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Sharon Davies
Principal Solicitor
Licensing Services
Blackpool Council
PO Box 4
Blackpool
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Your Ref: LIC

13TH September 2016

Dear Ms Davies,

Draft Sex Establishment Licensing Policy 2016

As the holder of Sex Shop license, we submit our comments in respect of this as requested.

Our first submission is that the document should not be called a policy despite the contents of Para. 3. This terminology implies something of a binding nature. As each and every application under the Local Government (Miscellaneous Provisions) Act 1982, Schedule 3 must be considered on the situation 'at the time the application is made', a pre-determined policy might be considered a fetter on the decision making process. We would submit that the use of the words 'guidelines' would be preferable to policy. It would be less acceptable, but slightly clearer, if the term 'policy guidelines' were used instead of 'policy'.

We also make some specific comments below.

In Para 3, we suggest that the following be amended to read:

- *At the hearing, the applicant and any objectors, **who made objections within the statutory period**, will be given.....*

This would avoid any problems over late objections.

Just before Para 3.1, there is a reference to '*parties*' in relation to communication of the decision. We submit that the use of the Term 'Parties' may give the impression that the hearing is between parties. The Courts have held that this is not the case. We suggest that 'all parties' be amended to read 'the applicant and the objectors'.

We have some reservation with respect to certain aspects of Para 3.2.

We note that the opening sentence begins 'The council will need to be satisfied that the applicants.....'. This is contrary to the basic approach of the Act. Para 3.1 shows that a licence can only be refused on the grounds laid down in the Act.

The presumption is that an application will be granted unless one of the grounds for refusal is met **and** that the grounds for refusal cannot be addressed by the imposition of appropriate conditions.

Whilst we would submit that we would satisfy sub-para f), it would often be impossible to employ individuals who meet it. Most applicants will not have worked in our business as there are a limited number of retail outlets which are geographically widespread. We recruit persons who we think will make suitable employees and train, and subsequently monitor them.

In the section referring to 'unlikely to be granted', sub-para b) would seem to be superfluous. If someone had been convicted in respect of running an unlicensed sex-establishment, they would be covered by a). If not, could an unproven allegation of what is a highly technical offence, be held against them.

Para 3.3 would seem possibly to be open to the argument made in our opening submission.

Para 3.8 states the situation in respect of appeals. However, we feel that a reference should be included to emphasise that any decision is subject to the right to apply for Judicial Review.

Finally, we note that there is no reference to the basis upon which fees are determined. Given the current case referred by the Supreme Court to the European Union Court of Justice, and, in particular, the opinion expressed by the Advocate General, it is likely to be of importance that a council can demonstrate the basis upon which the fees are set.

We trust the foregoing is clear, but if you have any questions, we will be happy to answer them

Yours sincerely

A handwritten signature in cursive script that reads "J. Singleton." The signature is written in dark ink and is positioned below the "Yours sincerely" text.

Janice Singleton
Licensing Admin
For & on behalf of
Darker Enterprises Limited