

Licensing & Regulatory Committee

22nd January 2019

Name of Cabinet Member:

Not applicable

Director Approving Submission of the report:

Deputy Chief Executive (Place)

Ward(s) affected:

Longford

Title: Decision to grant a waiver to the requirement to hold a Sex Establishment licence.

Is this a key decision?

No

Executive Summary:

The purpose of this report is for the Licensing & Regulatory Committee to consider whether to waive the requirement to hold a Sex Establishment licence, for a two day Erotica Trade Only (ETO) Show, to be held at the Ricoh Arena in March 2019.

Recommendations:

The Committee is recommended to consider whether to:

1. Grant the waiver as requested

List of Appendices included:

1. Event overview (provided by the event organiser)
2. Section 7, Schedule 3, Local Government (Miscellaneous Provisions) Act 1982

Background papers:

None

Other useful documents

None

Has it been or will it be considered by Scrutiny?

No

Has it been or will it be considered by any other Council Committee, Advisory Panel or other body?

No

Will this report go to Council?

No

1. Context (or background)

- 1.1 Coventry City Council (“the Council”) is able to regulate sex establishments through Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (“the 1982 Act”). A sex establishment means a sexual entertainment venue (SEV), a sex shop or a sex cinema. For the purpose of this report the consideration is for a sex shop.
- 1.2 A sex shop for the purposes of the 1982 Act means any premises used for business where there is a significant degree of selling, hiring, exchanging, lending, displaying or demonstrating sex articles or other things intended for use in connection with sexual activity.
- 1.3 On the 13 December 2018, Jonathon Kirk, Director of ETO Show applied to the Council for a temporary licence, or for a waiver to the requirement to hold a sex establishment licence, for a 2 day ‘trade only’ event at the Ricoh Arena in March 2019. An event overview is an appendix to this report (Appendix 1).
- 1.4 Schedule 3 of the 1982 Act makes provision for the Council to grant a waiver from the requirement to hold a sex establishment licence in any case where it considers that to require a licence would be unreasonable or inappropriate. A waiver may be for such a period as the Council thinks fit. A copy of the relevant section of the legislation is included as an appendix to this report (Appendix 2).
- 1.5 The cost of a sex establishment licence application is £5768. The Council is unable to pro-rata the fee, as the application process (which includes administering a hearing) is the same, irrespective of the duration of the licence, and whether the licence is time-limited. Therefore, a temporary licence, for a pro-rata application fee, is not an available option.
- 1.6 The event is a trade only event, whereby admission to the event is by invitation only. There is no general public access and there is no wider advertising of the event to the general public. The event is strictly over 18’s and controls will be in place to verify this at the event.
- 1.7 There will be no commercial transactions or sales made at the event, it is a ‘networking’ event whereby suppliers will be able to showcase and display their products to operators of licensed premises, who will then buy directly from the exhibitors after the event.
- 1.8 One type of sex article that can only be sold in licensed sex shops is videos that have been given an R18 classification by the British Board of Film Classification. The event organiser has confirmed there will be no R18 DVD’s on display at the event.
- 1.9 An important element in the definition of a sex shop (outlined in paragraph 1.2 of this report) is the words ‘significant degree’, and because of this shops can sell a small proportion of sex articles without needing a licence (an example being Ann Summers in the city centre). The ETO show event overview clearly states that there will be a smaller percentage of sex articles, such as adult toys, displayed at the exhibition (approximately 40%) in comparison to the other items such as lingerie and sexual health products (approximately 60%).
- 1.10 Aspects of the licensing of sex shops by local authorities have been a matter for much review by the courts, either through the formal appeal mechanisms in the 1982 Act, or through action for Judicial Review. There is some assistance with the term ‘significant degree’ in case law, which indicates that no single factor is decisive and that the ratio of sex articles to the other aspects of the business, the absolute quantity of sales, the

character of the remainder of the business and the nature of the display may all be material factors.

- 1.11 It should be noted that Licensing Officers have sought the view of legal experts with regard to this case, and it is the view of Counsel that in circumstances such as these, a waiver is the most appropriate and reasonable course of action.
- 1.12 The Ricoh Arena holds a premises licence, is an established operator in the city, and is experienced at hosting and advertising trade exhibitions. The event overview clearly states that the Ricoh Arena will not be advertising the event on their website and marketing forums.
- 1.13 Licensing officers will liaise closely with both the Ricoh Arena and the event organiser to ensure that all details in the event overview are adhered to.

2. Options considered and recommended proposal

- 2.1 There are two courses of action available to the Committee in relation to this application:

- (i) Grant the waiver as requested; or
- (ii) Refuse the waiver.

- 2.2 Your officer recommends option (i) and supports the grant of the waiver because based on the type of event and the circumstances detailed in section 1 in this report, it would be both unreasonable and inappropriate to refuse the waiver in this case. There is also no provision to apply for a temporary licence, with a pro-rata fee, and as such the cost of a full licence application would be unreasonable and inappropriate.
- 2.3 The Committee are advised that they may depart from the officer recommendation if, they believe it is appropriate to do so. Should the Committee decide to depart from the recommendation and choose an alternative option, they must provide full reasons for this decision. This application should be considered on its own merits and all the circumstances taken into account before a decision is made.

3 Results of consultation undertaken

- 3.1 No consultation is required for making an application for a waiver to the requirement of having a sex establishment licence.

4 Timetable for implementing this decision

- 4.1 There is no right of appeal to this decision.

5 Comments from Executive Director, Place

5.1 Financial implications

There are no financial implications arising directly from this report.

5.2 Legal implications

Although there is no right of appeal against the refusal of a waiver of the requirement to hold a sex establishment licence, the Council could still be challenged by means of Judicial Review if it was held to have acted unreasonably.

6 Other implications

6.1 How will this contribute to achievement of the Council's key objectives / corporate priorities (corporate plan/scorecard) / organisational blueprint or Coventry Sustainable Community Strategy

It is the Regulatory Services team's responsibility to ensure that members of the public in Coventry are not put at risk. This contributes to the Council's core aim of ensuring that citizens live longer healthier lives.

6.2 How is risk being managed?

If the application for a waiver is not handled in line with the Act, there is a risk of Judicial Review, and associated costs.

6.3 What is the impact on the organisation?

None

6.4 Equalities / EIA

This decision will not affect the service provision and therefore details of the Equalities Impact Assessment are not relevant in this case.

6.5 Implications for (or impact on) the environment

None

6.6 Implications for partner organisations?

None

Report author(s):

Name and job title:

Debbie Cahalin-Heath – Licensing Manager

Directorate:

Place

Tel and email contact:

024 7683 1888

Debbie.cahalin-heath@coventry.gov.uk

Enquiries should be directed to the above person.

Contributor/approver name	Title	Directorate or organisation	Date doc sent out	Date response received or approved
Contributors:				
Carolyn Sinclair	Governance Services Officer	Place	02.01.2019	02.01.2019
Tracy Miller	Head of Planning & Regulation	Place	18.12.2018	19.12.2018
Davina Blackburn	Regulatory Services Manager	Place	13.12.2018	14.12.2018
Names of approvers for submission: (officers and members)				
Cath Crosby	Finance	Place	02.01.2019	03.01.2019
Amy Wright	Legal	Place	02.01.2019	02.01.2019
Andrew Walster	Director Streetscene & Regulatory Services	Place	02.01.2019	02.01.2019

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