

**REPORT OF THE DEPUTY CHIEF
EXECUTIVE AND CITY SECRETARY**

**LICENSING COMMITTEE
19 July 2002**

**SEX ESTABLISHMENT LICENCE – MULTIPLEX MEDIA LIMITED –
30 – 32 GOOSEGATE, NOTTINGHAM – APPEAL AGAINST DECISION OF
NOTTINGHAM MAGISTRATES COURT TO GRANT LICENCE.**

1. SUMMARY

This Report informs Members of the result of a Crown Court Appeal against the decision of Nottingham Magistrates' Court that a licence be granted to Multiplex Media Limited to enable them to run a sex establishment from premises at 30-32 Goosegate, Nottingham.

2. RECOMMENDATION

That the Report be noted.

3. BACKGROUND

Members will no doubt recall that on 5 November 2001, this Committee refused an application by Multiplex Media Limited for a Sex Establishment Licence in respect of premises at 30-32 Goosegate, Nottingham. The application was refused on the grounds that the Applicant was unsuitable, in view of its Director's lack of experience in running a sex establishment.

On 4 February 2002, the Committee was advised that the Applicant had Appealed to Nottingham Magistrates' Court and during preparations for that Appeal, a great deal of new material was discovered which cast further doubt on the Director's, (Mr Bloom), suitability. This material included issues relating to another Company of which Mr Bloom was both Company Secretary and Director, namely Design and Media Limited, which have previously been reported to committee.

Despite these issues being brought to the attention of the Magistrates' Court, the Deputy District Judge held that Mr Bloom (and therefore Multiplex Media Limited) was suitable to hold a Sex Establishment Licence. The Court ordered that a licence be issued and that the Council pay £6,000.00 in costs.

Members will recall that an urgent Report was brought before this Committee on 8 April 2002, asking for authority to Appeal that decision to the Crown Court. That authority was granted and the Crown Court Appeal was heard on 27 and 28 June before Her Honour Judge Hampton and two Magistrates.

At the Hearing, the City Council called evidence from Jamie O'Reilly who had been the Acting Service Manager for Food and Licensing at the time the initial decision was made. Evidence was also called from one of the Council's Trading Standards Officers as to his part in an investigation into Mr Bloom and Design and Media Limited, and from an Ex Vice Squad Officer who had also taken part in that investigation. Mr Bloom himself gave evidence at the hearing as to his suitability to hold a Licence.

The Court held that Mr Bloom (and therefore Multiplex Media Limited,) was unsuitable to hold such a Licence. A note of the decision (taken from the Solicitor who attended Court notes) is attached as an Appendix to this Report.

Members may also be aware that following the Committee's Hearing of the application, the Committee formed a view that it had heard insufficient evidence upon which to determine whether the locality in which the premises were situated was suitable for a licensed sex establishment.

During the course of both the Magistrates' Court Appeal and the Crown Court Appeal, the City Council sought to argue that further evidence in relation to location could be adduced at these Appeals. In both the cases however, the Courts were satisfied that because there is no right of appeal against a refusal made on grounds of the locality that the spirit of the Local Governments (Miscellaneous Provisions) Act 1982 was such as to render the issue of location purely one for elected members. **It is, therefore, suggested that in any future applications if the Committee has any doubts or reservations regarding the locality of premises they should adjourn the proceedings for further evidence to be brought before them as it is clear that the Courts are unlikely to allow further evidence in relation to this issue to be brought at Appeal.**

4. FINANCIAL IMPLICATIONS

In addition to allowing the Appeal, the Court ordered Multiplex Media to pay costs in the sum of £8,114.00 to the Council. The costs order of Magistrates, in the earlier hearing, against the Council was also set aside.

5. OBSERVATIONS OF OTHER OFFICERS

None.

6. CORPORATE OBJECTIVES

The results of these proceedings may have implications for the Council's objectives in relation to sustainability, regeneration and social inclusion.

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**NOTES OF A DECISION GIVEN BY HER HONOUR JUDGE HAMPTON
IN AN APPEAL AGAINST THE DECISION OF NOTTINGHAM
MAGISTRATES COURT TO GRANT A SEX ESTABLISHMENT LICENCE
IN RESPECT OF PREMISES AT 30-32 GOOSEGATE NOTTINGHAM**

The Judge recited that this was an Appeal against a decision of Deputy District Judge Vietz dated 19 March 2002 to grant a Licence for Sex Establishment at 30-32 Goosegate, Nottingham. The Deputy District Judge in that case had found the applicant suitable to hold such a Licence.

The City Council had appealed and the Appeal had proceeded on matters which had not taken the Applicant by surprise. The Judge and the Magistrates were all agreed however, that locality could not form a ground of refusal in this particular Appeal. The Court was aware that the Applicant was, in fact a Company, but it was conceded that Mr Bloom was the personality and driving force behind that Company (which had been incorporated in 1998,) and that it had been responsible for the publication of magazines. The Court noted that the sale and distribution of such material is a lawful business and recognised that there is a legitimate market for such material.

Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, sets out the regulation of such establishments. In this particular case, the Court was concerned with paragraph 12 (3) (a) and (b) of Schedule 3 of the Act in determining whether the Applicant was suitable. In deliberating paragraph 12 (3) (b), the Court was concerned with the suitability of Mr Bloom on behalf of Multiplex Media Limited and not that of his partner Mr Newby Smith in the venture of Design and Media Limited. The Court noted however, from the antecedents of Mr Newby Smith that on 9 May 2002 he had been convicted of one offence under the Video Recordings Act of supplying an R18 video from premises other than a licensed sex establishment. He had also been convicted on the same date of one offence of offering an R18 video for sale other than from a Licensed Sex Establishment, and of eight offences of sending unsolicited mail.

The Court had to consider whether the Applicant Company was run for the benefit of Mr Bloom, not Mr Newby Smith. The Court noted however, a considerable intermingling of Design and Media Limited and Multiplex Media Limited. The Court however noted that Mr Newby Smith was not concerned in the running of Multiplex Media Limited.

The Court noted that the Council had refused the original application on the basis of Mr Bloom's inexperience and noted that Mr Bloom had obtained experience since that decision. The Court noted however, that further information gave the City Council cause for concern. The Court was reminded that the Appeal was by way of Re-hearing and that the case was to be decided on the evidence heard before it on 27 and 28 June 2002. It was accepted that the prosecution against Mr Bloom for offences under the Video Recordings Act and the Unsolicited Goods and Services Act had not been proceeded with and the Court did not seek to go behind that acquittal. The Court however, accepted that Mr Bloom could have been convicted under Section 5 of the Unsolicited Goods and Services Act 1971 and/or Section 16

of the Video Recordings Act which created offences whereby the Directors of Companies could be held liable on behalf of those Companies if offences had been committed with the consent, connivance or neglect of those Directors. The Court accepted however, that those offences had not been made out on the criminal burden of proof. The Crown Court however, was dealing with a civil standard of proof and the issue of suitability was to be determined by the impression that Mr Bloom had made upon the Court.

Since the prosecution of Mr Newby Smith, the Court had been told of Mr Bloom's efforts to distance himself from Design and Media Limited. Mr Bloom stated that the unsolicited material was nothing to do with him. However, the Court was reminded that Section 4 of the Unsolicited Goods and Services Act refers to material which the sender "ought reasonably know was unsolicited". There were a number of matters which troubled the Court:-

(i) There appeared to be confusion as to whether the Company, (Design and Media Limited) had breached legislation regarding the sale of R18 Videos. It seemed to be conceded and accepted by Mr Bloom's Barrister that the Company was in error, but in evidence, Mr Bloom had purported to say that he knew nothing about the sale of such videos. This undermined his credibility and the control which he had over the Company which he operates (as Company Secretary). Mr Bloom then explained why he had no Sex Establishment Licence at the time that these items were sold by saying that he did not know at that time that a Sex Establishment Licence was needed. Mr Bloom's Barrister had suggested that Mr Bloom should not be criticised for not knowing the Regulations controlling that type of business. The Court felt however, that this was a sensitive trade and that Operators should take it upon themselves to be familiar with the Regulations. Mr Bloom's general attitude showed that he gave no thought to the matter and demonstrated a cavalier approach. The Court was surprised and found it unacceptable that Mr Bloom did not know what was going on at Design and Media's premises at Woolpack Lane. This was more surprising, because this was a small Company. The Court had been told that since Mr Newby Smith had been prosecuted that Mr Bloom had taken steps to resign from Design and Media, however, no documentation had been put forward to the Court to prove this and Mr Bloom had been evasive with regards to the action he was taking resign from his role as Company Secretary and sell his shares. The Court was not impressed by the vagueness of Mr Bloom's answers, nor his attitude, however, this itself was not on its own sufficient for finding that Mr Bloom was not suitable to hold a Sex Establishment Licence. The Court also bore in mind, that a test purchase had been carried out from a magazine issued by Design and Media. The goods had been supplied together with an Invoice in the name of Design and Media and a Visa Slip bearing the name of Telecom 4, which was another Company owned and run by Mr Bloom. Mr Bloom says it was a remarkable coincidence that the money for this test purchase had gone through Telecom 4 and that it was an error. However, the Court was unconvinced by this explanation.

(ii) **The Premises**

The Court was informed that the Premises at Goosegate were leased to Design and Media Limited. The lower floor of the Goosegate premises was then sub-let to Multiplex Media Limited, though there was no legal formality in the way that Multiplex would occupy the lower floor. The two businesses were inter-mingled. To a layman, it would appear that the two businesses were, in fact the same people in the same premises. There is very little separation and it was noted that staff employed by Design and Media would work on behalf of Multiplex Media Limited and that it was, in fact Design and Media that had been responsible for the unsolicited mail.

(iii) **Unsolicited Mail**

This was a particular worry and there had been a number of complaints. Explanations had been put before the Court, but in the Court's view these did not explain away the number of complaints. The Court was told that Mr Bloom assumes that the people on the data bases purchased by Design and Media Limited wanted this type of material. The Court felt that it was trite to say that the term "unsolicited" meant "unasked for". The Court was troubled that there was little checking as to whether the people on the data bases purchased by Design and Media actually wanted the material which they were sent. The Court noted that all the methods to get off the data base involved positive action on behalf of the recipient of the mail at the Recipient's cost. This included ringing a premium number from which the Company itself makes another profit. The Court asked why people who received such material should be expected to turn to the Police or Trading Standards to get off a mailing list? The Court stated that the evidence it had heard from Mr Bloom regarding the sending out of cards with each magazine which could then be returned to the Company if the recipient did not want the material, was vague. The Court was astonished that Mr Bloom did not know what procedures were adopted by the Company on nil returns and it was noted that Mr Bloom had sought help from elsewhere in the Court Room, namely from Mr Newby Smith in answering questions. It was felt that Mr Bloom as Company Secretary should be responsible for devising systems for the Company and enforcing them in this respect.

The Court felt that Mr Bloom seemed unconcerned regarding complaints of unsolicited mail, and he had taken no steps, nor made any enquiries about the complaints as to how those people had got on to the data base. Nor did it appear that the complainants had been taken off the data base. It was felt that this was a sensitive trade and that in this case there had been more than one mistake, but apparently no enquiry about them nor apologies to the people concerned. Mr Bloom did not appear to have made any improvements to the data base. His demeanour in the witness box gave the Court concern. It was stressed that this is a sensitive trade and therefore it may not be appropriate to give warnings in relation to such conduct prior to enforcement/prosecution as had been suggested on Mr Bloom's behalf. It was not harsh to expect Mr Bloom to have frequented himself with the Regulations under which he was operating and to have checked his data bases.

(iv) **Consignia**

With regard to the investigation by Consignia, the Court had now been told that a copy of the magazine was submitted to Consignia before a print run was carried out and the magazine was posted. The Court accepted this but noted that this procedure had only been brought in to place after Design and Media had been investigated by Consignia. The Court expected more pro-active activity to ensure that the law had not been broken. In particular it was noted that in one of the Witnesses' Statements where Mr Bloom had been questioned, he put more of an emphasis on the health of his business rather than showing concern regarding the breach of the law. The Court stated that whilst Mr Bloom may be a strategist and a businessman, he should still have had more regard for the Regulations under which he worked and therefore he was not a suitable Applicant and the Appeal was to be allowed.

(solicitors/reports/liccom19jul02)