

AGENDA ITEM NO. 3

REPORT TO:	Regulatory Committee
DATE:	4 th October, 2004
REPORTING OFFICER:	Chief Executive
SUBJECT:	Application for sex shop licence at 119 Albert Road Widnes
WARD(S):	Appleton

1.0 PURPOSE OF THE REPORT

- 1.1 To determine an application for a sex shop licence.

2.0 RECOMMENDATIONS

- 2.1 RECOMMENDED: That the Committee consider the application and relevant representations made in respect of the application and determine the application on its merits.**

3.0 INTRODUCTION

- 3.1 Prior to 1982 there was no control over the operation of sex establishments (which are defined as sex shops and sex cinemas). Section 2 and Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 enabled local authorities to adopt controls over sex establishments. The Council adopted these provisions in 1983 and confirmed its policies and procedures in 2000 after consideration by the Council's Licensing Review Body.
- 3.2 The 1982 Act states that no person shall use any premises as a sex establishment except under and in accordance with the terms of a licence granted by the Council. Although there have been a number of enquiries about licensing premises over the years, the application before the Committee is the first to have been made within the Borough.
- 3.3 A "sex shop" means premises uses for a business which consists to a significant degree of selling, hiring, exchanging, lending, displaying or demonstrating sex articles or 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 etc. A fuller definition is set out at **Appendix 1**.
- 3.4 The Act does not apply to the sale, supply or demonstration of articles which are manufactured for use primarily for the purposes of birth control or which primarily relate to birth control.

4.0 APPLICATION PROCEDURES

- 4.1 The 1982 Act sets out requirements for applications, including site notices and advertisements. These have been complied with.
- 4.2 Objections may be made to the grant of a licence not later than 28 days after the date of the application. Objectors must set out in general terms the grounds of the objection. The Council must take into account any representations made within the 28-day period, but only so far, and to the extent, that these relate to one or more of the possible grounds for refusing the application.
- 4.3 The 1982 Act sets out the circumstances where an application **must** be refused as well as the circumstances where an application **may** be refused.
- 4.4 A licence **must** be refused if the applicant:
- Is under 18
 - Was the holder of a licence which was revoked within the preceding 12 months
 - Is not (other than a corporation) resident in the UK or was not during the previous six month
 - Is not (being a corporation) incorporated in the UK
 - Has, within the preceding 12 months, been refused an application (unless overturned on appeal)
- 4.5 A licence **may** be refused if :
- The applicant is unsuitable by reason of having been convicted of an offence or for any other reason
 - The grant, renewal or transfer would result in the transfer the business to the management or benefit of a person other than the applicant, who would be refused had that person been the applicant.
 - The number of sex establishments within the locality equals or exceeds the number which the Council consider appropriate. The Act states that “nil may be the number of sex establishments for the purposes of” this ground of objection.
 - **The grant or renewal would be inappropriate having regard to:**
 - **the character of the relevant locality or**
 - **the use to which premises in the vicinity are put or**
 - the layout, character or condition of the premises in respect of which the application is made.
- 4.6 In the present case the only statutory grounds for refusal which have been stated in objections received by the Council are the grounds shown above in bold text.
- 4.7 Precisely what is meant by the “locality” as distinct from the “vicinity” is not clear. Neither of these words has an absolute meaning. Members are free to give any reasonable interpretation based on their knowledge

of the area. What is clear is that the things which can be looked at are, first, the “character” and secondly, the “use of premises” in this area. To assist members in this regard, some of the features and characteristics of the area in which the premises are situated are referred to in section 5 below.

- 4.8 The Committee is free to consider any statutory ground for refusal whether or not the ground has been raised in any written objection received by the Council. However, the rules of natural justice require that an applicant be entitled to notice of any ground of objection which will be raised.
- 4.9 Unless cancelled (at the request of the licence holder) or revoked (by the Council) a licence lasts for a period of one year or such shorter period as the Council may specify.
- 4.10 A licence may be granted subject to such conditions as the Committee chooses to impose. The Council has adopted a model set of standard conditions which are set out at **Appendix 2**. The Committee may add to or vary the standard conditions.

5.0 DETAILS OF THE APPLICATION PREMISES AND SURROUNDING AREA

- 5.1 The application address is 119 Albert Road Widnes.
- 5.2 The site is allocated in the Halton Local Plan and the emerging Halton Unitary Development Plan as Secondary Shopping Area associated with the Widnes Town Centre. As such the site's location is presumed to be suitable for a full range of Class A1(Shops), A2 (Banks, Estate Agents etc.) and A3 (Hot Food Outlets) retail and commercial uses. The premises currently benefit from an established retail use (Class A1).
- 5.3 The Plan marked Plan 1 attached hereto shows the uses of premises in the same block as the application site (and fronting onto the application site). Plan 2 attached hereto shows the uses of premises in the wider area identifying what the Committee may consider to be sensitive uses in the context of the application. In particular Plan 2 identifies the location of the following within a 500 metre radius of the application premises:
- 3 Places of Worship
 - 2 Nursing Homes
 - 2 Day Care Centres
 - 1 Infant School
 - 1 Junior School
- 5.4 The application premises are situated at the northern apex of Widnes Town Centre. The area immediately to the rear of the shop premises is

a residential area, and the areas to the north, west and east are predominantly residential. The property lies in the Appleton Ward which has a resident population of 6,390. Of these approximately 23% of people are under 18 years of age and approximately 18% are over 65 years of age. (All figures are based on the 2001 Census).

5.5 The application premises are situated on one of the main roads into, out of, and through Widnes Town Centre. As a result a number of bus services pass directly outside the premises. There is also a bus stop situated in Albert Road almost directly outside the premises. The bus routes passing in front of the premises are as follows:

- 110 – Warrington
- 62 – Halton View
- 26 – Cronton
- 61 – Liverpool
- 17A & 17B – St. Helens.

6.0 DETAILS OF THE APPLICANT AND APPLICATION

6.1 The applicant is Stephen John Wesley. If granted, the licence would be in the name of Mr. Wesley but he makes the application on the basis that the premises would be run by Ecclesall Trading Company Limited which has its registered office in Boston Lincolnshire and its main office in Sheffield. It has two other licensed sex shops, one in Boston (which has operated for two years) and the other is in Grantham (which has operated for one year). The relevant local authorities have been contacted and have confirmed that they have had no complaints about these premises.

6.2 The information submitted by the Applicant in support of the application is set out in **Appendix 3**.

6.3 The goods which are proposed to be sold under the authority of a licence are described in the application as: marital aids; lingerie; VHS video and DVD.

6.4 The hours of opening which are requested 0930 to 1800 with one late opening to 2000 on a day to be detailed at the meeting.

7.0 OBJECTIONS RECEIVED

7.1 The Committee may only take into consideration objections made within the 28-day objection period. Within this period over 2,000 objections were received in response to the application. The Committee may only take these objections into account to the extent that they raise issues which are material to the potential grounds for refusal set out in the legislation.

7.2 An analysis of the objections is set out in **Appendix 4**. The Committee should assess the merit of these objections and balance them against the case put forward by the Applicant. It is the issues raised in the objections to which the Committee must have regard, not the number of objections.

8.0 OPTIONS AVAILABLE TO THE COMMITTEE

8.1 The options open to the Committee are:

- Approve the application with conditions;
- Refuse the application.

8.2 There are limited rights of appeal to the magistrates against refusal of applications (depending on the grounds specified in the refusal) and for grounds where no right of appeal are specified there is the possibility of challenge by way of judicial review.

9.0 POLICY AND OTHER IMPLICATIONS

9.1 None except as outlined in the report.

10.0 LIST OF BACKGROUND PAPERS UNDER SECTION 100D OF THE LOCAL GOVERNMENT ACT 1972

10.1 Licensing File number L:SEL 001

Appendix 1
Statutory Definition of “sex articles”
Local Government (Miscellaneous Provisions) Act 1982 Schedule 3
paragraph 4

(3) In this Schedule ‘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) below applies.

(4) This sub-paragraph applies –

- (a) to any article containing or embodying matter to be read or looked at or anything intended to be used, either alone or as one of a set, for the reproduction or manufacture of any such article; and
- (b) to any recording of vision or sound,

which –

- (i) is concerned primarily with the portrayal of, or 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.

Appendix 2

SEX SHOP LICENCES STANDARD CONDITIONS

1. Premises licensed as a Sex Shop under the provisions of Schedule III of the Local Government (Miscellaneous Provisions) Act, 1982, shall be used only for the purpose of a Sex Shop as defined in Paragraph 4 of the said Schedule 3 and shall not be used, wholly or in part, for any other purpose during the period the premises are licensed as a Sex Shop.

2. Except with the previous written consent of the Council no sex shop shall be open to the public earlier than 9am in the morning and shall be closed not later than 8pm in the evening on any day Monday to Friday and not later than 9pm in the evening on Saturdays. The sex shop shall not be open on Sundays or any Bank Holidays or any public holidays.

3. Over each entrance to the premises, in a position approved by the Council, the Licensee shall affix and maintain in a permanent form a notice stating that the premises are licensed as a Sex Shop under the provisions of the Local Government (Miscellaneous Provisions) Act, 1982. Such a Notice shall also carry the full name of the Licensee and the number of the license and if the Licensee is a private or public company the notice shall also carry the address of the registered or principal office and the full name of the Secretary of the Company. The lettering on such a Notice shall be 75mm tall and at least 6.25mm thick and shall be in white on a dark background.

4. At each entrance there shall be prominently displayed so as to be visible at all times to persons approaching the premises a notice prohibiting entry to all persons under 18 years of age. Such a Notice shall be in letters at least 50mm high and 6.25mm thick and shall be in dark letters on a light background.

5. The Licensee of every premises licensed as a Sex Shop shall ensure that all persons employed on the premises are aware of the age restriction on clients and that they exclude or remove from the premises any person attempting to evade the restriction.

6. The Licensee shall not display outside, near to, or within the premises any advertising material, sign or pictorial display referring to the licensed premises or the goods, articles or services provided at the premises, in such a position or manner that it is visible to any person using adjacent highways, streets, footpaths or forecourts except any notice displaying the name or trading title of the Licensee, any Notice indicating the times of opening of the premises for business, any Notice required by an statute, regulation or bylaw applicable to the premises or business carried thereon or any notice prescribed by these conditions. The use of loudspeakers and displays on business vehicles is strictly prohibited.

7. The licensed premises shall be so arranged by screening or obscuring windows, doors and other openings so that the interior of the licensed

premises and the displays of articles sold at the premises shall not be visible at any time to persons outside the building. The external doors shall be fitted with automatic closing devices which shall be maintained in good working order.

8. Except as allowed by a licence issued permitting public music under the provisions of the Local Government (Miscellaneous Provisions) Act, 1982 no music of any kind shall be played on the licensed premises and no public entertainment of any nature shall be provided or permitted by the Licensee to take place on the premises.

9. The Licensee shall not at any time keep or allow to be used on the premises any gaming or amusement machine whether for prizes or not.

10. No moving picture or display or recorded sound of any description or however provided shall be permitted on the licensed premises except for a period of not more than one minute for the sole purpose of demonstrating to a prospective purchaser or hirer of the article in question and such display shall be in a booth to which there shall only be permitted the prospective purchaser or hirer and any one person employed by the Licensee to sell or hire such articles. The Licensee shall not make any charge or permit any charge to be made for such a display.

11. The Licensee shall not supply or permit to be supplied to any person, other than a person employed to work on the premises, any article of food or drink whether for consumption on or off the premises.

12. All refuse produced on the premises and materials, goods or articles discarded for any reason shall be securely stored within the premises and delivered in sealed containers to the refuse collection service.

13. The Licensee shall make such provision for the reception of goods and articles for sale, hire, exchange, loan, demonstration or display on the premises so that they are received directly into the premises and not subject to storage for any period of time on any pavement, footpath, forecourt or yard nor in any vessel or vehicle, etc.

14. The Licensee or some responsible person nominated by him in writing for the purpose and approved by the Council shall be in charge of and upon the licensed premises during the whole time they are open to the public. Such written nominations shall be continuously available for inspection by authorised officers of the Council or the Police. During the hours that the premises are open the person in charge shall wear a form of visible photographic identification.

15. A daily register of persons employed shall be kept stating names, addresses, position and times worked. The register is to be completed each day within thirty minutes of the premises opening for business and must be kept at the premises and be open for inspection by authorised officers of the Council or the Police.

16. No part of the premises shall be used by prostitutes (male or female) for the purpose of solicitation or of otherwise exercising their calling or profession.

17. The Licensee shall ensure that no employee or other person shall seek to obtain custom for the premises by means of personal solicitation outside or in the vicinity of the premises.

18. The Licensee shall not in the conduct of the business employ any person:-
(a) Whose application for a licence to carry on a sex establishment, or renewal thereof, has been refused by the Council or any other licensing authority;
(b) Whose licence to carry on the business of a sex establishment has been revoked by the Council or any other licensing authority.

19. The Council shall approve the external appearance of the premises and neither the interior nor the exterior of the premises shall be altered without the approval of the Council.

20. All sex articles and other things displayed for ;supply, sale, hire, exchange or loan within the premises shall be clearly marked to show to persons who are inside the premises the respective prices being charged.

21. No advertisements, other than advertisements relating to other licensed sex establishments or relating to goods sold from the premises, shall be displayed at the premises.

22. No part of the premises shall be used as a sex cinema.

23. The Licensee shall not contravene the Unsolicited Goods and Services Act, 1971.

24. The licence and a copy of these conditions shall be conspicuously displayed on a part of the premises to which the public has access as specified by the Council.

25. A record shall be kept of all mail order transactions (if any) in such form as agreed by the Council.

26. The licence is not transferable by the Licensee.

27. The Licensee shall forthwith notify the Council of his ceasing to carry on the business.

28. The Licensee shall inform the Council if he is convicted under the Obscene Publications Act, 1959, the Protection of Children Act, 1978, or the Customs and Excise Management Act, 1979 or if an order for forfeiture is made under the Obscene Publications Act, 1959 following the service of a

summons on the Licensee. The Council will take into consideration any such conviction or orders for possible revocation or non-renewal of the licence.

29. Where the Licensee is a company, any change of Director, Company Secretary or other person responsible for the management of the company is to be notified in writing to the Council within 14 days.

30. Any breach of or failure to comply with the Conditions attached to this Licence may result in the revocation of the Licence.

APPENDIX 3

INFORMATION SUPPLIED BY THE APPLICANT WITH THE APPLICATION

Licensing Act 2003

Local Government (Miscellaneous Provisions) Act 1982
Application for License to Operate Sex Shop
ETC LTD, 119 Albert Road, Widnes, WA8 76LB

Supporting Information

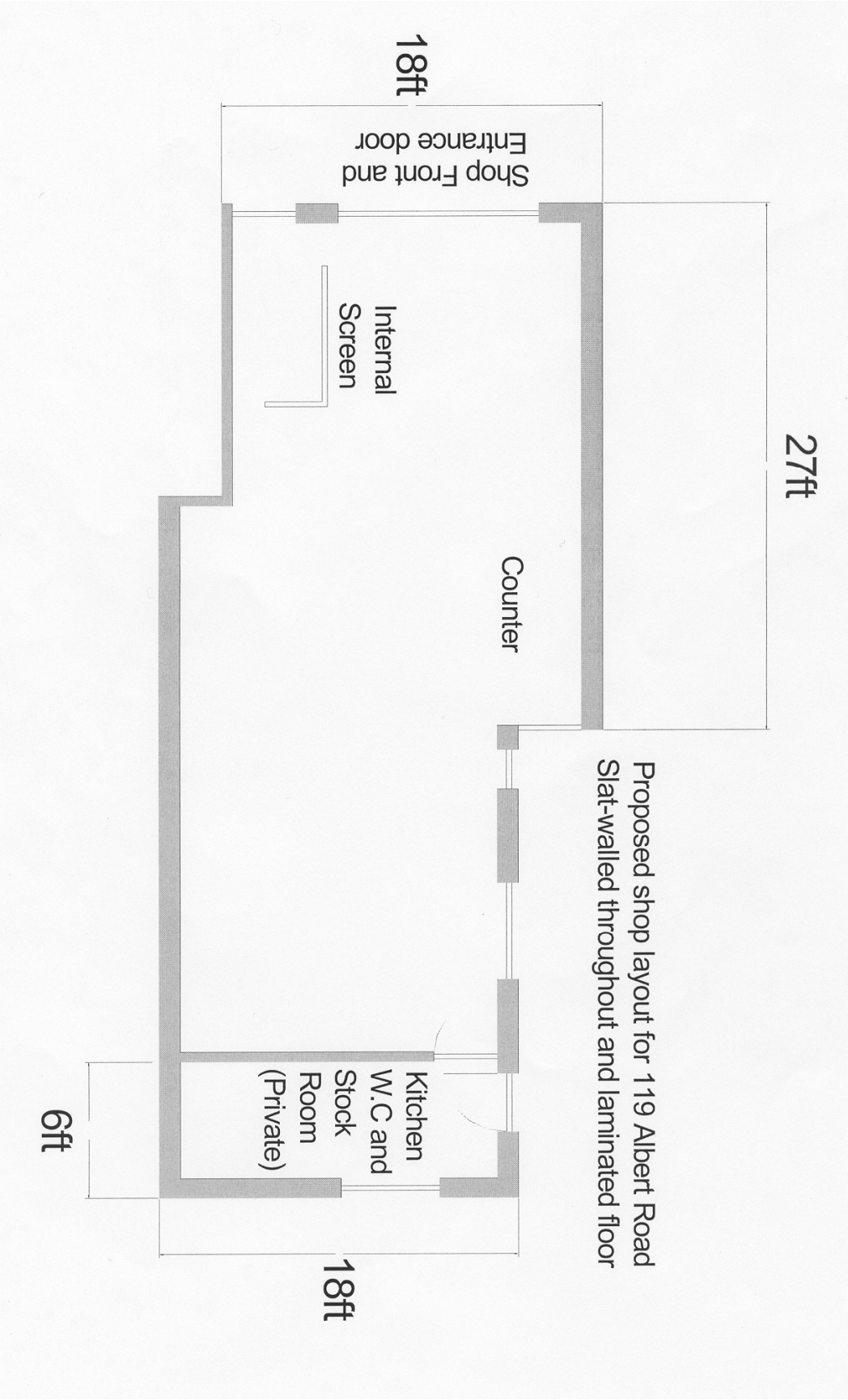
Introduction

- The premise is currently an empty unit (formally a skateboard shop) situated in Albert Road. The application is to licence the whole premise as a sex shop. The premise is in a block of six, several of which are currently empty. The surrounding premises are suitable for commercial use although there are residential flats above those and other nearby shops.
- ETC has shops in similar locations in Grantham and Boston. Close consultation with the Local Authority Licencing Officers regarding the suitability of both the location and the impact on the local community was fundamental to the success of these applications.
- We have visited the area and given due consideration to the chosen location and the suitability of the premise based on guidance from the above mentioned Act. We have taken into account the location of the nearest school, the Methodist church on the east corner of the bottom of Peelhouse Lane and the residential areas. Based on our experience with other Local Authorities where licences have been granted, we feel that the character of the relevant locality is appropriate. A map showing the location of the property is attached.
- The premise is situated on the edge of the Town Centre and we understand that this is an area where Halton Borough Council is actively committed to regeneration and future development. ETC have a policy of completely refurbishing properties to a very high standard and we have already held discussions with the Landlord, Mr. Geoffrey Smith, who would be totally amenable to this should a licence be granted. Any alterations would conform to current legislation and would be in consultation with the Licencing Officer and Local Authority requirements.
- Disabled access to the premise would be facilitated by the Landlord in conjunction with the Local Authority's Streetscape Improvement Scheme.

- ETC Limited is a Sheffield based company. Our parent company being Clear Line Limited. Clear Line has been established for over 11 years as a leading curtain wall constructing company working on major projects in the UK, Europe and America.
- We are looking to expand ETC and wish to do so in areas committed to long term investment. If a licence were to be granted we would be looking to negotiate a two year lease with the Landlord and completely refurbish the property by November 2004. We feel that this would create a positive visual impact to an otherwise run-down block of commercial properties, encouraging other private business interests and thus assisting in the regeneration of the area.

Relevant considerations

- The Local Government (Miscellaneous Provisions) Act 1982 sets out the provisions for the licencing and control of sex shops. Sex shops are deemed to be premises used for a business which sells sex articles "to a significant" degree. We believe that any responsible business which sells sex articles "to a significant degree" should hold a licence, should be accountable to the relevant Authorities and adhere to current legislation.
- Despite our boutique style stores not being dissimilar to those of Anne Summers we appreciate that Schedule 3 to the Act governs the grant and renewal of licences and will be adopted by Halton Borough Council. As such we respect that you will have the right to impose conditions relating to such matters as the hours of opening, displays or advertisements and the visibility of the exterior and interior to members of the public, etc. These have been clearly set out in your Standard Conditions Document.
- Our aim is to comply with all conditions as quickly as possible.



Appendix 4 Details of objections received

Not all the objections received by the Council raise issues which are material to the statutory grounds for refusal. Some objections are purely expressed on moral grounds and some objections don't give any reasons at all. The nature of the objections received by the Council can be summarised as follows:-

- ❖ Within walking distance of schools (infant, junior and secondary);
- ❖ On recognised children's walking route from such schools;
- ❖ Next door to sandwich bar used by children and young persons;
- ❖ Encompassed by large residential area;
- ❖ Central to a small shopping area frequented by young and old;
- ❖ Close to two nursing homes;
- ❖ Close to community support centre;
- ❖ On a main thoroughfare;
- ❖ Within the locality there are schools and homes with families and children should not be subjected to such inappropriate materials;
- ❖ Could attract sex offenders increasing the risk of crime
- ❖ Influx of undesirable visitors could cause loss to local businesses and traders
- ❖ Bad for the image of the town
- ❖ Many people in vulnerable groups would pass by daily, often several times daily
- ❖ Say No to Widnes Sex Shop
- ❖ We strongly object in order to protect public decency and the integrity of all, especially young people
- ❖ We strongly object on moral grounds
- ❖ I wish to register my objection
- ❖ I don't want this kind of shop at the bottom of my road
- ❖ I thought the town was to be regenerated not degenerated
- ❖ Don't you think Widnes is bad enough without encouraging our YOUTH to this sort of filth
- ❖ Short walk from Victoria Park
- ❖ Situated opposite JJB Sports & Leisure Centre where children frequent for sports gear daily
- ❖ On next block to family newspaper and sweet shop where young children may be influenced
- ❖ Close to professional business of Accountants Office and Solicitors Office where people may be embarrassed passing and local businesses could possibly lose trade
- ❖ We consider this to be degrading and inappropriate, an offence to local residents and a damaging example to the young and vulnerable people in the community
- ❖ A distinct category of objection comes from surrounding businesses who express concern about the impact of the premises on their businesses if the application is granted.

The vast majority of objections (totalling 1985 signatures) were contained in five sets of petitions. Of these only one set of petitions (totalling 79 signatures) raised any objection other than moral grounds.

In addition to the petitions, 253 letters of objection were received in connection with the application. However 101 of these letters were based on moral grounds and did not raise issues which are material to the potential grounds for refusal. As indicated in the body of the report, the Committee may only take objections into account to the extent that they raise issues which are material to the potential grounds for refusal of the Publication which are set out in the legislation.

NAME OF BOARD: Regulatory Committee
DATE OF MEETING: 4th October 2004
REPORT TITLE: Application for sex shop licence at 119 Albert Road
Widnes
AUTHOR: Council Solicitor

STANDARDS SECTIONS – CHECKLIST		
All reports must be submitted together with the following checklist fully completed		
	Yes	No
<p>Resource Implications</p> <p>The financial, manpower and land (buying or selling) considerations should be clearly detailed including any corporate implications of following the recommended course of action.</p>		No
<p>Social Inclusion Implications</p> <p>Any implications relating to social inclusion/anti-poverty should be highlighted.</p>		No
<p>Sustainability Checklist</p> <p>Any implications that affect the sustainability themes of economy, society and the community and the environment should be included.</p>		No
<p>Best Value</p> <p>Any Best Value implications should be included.</p>		No
<p>Legal Implications</p> <p>Any legal implications should be included.</p>	Yes	
<p>Crime and Disorder Issues</p> <p>Any crime and disorder implications should be included.</p>		No
<p><i>Please review these potential effects, within the context set out overleaf, to compose your summary assessment</i></p>		

Summary assessment of Implications: *This wording will appear in the Board report.*

As set out in the Report

Background Papers

Application File (partly restricted access)