

COMMITTEE:	GENERAL LICENSING SUB-COMMITTEE
DATE:	10 March 2022
TITLE:	APPLICATION FOR A SEX SHOP LICENCE , EVA AMOUR, 6 ST ANNE'S SQUARE, HIGH ST, BARMOUTH LL42 1DL
PURPOSE:	FOR DECISION
AUTHOR:	HEAD OF ENVIRONMENT DEPARTMENT

1. Application received.

- 1.1 Attached is an application for a sex shop at 6 St Anne's Square, High Street, Barmouth, LL42 1DL received from David Powley and Daniel Miller operating as DD Trading (NW), recently from the same address.
- 1.2 The application was received and accepted as valid on the 8th of February 2021, and in accordance with legal requirements a notice was displayed on the premises during the consultation period; and also appeared in the local press.
- 1.3 82 objections were received during the initial consultation period and 8 representations in support of the application. Copies of all the representations can be seen in the appendix of this report
- 1.4 The applicant requests that the shop is allowed to open 7 days a week, 10am until 6pm Monday to Saturday and until 4pm on Sundays.
- 1.5 The applicant decided to open the shop in December whilst awaiting the process of determining the application to be concluded. As the discretionary powers to regulate and licence sex establishment required formal adoption for the south of the County, the business was able to open unregulated as the relevant statutory powers did not become operational until the 6th of December 2021.
- 1.6 In an e mail dated the 6th of June to the Licensing Manager ; the applicant confirmed that he wished the Council to determine the application retrospectively if the decision was that a licence was required.

2. The regulation of sex establishments and the licensing process

- 2.1 There are five mandatory grounds for refusal of an application – if the applicant is
 - Is under the age of 18
 - Is for the time being disqualified from holding a sex establishment licence
 - Is not a body corporate and is not resident or has not been resident in the UK for six months immediately preceding the date of the application
 - Is a body corporate which is not incorporated in the UK
 - Has in the period of 12 months preceding the date of the application been
 - refused the grant or renewal of a licence for the premises in respect of which
 - the application is made, unless the refusal has been reversed on appeal

None of the mandatory grounds for refusal apply in this case.

2.2 The following discretionary grounds may be considered -

- If the applicant is unsuitable to hold the licence by reason of having been convicted of an offence
- If the business would be managed by or carried on for the benefit of a third party who would be refused a licence in their own right
- That the number of sex establishments in the locality or of the particular kind in the locality equals or exceeds the number considered appropriate.
- Is inappropriate having regard to:
 - i. The character of the relevant locality
 - ii. Use of premises in the vicinity
 - iii. Layout, character, condition or location of the premises

3. **Determining the relevant locality**

3.1 The decision as to what constitutes the 'relevant locality' is a matter for members; based on the facts of the application. The relevant locality does not have to be clearly defined ;and the members may determine that the relevant locality in this case refers to the area which surrounds the premises on or near St Anne's Square , on the High Street in Barmouth in this case.

3.2 Once the 'relevant locality has been determined , members should seek to make an assessment of the 'character ' of the relevant locality and how many , if any Sex Establishments, or Sex Establishments of a particular kind , is considered appropriate for that locality . The Sub Committee may come to the conclusion, based on the facts; that the appropriate number of such establishments may be nil.

3.3 Factors the members may wish to consider are –

- Is the locality predominantly residential in nature?
- Is the premises close to a school or premises used by children or vulnerable adults?
- Is the premises located in a publicly accessible open space regularly frequented by children or vulnerable adults?
- Is the premises close to a place of worship?
- Is the premises within a family shopping area?

4. **The Legal Position and Council Policy**

4.1 On the 7th of October Gwynedd Council adopted the discretionary provisions of the Local Government (Miscellaneous Provisions) Act 1982 ('the Act') as amended by the Crime and Policing Act 2009 ("2009 Act") to regulate 'Sex Establishments', and the licensing regime became operational on the 6th of December 2021, throughout the Gwynedd Council area. Previously, ac members of this committee will be aware; the provisions of the Act, and hence the Licensing regime had only been adopted within the Arfon area of the County, prior to Local government reorganisation in 1996 due to a single historic sex shop application being received in that area. This situation only became apparent as the Licensing Service was preparing to arrange a hearing for the determination of this application , back in April 2021.

- 4.2 The full adoption of the provisions of the Act now means it is possible to refer the application received for a determination by this committee ; having regard to the legislation, the Council’s Statement of Sex Establishment Licensing Policy and all the representations received on the application. As previously stated; the applicant has consented for this application to be determined retrospectively.
- 4.3 A Sex Establishment can either be a Sex Shop or Sex Cinema; in this case the application is for a Sex Shop. A sex shop is a premises used for a business which consists to a significant degree of selling sex articles.
- 4.4 As the application was received , consulted upon and advertised according to established protocols , which have since been incorporated in to the recently adopted Policy ; the application is deemed to be valid and ready for a determination by this committee .
- 4.5 Any person wishing to operate a Sex Establishment as defined by the Act requires a sex establishment licence, unless the requirement for a licence has been waived by the appropriate authority. As the provisions of the Act have now been fully adopted no such business can operate within the Gwynedd area without a valid licence . As the business in question applied for a licence back in February 2021 ; before the adoption of the licensing regime for the entire Gwynedd area ; the council had no powers to stop the business from opening without a licence at the time. It is understood that the business has been Trading since December 2021.
- 4.6 If a licence is granted , the Policy allows for conditions and/ or restrictions to be attached to the licence and may include conditions in respect of hours of opening; displays and advertisements on the establishment; visibility of the interior of the shop from the outside etc.
- 4.7 A licence for a Sex Establishment can only be granted for 12 months. Any renewal of a Sex Establishment licence would require the same application process as a new application and would be presented to this Committee for determination each time.

5. Initial Representations received

- 5.1 90 representations were received, 82 being objections to the proposed Licence and 8 being in support of the proposal. All the representations received are attached in the appendix to this report. Amongst the representations from residents, objections were also received from the elders of Christ Church, Presbyterian Church of Wales and the Community Council, and local clergy. North Wales Police, North Wales Fire and Rescue service , the Council’s Environmental Health and Trading Standards also made representations and confirmed that they had no objection to the application. (see appendix)
- 5.2 Further to discussions with the applicant, and as 11 months have passed since the consultation on the application had been held; the decision was made to allow all respondents to the application to reconsider their representations. A letter was sent on the 28th of January to all who responded initially ; so as to allow the opportunity to amend comments, or to withdraw representations completely.
- 5.3 22 responses were received , 20 confirming their objection to the application; 5 of which presented amended responses. One responder requested the withdrawal of their objection;

based on the fact that the shop window display did not cause offence as initially feared. One responder who has supported the application made some observations on the process followed to determine the application.

5.4 So as to ensure fairness; it was also agreed that the applicant could present evidence of names of individuals who were supportive of the business and licence application. The applicant has submitted comments from social media, and names of individuals who have supported an online petition; as well as a signed local paper petition .

6. Basis of Objections received

6.1 Many of the objections were based on concerns over the location of the proposed licenced sex shop. The main recurrent objections raised are -

- That the proposed licence would not be in keeping with the character of a small seaside town which attracts families.
- The shop is located in the middle of the retail area of town; next door to charity shop which quite often has vulnerable adults working there
- The Factory Shop is located directly opposite with its mixed retail outlet attracting family shoppers
- There is a pedestrian crossing (the only one on the high street) from the factory shop over the road to directly in front of the proposed shop; and school children use this pedestrian crossing as it is a busy road. During busy times children and adults often have to wait outside the shop frontage to cross the busy road
- Christ Church is located next to the Factory Shop ; the church is in use for worship and religious services and other community use.
- Many noted that funerals and weddings were often held at the Chapel; and the location of a sex shop opposite would be offensive to mourners and other churchgoers. The application states that the shop will be open on Sundays.
- The Guides and Brownies meet use the Chapel to meet and hold activities
- There is outside seating for families to enjoy in St Anne's Square, often frequented by families
- Approximately 200 yards away there is a children's Play centre called Bendigedig (the committee members should note that information has since been received by the applicant that this business has since closed down therefore representations made by the owners of this business, and comments made regarding this business should be disregarded)
- There are residential flats above many of the high Street retail premises, and many young families residing in close proximity to the shop
- The high street is always busy with young families coming off the beach during school holiday, and the location of the shop is impossible to avoid
- A pub is located on one side of the shop with an outside seating area
- The applicant claims that there is a discreet side door entrance to the shop; but many responders feel this is misleading , as the side door is for the flat above, and the shop is entered via an adjoining door from the hallway
- Some responders believe that the name 'Eva Amour ' is used as a branding cover and that the application does not accurately portray the extreme products and events the company DD Trading (NW) Ltd. specialises in .

- Oasis Nursery have expressed concern that it is difficult to avoid the location of the shop when walking around the town with the children in their care
- Some responders note that the applicant would not state that there is controlled entry through a side door unless there is potential for harm
- Responders note that the applicant would wish to promote the shop as a destination location ; but the promotion of Barmouth as a destination for sex tourism is contradictory to everything Barmouth wishes to promote.
- Primary school children have to walk past the shop to get to the train , as well as Secondary school children
- There is a regular twice weekly market held in the town centre

6.2 Other comments received questioned the following -

- Whether the shop would realistically bring as much employment as noted in the application. Realistically this amounts to one full time job it is claimed; and many responders feel the negative impact of the business on the town will far outweigh the benefits
- The claim that counselling can be provided in the context of sexual and mental health is disputed by many responders; many noting that the local GP'S and other suitably qualified professionals would be best placed to provide such service
- Many objectors dispute the applicants claim as to the amount of money which will be spent by the business at the local post office
- Responders fear that it will attract the wrong type of visitors to this popular family seaside town – and that it may become a destination for stag and hen parties etc
- Many responders believe that the business due to it's location will have a detrimental effect on trade to surrounding businesses, and would deter customers
- Many responders note that the application consultation period should be extended because of lockdown to enable more people to respond before the hearing.
- The type of establishment is not by it's nature , inclusive to the majority of the local population and demographic
- Some responders concerned at the type of events/workshops will reflect the type of events the company holds at their other establishment in Chester
- One responder following some research indicates concern that the application overstates the viability of the company
- Responders note that they have been embarrassed in explaining the nature of the proposed business to inquisitive children who have read some comments on social media
- Concern has been expressed that the applicant may not be describing the true nature and purpose of a business retail outlet in Barmouth

6.3 Members should consider all representations in the in the context of the mandatory and discretionary grounds for objection contained in the Act , as outlined previously in section 2 of this report. The application and representations should also be considered in the context of the Council's Policy. Specifically , the suitability of the location of the business as a licenced sex shop should be considered carefully. Objections should not be based on moral grounds/values and members should not refuse the application on such basis.

6.4 Updated representations have included the following observations -

- A few responders commented that the shop owner showed a lack of consideration for community sentiments by opening the business before the application has been determined. The individual did concede that there was no legal impediment for the shop to open at the time .
- Since the original representations were made, the Post office has shut ; or is in the process of being shut and the post office counter is being moved to the local Spar shop. Responders are concerned about the increase pressure the online orders from Eva Amour will place on the reduced post office counter service in the town.
- Some responders have expressed concern about some inferences being made on the Barmouth Networking Facebook page by the applicant in respect of the potential effect of a licence refusal; specifically that it would be more difficult to regulate what the applicant choses to display in the window of the property.

6.5 No objections were received by North Wales Police . The written objections (with personal details redacted) are attached to this report in the appendix.

7. Representations received in support of the application

7.1 8 representations were received in support of the application . Responders considered that the shop would broaden variety of shops available in Barmouth all year round, would not compete with other businesses and would ensure that there is one less empty shop in the town. No Updated responses were received from responders who indicated support for the application. The applicant has submitted information to the committee outlining the support for the business in the wider community and beyond .

7.2 The full details of the representations can be seen in the appendix to this report.

8. Recommendation

8.1 Consideration has been given to the application, the legal requirements, the Council's Statement of Sex Establishment Licensing Policy, and all the representations made on the application. **It is recommended that the Committee refuse the application on the grounds that it is not in keeping with the character of the relevant locality and that the location of the premises is in close proximity to premises frequented by children and vulnerable adults.**