a letter had been written to the security company as a result of their failure to inform him. Mr Robinson, who stated that he had no operational interest in the premises, denied that he had made the decision to close the doors and had been at the premises purely as a patron with some friends;
- on the 19 June Mr Willoughby stated that he was out at the front of the premises when the disorder occurred but was inside when the police requested to speak to him and indeed was unaware that such a request had been made;
- Mr Willoughby was unaware that there were posters at the New George Street advising that the premises had moved addresses. He also did not know about the flyers that had been sent out;

In relation to the application to transfer the premises licence to Mr Willoughby and having taken into account all of the above representations members were satisfied that Mr Willoughby had had a management interest at the New George Street premises. They accepted that this decision was based on some hearsay contained in the police statements but weren't satisfied with the responses received to questions posed to Mr Willoughby to cast any doubt on the reliability of that evidence produced

in section 9 format by the Police. They therefore considered that the hearsay was reliable.

The committee also noted that save for the positive action in relation to polycarbonate glasses there was nothing put forward by the applicant to show how he was going to address the problems which already existed at the premises in the short length of time they had been opened.

The committee considered that the evidence brought by the Police on the CCTV and the written time line went to support the concerns the police had expressed that the granting of the application would undermine the crime prevention objective. Therefore it was agreed that the application for the transfer of the Premises Licence would be refused as to grant it would undermine the Crime Prevention objective.

In relation to the application to vary the premises licence to specify Mr Willoughby as DPS, whilst the committee was aware that the application for the transfer of the premise licence was a separate application, the evidence presented by the Police was the same for both. The committee had the same concerns as have been outlined in the decision to transfer the premises licence. Therefore the application to vary the premises licence to specify Mr Willoughby as the DPS is refused on the basis that to grant it would undermine the crime prevention objective.

5. **EXEMPT BUSINESS**

There were no items of exempt business.

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## Licensing Sub Committee (Miscellaneous)

Tuesday 27 July 2010

### PRESENT:

Councillor Mrs Bowyer, in the Chair.  
Councillor, Vice Chair.  
Councillors Lock and Rennie.

Co-opted Representatives:

Apologies for absence: Councillors Gordon and

Also in attendance:

The meeting started at 10.00 am and finished at 10.40 am.

*Note: At a future meeting, the committee will consider the accuracy of these draft minutes, so they may be subject to change. Please check the minutes of that meeting to confirm whether these minutes have been amended.*

### 1. APPOINTMENT OF CHAIR AND VICE-CHAIR

Agreed that Councillor Mrs Bowyer was appointed as Chair and Councillor Lock appointed as Vice Chair for this meeting.

### 2. DECLARATIONS OF INTEREST

There were no declarations of interest in accordance with the code of conduct.

### 3. CHAIR'S URGENT BUSINESS

There were no items of Chair's Urgent Business.

### 4. REVIEW OF PREMISES LICENCE - THE COOPERAGE, 134 VAUXHALL STREET, PLYMOUTH (TO FOLLOW)

The Committee having –

- (a) considered the report from the Director for Community Services;
- (b) heard from a representative of the Devon and Cornwall Constabulary that –
  - the application for review of the premises licence was made on 22 June 2006;
  - the hearing had subsequently been adjourned on several occasions;
  - the review of these premises was based on the fact that the Dance Academy had been taken for review following a police drugs raid and the owner Mr Bahmanzadeh had moved the business to these premises which he also owned;
  - the premises licence had been transferred;
  - Mr Bahmanzadeh no longer had any connection to the property or the premises licence.

The Committee did consider the conditions currently on the premises licence and considered these to be sufficiently robust to alleviate any concerns regarding any future possible trading of the premises.

Having taken into account all the relevant representations made, the members have agreed to take no action as the committee did not deem it necessary.

5. **EXEMPT BUSINESS**

Agreed to consider passing a resolution under Section 100A (4) of the Local Government Act, 1972 to exclude the press and public from the meeting for the following items of business on the grounds that they involve the likely disclosure of exempt information as defined in paragraphs 7 of Part 1 of Schedule 12A of the Act, as amended by the Freedom of Information Act 2000.

6. **GRANT OF PERSONAL LICENCE - MA (E7)**

The Committee having –

- (a) considered the report from the Director for Community Services;
- (b) heard that a letter had been received from the applicant's solicitor stating that MA did not wish to proceed with his application at the present time.

The matter was withdrawn.



## **Licensing Sub Committee (Miscellaneous)**

**Tuesday 3 August 2010**

### **PRESENT:**

Councillor Mrs Bowyer, in the Chair.  
Councillor Delbridge, Vice Chair.  
Councillors Lock and Wright.

Apologies for absence: Councillor Gordon

Also in attendance: Sharon Day – Lawyer

The meeting started at 10.00 am and finished at 1.30 pm.

*Note: At a future meeting, the committee will consider the accuracy of these draft minutes, so they may be subject to change. Please check the minutes of that meeting to confirm whether these minutes have been amended.*

### **7. APPOINTMENT OF CHAIR AND VICE-CHAIR**

Agreed that Councillor Mrs Bowyer was appointed as Chair and Councillor Delbridge was appointed as Vice Chair.

### **8. DECLARATIONS OF INTEREST**

There were no declarations of interest in accordance with the code of conduct.

### **9. CHAIR'S URGENT BUSINESS**

There were no items of Chair's Urgent Business.

### **10. GRANT OF PREMISES LICENCE - BREAKERS CAFE, COMPTON HOUSE, 11-14 GIBBON LANE, PLYMOUTH**

The Committee having –

- (i) considered the report from the Director for Community Services;
- (ii) considered the written representations and heard from interested parties;
- (iii) heard from the applicant that:
  - they wanted to be involved in the community; they have a community board in the premises at the moment;
  - they would have 18 covers in the premises and wanted to have the option to provide take away food and drink although their main aim was to provide sit down breakfasts;

- they were asking to open until 5am 7 days a week but may not be open for that length of time as it would depend upon the level of custom;
- they had their own residents in the same block as the premises so were also concerned with disturbances and would do all they could to make sure their premises did not add to existing problems. They felt that providing a meal may reduce problems in the area;
- there was a problem with rubbish in the area but this mainly came from a new residential building in the area which did not have suitable provision for rubbish. The applicants were regularly clearing the area themselves;
- they did not consider they would bring additional people into the area as it would be passing trade they would attract;
- they would have CCTV installed and would work with the police;
- they were experienced licensees;
- the applicants had installed extra lighting in Gibbon Lane to improve the area and prevent problems;

(vi) considered representations under the licensing objectives as follows:

a) Prevention of Public Nuisance –

- granting a food licence until 5am would have a detrimental impact on the local community as the premises was very near a school and residential housing. It would draw a large number of intoxicated individuals into the area with resulting noise, disturbance and anti social behaviour. They already suffer with pavements being littered with vomit, broken glass and urine after weekend evenings; this was considered to be relevant but there was no evidence to support this bearing in mind the size of the premises;
- there was a paved area with seating around the corner from the café and interested parties were concerned that this would become even more of a focus for loitering and disruptive behaviour; this was considered to be relevant and members felt that this would be addressed by the imposition of a special condition;

- the local community already suffered from broken glass on pavements and interested parties feared that the granting of the licence would aggravate this and add to litter and mess which was already a problem in the area; this was considered to be relevant and members considered that this problem would be addressed by the imposition of a special condition;
- b) Prevention of Crime and Disorder –
- residents feared an increase in antisocial behaviour, damage to vehicles and other petty crime due to the drawing in of larger numbers of inebriated individuals and groups in the area if the licence was granted; this was considered to be relevant but there was no evidence to support this bearing in mind the proposed size of the premises;
- c) Protection of Children from Harm –
- as this is a very late licence interested parties were concerned that noise would have an impact on surrounding houses where pupils of the local school live. This noise could interrupt children's sleep which would adversely affect the learning of the pupils; this was considered to be relevant but there was no evidence to support this although members considered that the special condition would address any potential problems;
- d) Public Safety –
- the granting of the licence would lead to an increase in broken glass and vomit which would represent a health and safety hazard to pupils walking to and from a nearby school; this was considered to be relevant and members felt that the special condition would address this;
- e) Other representations –
- due to the numbers of licensed premises on North Hill the granting of another late licence so close to residential housing would mean that families would have no choice but to move away from the Greenbank area due to the associated antisocial behaviour and nuisance, having a further negative impact on the school and community; this was not considered to be relevant as it did not come within one of the four licensing objectives;

- the presence of rubbish and glass strewn around is at odds with the teaching ethos to encourage pupils to become responsible citizens; this was not considered to be relevant in these terms as the concerns did not fall within one of the four licensing objectives but the concern in relation to rubbish and glass had been dealt with earlier under the relevant licensing objective;
- there was already another hot food outlet within 100m of the Breakers Café which had resulted in a negative impact within the community; this was not considered relevant as it did not relate to one of the four licensing objectives

Agreed that having taken into account all of the above representations the application be GRANTED as applied for subject to mandatory conditions contained in the Licensing Act 2003, conditions consistent with the applicants operating schedule and the following special conditions:

- (1) Between the hours of 11pm and 5am late night refreshment must be consumed on the premises. Provision of late night refreshment for take away is not permitted.
- (2) A sign is to be placed in the window of the premises to advise patrons that take away food is not permitted between 11pm and 5am.

11. **VARIATION OF PREMISES LICENCE - HEAVEN, 162 EXETER STREET, PLYMOUTH**

The Committee having –

- (i) considered the report from the Director for Community Services;
- (ii) considered the written representation from interested parties and noted that in response to the notice of hearing the interested parties indicated that the application to extend opening hours indoors was not an issue; they only wanted to object to the applications relating to the outdoor elements of the application; a petition was received signed by 18 people. This was treated as one representation;
- (iii) heard that Environmental Health had withdrawn their representations following agreement of conditions with the applicant;
- (v) heard from the applicant that:
  - he had received various complaints from one particular resident in relation to noise from bins, doors slamming and he had taken action to address those concerns;
  - the premises, under its previous name, had allegedly caused problems for residents;

- none of the residents had ever come into the restaurant to complain;
  - the applicant considered himself to be a very good restaurateur with many years experience. He considered he had good clientele. He mainly served wine with food to stop drinkers just coming in, it is tables only;
  - the application had been made so that he can get into the wedding reception market and also for occasions such as Christmas;
  - he does a lot of charity events for the community without any complaints with the few late licences he has had;
  - the application to vary to licence had received no objections from the Police;
  - he had a set of house rules which were presented to the committee;
  - he had a petition signed by approximately 48 people; the Committee noted that there were no addresses on the petition (which was headed up as a music petition) and so were unable to put any weight on it as they were not able to say whether these people came within the vicinity of the premises;
  - he had signed and agreed to the conditions put forward by Environmental Health detailed below being included within his operating schedule:
- 1 Where regulated entertainment is held inside the premises, doors and windows will be kept shut at all times
  - 2 Live and recorded music outdoors will only be permitted when a function has been pre booked and a substantial meal is provided as part of that function
  - 3 All regulated entertainment will last no more that three hours duration, inclusive of any breaks
  - 4 No more that 12 performances of regulated entertainment outdoors shall be permitted in any calendar month
  - 5 A member of staff will be nominated to deal with noise complaints and will respond to local residents concerns if issues are raised, as well as any reasonable request made by an Officer of a Responsible Authority.

- 6 Music noise should not be excessive/unreasonable at any time, responsible member of staff should take action to control music noise if found to be excessive/unreasonable.
  - 7 A senior member of staff (manager) will assess the impact of any noisy activities on neighbouring residential premises at the start of the activity/entertainment and periodically throughout the activity/entertainment.
  - 8 A diary of entertainment will be maintained at the premises and will be made available for inspection at the request of any representative of a Responsible Authority. Details of entertainment events must be documented within this diary and should include: Name, date and times of pre-booked performance, if any complaints have been received, if any action was taken to control music noise and the time at which regulated entertainment ceased.
- (vi) considered representations under the licensing objectives as follows:
- a) Prevention of Public Nuisance –
    - the granting of the licence in relation to outdoor activities would prevent sleep and mean residents wouldn't be able to have their windows open in the summer months. Residents felt they should be able to get to sleep at a reasonable time both during the week and at week ends. Information was provided that during temporary events notices had been used recently to enable music to be played outdoors (including some events where music took place but was not authorised under the TEN). These events caused noise and disturbance on a number of occasions. On these occasions the interested party closed their double glazed windows but this was not sufficient to prevent the singing/music being audible and causing a disturbance. This was considered to be relevant and members felt that the conditions agreed with Environmental Health would go some way to address the concerns of the residents but members still felt that the issue raised by interested parties of being able to get to sleep at a reasonable time needed addressing. Members did not consider that this could be addressed by conditions but could only be addressed by adjusting the finishing time of the regulated entertainment relating to live music, recorded music, provision of facilities for making music, provision of facilities for dancing (and anything of a similar description) taking place outdoors.

- b) Prevention of Crime and Disorder –
  - there were no representations;
- c) Protection of Children from Harm –
  - there were no representations;
- d) Public Safety –
  - there were no representations;
- e) Other representations –
  - because the restaurant was not a club and was situated in a residential area, music late into the night/early hours of the morning should be confined to the inside of the premises; this was not considered to be relevant as it did not relate to the licensing objectives;
  - the application had not been advertised correctly; the licensing officer confirmed the requirements of the legislation had been complied with.

The Committee agreed that having taken into account all of the above representations the variation application be GRANTED subject to mandatory conditions contained in the Licensing Act 2003, conditions consistent with the applicants operating schedule and the conditions agreed with Environmental Health.

In addition live music, recorded music (and anything of a similar description) provision of facilities for making music and provision of facilities for dancing (and anything of a similar description) outdoors must end as follows:

Sun – Thu -2300 hours

Fri and Saturday - midnight:

12. **EXEMPT BUSINESS**

There were no items of exempt business.

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**CITY OF PLYMOUTH**

**Subject:** Private Shop 31, Athenaeum Street, Plymouth  
Application for consent

**Committee:** Licensing Committee (Miscellaneous)

**Date:** 24 August 2010

**Cabinet Member:** Community Services Street Scene Waste and  
Sustainability  
Councillor Michael Leaves

**CMT Member:** Director for Community Services

**Author:** Peter Clemens  
e-mail: licensing@plymouth.gov.uk

**Contact:** 01752 305465

**Ref:** ERS/LIC/PREM

**Part:** I

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**Executive Summary:**

An application has been received from Darker Enterprises Limited in respect of the Private Shop 31, Athenaeum Street, Plymouth to open on Bank Holiday Monday 27<sup>th</sup> December, Tuesday 28<sup>th</sup> December 2010 and Monday 3<sup>rd</sup> January 2011.

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**Corporate Plan 2010- 2013:**

This report links to the delivery of the corporate improvement priorities. In particular:

1. Informing and involving residents.
  2. Improving culture and leisure activities.
- 

**Implications for Medium Term Financial Plan and Resource Implications:  
Including finance, human, IT and land**

Not applicable.

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**Other Implications: eg. Section 17 - Community Safety, Health and Safety, Risk Management, Equalities Impact Assessment, etc.**

Members should be aware that Section 17 of the Crime and Disorder Act 1998 puts a statutory duty on every Local Authority to exercise its various functions with due regard to the need to do all that it reasonably can do to prevent crime and disorder in its area.

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**Recommendations and Reasons for recommended action:**

That Members consider this report.

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**Alternative options considered and reasons for recommended action:**

None.

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**Background papers:**

Application.  
Licensing Act 2003.  
Guidance issued under Section 182 Licensing Act 2003.  
Council's Licensing Policy.

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**Sign off:**

Head of Fin		Head of Leg		Head of HR		Head of AM		Head of IT		Head of Strat Proc	
Originating CMF Member											

## **1.0 BACKGROUND**

- 1.1 An application has been received from Darker Enterprises Limited in respect of the Private Shop situated at 31, Athenaeum Street, Plymouth to open on the Bank Holidays over the Christmas period 2010 / 2011.
- 1.2 As the 25<sup>th</sup> and 26<sup>th</sup> December 2010 fall on a Saturday and Sunday respectively Darker Enterprises Limited have requested they be allowed to open on the Bank Holidays Monday 27<sup>th</sup> December, Tuesday 28<sup>th</sup> December 2010 and also Monday 3<sup>rd</sup> January 2011.
- 1.3 Sex shops are governed under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (c.30)
- 1.4 Paragraph 13 (1) of Schedule 3 states:  
Subject to the provisions of the Schedule, the appropriate authority may make regulations prescribing standard conditions applicable to licences for sex establishments, that is to say, terms, conditions and restrictions on or subject to which licences under this Schedule are in general to be granted, renewed or transferred by them.
- 1.5 Paragraph 13 (3) of Schedule 3 states:  
Without prejudice to the generality of sub – paragraphs (1) and (2) above, regulations under this paragraph may prescribe conditions regulating –
  - (a) the hours of opening and closing of sex establishments
  - (b) displays or advertisements on or in such establishments
  - (c) the visibility of the interior of sex establishments to passersby; and
  - (d) any change from one kind of sex establishment mentioned in sub-paragraph 2(a) above to another kind of sex establishment so mentioned.
- 1.6 These premises operate under Sex Shop licence No SS0002 issued by Plymouth City Council and have standard conditions attached to the licence as (Appendix 1).
- 1.7 The relevant condition under ‘Times of Opening’ states:  
‘except with the previous consent of the Council a Sex Establishment shall not open on Sundays or any Bank Holidays or any Public Holidays’.
- 1.8 The licence was renewed on the 17<sup>th</sup> August 2009 for a period of 12 months.

## **2.0 OBJECTIONS**

- 2.1 The Police have no objections to this application.

### **3.0 CONSIDERATIONS**

3.1 When deciding the grant or renewal of a licence the committee would have consideration of the following:

whether the grant would be appropriate having regard to

(a) to the character of the relevant locality; or

(b) to the use to which any premises in the vicinity are put; or

(c) to the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.

(d) the applicant is unsuitable having been convicted of an offence or for any other reason.

(e) the business to which the application 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.

3.2 Committee may wish to have regard to the above when considering the application today.

STANDARD CONDITIONS ATTACHED TO THE ISSUE OF A  
**Sex Shop Licence**

LICENCE No: SS0002

Licence commences 17/08/2009 Expires 16/08/2010

Licensee Darker Enterprises Limited

**Times of Opening**

Except with the previous consent of the Council a Sex Shop shall not be open to the public before 9:00 am and shall not be kept open after 8:00 pm.

Except with the previous consent of the Council a Sex Establishment shall not be open on Sundays or any Bank Holidays or any public holidays.

**Conduct and Management of Sex Establishments**

Where the licensee is a corporate body or an unincorporated body any change of director, company secretary or other person responsible for the management of the body is to 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 any new director secretary or manager are to be furnished within 14 days of a request in writing from the Council.

The licensee or some responsible person nominated by him in writing for the purpose of managing the Sex Establishment in his absence and of whom details (including photographs) have been supplied to and approved in writing by the Council shall be in charge of and upon the premises during the whole time they are open to the public.

The name of the person responsible for the management of a Sex Establishment be he the licensee or a manager approved by the Council shall be prominently displayed within the Sex Establishment throughout the period during which he is responsible for its conduct.

The licensee shall maintain a daily register in which he shall record the name and address of any person who is to be responsible for managing the Sex Establishment in his / her absence and the names and addresses of those employed in the Sex Establishment. The register is to be completed each day within thirty minutes of the Sex Establishment opening for business and is to be available for inspection by the Police and by authorised officers of the Council.

The licensee shall retain control over all portions of the premises and shall not let, licence or part with possession of any part of the premises.

The licensee shall maintain good order in the premises.

No person under the age of 18 shall be admitted to the premises or employed in the business of a Sex Establishment.

The licensee shall ensure that the public are not admitted to any part or parts of the premises other than those which have been approved by the Council.

The licensee shall ensure that no part of the premises shall be used by prostitutes (male or female) for soliciting or for any immoral purposes.

Neither the licensee nor any employee or other person shall seek to obtain custom for the Sex Establishment by means of personal solicitation outside or in the vicinity of the premises.

The licensee shall comply with all statutory provisions and any regulations made there under.

The licensee shall ensure that during the hours the Sex Establishment is open for business every employee wears a badge of a type approved by the Council indicating his / her name and that he / she is an employee.

## STANDARD CONDITIONS ATTACHED TO THE ISSUE OF A

### Sex Shop Licence

LICENCE No: SS0002

Licence commences 17/08/2009 Expires 16/08/2010

Licensee Darker Enterprises Limited

The copy of the licence and these Regulations are required to be exhibited in accordance with paragraph 14 (1) of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 shall be reproductions to the same scale as those issued by the Council. The copy of the licence required to be displayed as aforesaid shall be suitably framed and the copy of these Regulations shall be retained in a clean and legible condition.

#### User

A Sex Shop shall be conducted primarily for the purpose of the sale of goods by retail.

No change of use of any portion of the premises from that approved by the Council shall be made until the consent of the Council has been obtained thereto.

No change from a Sex Cinema to a Sex Shop or from a Sex Shop to a Sex Cinema shall be effected without the consent of the Council.

Neither sex articles nor 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 shall be displayed, sold, hired, exchanged, loaned or demonstrated in a Sex Cinema.

#### Goods available in Sex Establishments

All sex articles and other things displayed for sale, hire, exchange or loan within a Sex Shop shall be clearly marked to show to persons who are inside the Sex Shop the maximum prices being charged.

All printed matter offered for sale, hire, exchange or loan shall be available for inspection prior to purchase and a notice to this effect is to be prominently displayed within the Sex Establishment.

No film or video film shall be exhibited, sold or supplied unless it complies with the Video Recording Act 1974 and is a reproduction authorised by the owner of the copyright of the film or video film so certified.

The licensee shall without charge, display and make available in the Sex Establishment such free literature on counselling on matters related to sexual problems published by any organisation as may be specified by the Council. Such literature is to be displayed in a prominent position approved by the Council adjacent to all cash collection points in the Sex Establishment.

#### External Appearance

No display, advertisement, word, letter, model, sign, placard, board, notice, device, representation, drawing, writing or any matter or thing (whether illuminated or not) shall be exhibited so as to be visible from outside the premises except:

- (i) Any notice of a size and in a form approved by the Council which is required to be displayed so as to be visible from outside the premises by law or by any condition of a licence granted by the Council.
- (ii) Such display, advertisement, word, letter, model, sign, placard, board, notice, device, representation, drawing, writing or any matter or thing as shall have been approved by the Council.

The entrances to the premises shall be of a material or covered with a material which will render the interior of the premises invisible to passers by.

STANDARD CONDITIONS ATTACHED TO THE ISSUE OF A  
**Sex Shop Licence**

LICENCE No: SS0002

Licence commences 17/08/2009 Expires 16/08/2010

Licensee Darker Enterprises Limited

Windows and openings to the premises other than entrances shall not be obscured otherwise than with the consent of the Council but shall have suspended behind them, in a position and at an attitude approved by the Council, opaque screens or blinds of a type and size approved by the Council. This regulation shall not be constructed as lessening the obligation of the licensee under Regulation 28 hereof.

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

The premises shall be maintained in good repair and condition.

Lighting in all parts of the premises as approved by the Council shall be in operation continuously during the whole of the time that the Sex Establishment is open to the public.

The number, size and position of all doors or openings provided for the purposes of the ingress and egress of the public shall be approved by the Council and shall comply with the following requirements:

- (i) All such doors or openings approved by the Council shall be clearly indicated on the inside by the word "exit".
- (ii) Doors and openings which lead to parts of the premises to which the public are not permitted to have access shall have notices placed over them marked "private".
- (iii) Save in the case of emergency no access shall be permitted through the premises to any unlicensed premises adjoining or adjacent.

The external doors to the Sex Establishment shall be fitted with a device to provide for their automatic closure and such devices shall be maintained in good working order.

The licensee shall make provision in the means of access both to and within the Sex Establishment for the needs of members of the public visiting the Sex Establishment who are disabled.

No fastenings of any description shall be fitted upon any booth or cubicle within the Sex Establishment nor shall more than one person (including any employee) be present in any such booth or cubicle at any time.

Alterations or additions either internal or external and whether permanent or temporary to the structure, lighting or layout of the premises shall not be made except with the prior approval of the Council.

All parts of the premises shall be kept in a clean and wholesome conditions to the satisfaction of the Council.

The licensee shall take all reasonable precautions for the safety of the public and employees.

The licensee shall comply with any fire prevention and safety measures that may be required of him / her by the Council.

The premises shall be provided with fire appliances suitable to the fire risks of the premises and such fire appliances shall be maintained in proper working order and shall be available for instant use.

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