



# Tunbridge Wells Borough Council's Policy on Licensing Sex Shops, Sex Cinemas and Sexual Entertainment Venues

## 1. Introduction

Tunbridge Wells Borough Council is situated in the County of Kent, which contains 12 Borough and District Councils with one Unitary Authority in total. The Council area has a population of 105,600. The Council area is mainly rural with 11 wards and a central urban area of 9 wards. These areas are shown in the map below.



## 2. Overview

- 2.1 This policy forms the basis of Tunbridge Wells Borough Council's decision to adopt the amended schedule 3 of The Local Government (Miscellaneous Provisions) Act 1982.
- 2.2 By adopting schedule 3 this will enable the licensing authority within the licensing authority area to discharge its function in relation to the following :
  - sexual entertainment venues (providing relevant entertainment)
  - sex shops
  - sex cinemas
- 2.3 The Local Government (Miscellaneous Provisions) Act 1982 (as amended by Section 27, Policing and Crime Act 2009) provides that a local authority may, by resolution, adopt schedule 3 to that Act.
- 2.4 Schedule 7 to the Policing and Crime Act 2009 amends the Licensing Act 2003 to ensure that premises for which a sexual entertainment venue licence is required or held (or for which the requirement has been waived under paragraph 7 of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982) do not also require a premises licence, club premises certificate or temporary event notice in order to provide relevant entertainment. This is because such entertainment is expressly excluded from the definition of regulated entertainment found in the Licensing Act 2003. However, if the premises also carries on other licensable activities (e.g. the sale of alcohol or the provision of regulated entertainment) then this is not a

provision of relevant entertainment), they will nevertheless continue to require a premises licence, club premises certificate or temporary events notice under the Licensing Act 2003 for those other activities, subject to any exceptions contained in that Act.

- 2.5 In practice this will mean that the vast majority of lap dancing clubs and similar venues will require both a sexual entertainment venue licence for the provision of relevant entertainment and a premises licence or club premises certificate for the sale of alcohol or provision of other types of regulated entertainment not covered by the definition of relevant entertainment.
- 2.6 Live music or the playing of recorded music which is integral to the provision of relevant entertainment, such as lap dancing, for which a sexual entertainment licence is required, is specifically excluded from the definition of regulated entertainment in the Licensing Act 2003. Therefore, a sexual entertainment venue will not require a premises licence or club premises certificate just because it plays recorded music for a performer to dance nor will providing entertainment facilities for the purposes of the provisions of relevant entertainment be regulated entertainment under the Licensing Act 2003.
- 2.7 If a local authority have not made a resolution to adopt the provisions introduced by section 27 Policing and Crime Act 2009 within one year of the Act coming into force it must, as soon as is reasonably practicable, consult local people about whether they should make such a resolution. The purpose of this duty is to ensure that local authorities consider the views of local people whether, for whatever reason, they have not adopted the provisions. This duty should be seen to be an extension to existing general duties on local authorities to consult and involve local people when exercising their functions.
- 2.8 The Licensing Authority have also taken into consideration the provisions of Section 17 Crime and Disorder Act 1998 that requires responsible authorities to consider crime and disorder (including antisocial behaviour and other behaviour adversely affecting the local environment) and the misuse of drugs, alcohol and other substances in the exercise of all their duties, activities and decision-making. This means that in all policies, strategies and service delivery there is a need to consider the likely impact on crime and disorder.
- 2.9 The Licensing Authority is also aware that, at the time of formulating this policy, there is no evidence of any crime or disorder directly attributable to the operation of such establishments in the Tunbridge Wells area.
- 2.11 This policy helps to promote efficient and effective approaches to regulatory inspection and enforcement which is in compliance with:
  - a) The Regulator's Compliance Code (set out under the Legislative and Regulatory Reform Act 2006) not to impeded progress by the regulations we set out and to particularly consider the impact of regulations on small businesses: and
  - b) The Provisions of Services Regulations 2009 to ensure requirements are:
    - i) non-discriminatory
    - ii) justified by an overriding reason relating to the public interest
    - iii) proportionate to that public interest objective
    - iv) clear and unambiguous

- v) objective
- vi) made public in advance
- vii) transparent and accessible

In certain instances we may conclude that a provision in the policy is either not relevant or is outweighed by other provisions. We will ensure that any decision to depart from the policy will be properly reasoned, based on material evidence and documented giving clear and compelling reasons for doing so.

2.12 The Council sees the licensing process as an integral part of its approach to achieving its strategic and corporate objectives which encompasses the visionary goals of:

- Environment – to achieve a safe, clean and green Place of Choice
- Communities – to foster vibrant and cohesive communities that promote engagement, diversity, social inclusion, health and well-being, leisure and culture
- Housing – to seek to provide and work with others to ensure quality and affordable housing
- Business – to secure a sustainable and buoyant economy, particularly in the town centre, with attractive investment opportunities and a developing tourism market
- Regeneration – to maximise regeneration opportunities for the benefit of existing and new communities
- Transformation – to transform the Council into an economically sound organisation delivering excellent accessible services that provide value-for-money

### **3. Policy**

3.1 The purpose of this policy is to:

- Set out the expectations of the local authority in meeting the requirements of the legislation
- The process for making an application
- The process the Council will follow in considering and determining an application.
- Assist any persons making representations in respect of an application to make a properly directed and evidenced representation.

3.3 Notwithstanding this policy, each application will be assessed on its individual merit and granted or refused purely on that merit. Whilst this policy will set out the broad scope of expectations, it should not be seen as restricting or predetermining the outcome or any application or representation in respect of the licensing of any premises.

### **4. Functions**

4.1 Under section 101 of the Local Government Act 1972, local authorities may arrange for the discharge of these responsibilities by a committee or sub-committee of the appropriate authority.

4.2 An authority may delegate its functions to those who sit on its licensing committee that was set up to discharge licensing functions under the Licensing Act 2003.

However, when dealing with an application in relation to sex shops, sex cinemas and sexual entertainment venues, the members of the committee would not be acting as the licensing committee under the Licensing Act 2003 and would instead be exercising their functions under Schedule 3.

## **5. Consultations**

- 5.1 The Policing and Crime Act 2009 is not prescriptive about how local authorities should consult with local people in order to comply with this duty. The Council has extensive experience of engaging with local people and will utilise that knowledge to ensure that any consultation exercise carried out under this duty will be fair and meaningful. The Council will seek to make any relevant information available to local people in order to inform them of the legislation, criteria and outcomes of the consultation.
- 5.2 For the purpose of this duty 'local people' are defined as anyone who lives or works in the local authority area.
- 5.3 The council will seek to consult with
- those premises that currently hold relevant entertainment, sell sex articles or show films of sexual activity.
  - Persons or companies who may consider holding such activities in the future.
  - A number of enforcement agencies such as Police and Fire Authority.
  - Local people and businesses in Tunbridge Wells who are near to existing premises.
  - Advertise the consultation on the Councils internet and available at Council contact points.
- 5.4 A full list of those consulted will be displayed in **Appendix A**.

## **6. Venues that require licensing**

6.1 For the purpose of this policy the following definitions will apply:-

### **6.2 Sex Shop**

Any premises, vehicle, vessel or stall used for a business which consists to a significant degree of selling, hiring, exchanging, lending, displaying or demonstrating sex articles (anything for use in connection with or for stimulating or encouraging sexual activity or acts of force or restraint which are associated with sexual activity) 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.

### **6.3 Sex Cinema**

Any premises, vehicle, vessel or stall used to a significant degree for the exhibition of moving pictures, by whatever means produced which are concerned primarily with the portrayal of, or primarily deal with or relate to, or are intended to stimulate or encourage sexual activity, acts of force or restraint which are associated with sexual activity or are concerned primarily with the portrayal of or primarily deal with or relate to, genital organs or urinary or excretory functions but does not include a dwelling to which the public is not admitted.

## 6.4 Sexual Entertainment Venue

Any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer.

## 7. Relevant Entertainment

7.1 Any live performance or any live display of nudity which is of such a nature that, ignoring financial gain, it must reasonable be assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience (whether by verbal or other means).

7.2 Home Office guidance states relevant entertainment would therefore apply to the following forms of entertainment, as they are commonly understood:-

- Lap Dancing
- Pole Dancing
- Table Dancing
- Strip Shows
- Peep Shows
- Live Sex Shows

7.3 However, this list is not exhaustive and local authorities will judge each case on its merits. Decisions will be based on the content of the entertainment provided and not the name given to it.

## 8. Exemptions from being a sexual entertainment venue

8.1 The following are not sexual entertainment venues for the purpose of this policy:-

(a) sex cinemas and sex shops

(b) premises at which the provision of relevant entertainment is such that, at the time in question and including any relevant entertainment which is being so provided at that time

- (i) there have not been more than eleven occasions on which relevant entertainment has been provided which fall (wholly or partly) with the period of 12 months ending with that time
- (ii) no such occasions has lasted for more than 24 hours and
- (iii) no such occasion has begun within the period of one month beginning with the end of any previous occasion on which relevant entertainment has been so provided (whether or not that previous occasions falls within the 12 month period mentioned in subparagraph (i)).

8.2 Premises which fall under this exemption created for infrequent entertainment do not require a sexual entertainment licence but will instead need an appropriate authorisation under the Licensing Act 2003. For example, to cover the performance of dance.

8.3 Operators are encouraged to maintain written records of any relevant entertainment that falls within the exemption. This in order to assist the Licensing Authority to prove or refute any allegation of unlicensed events, holding events in breach of the exemptions.

8.4 Any records should contain information of the date, times of the event and those persons who have participated in the relevant entertainment, which includes

performers, security, management and bar staff. If tickets are sold then details of the number of tickets sold at each event.

## **9. Nudity**

9.1 Schedule 3 sets out the definition of a display of nudity:

- In the case of a woman, it means exposure of her nipples, pubic area, genitals or anus and
- in the case of a man it means exposure of his pubic area, genitals or anus

## **10. Spontaneous Entertainment**

10.1 Where activities that would otherwise be considered to involve the provision of relevant entertainment take place, but are not provided for the financial gain of the organiser or entertainer, such as a spontaneous display of nudity or a lap dance by a customer or guest, the premises will not be considered a sexual entertainment venue by virtue of those circumstances alone. This is because the relevant entertainment must be provided for the financial gain of the organiser or entertainer. However, it should be noted that an organiser might be considered to have provided the entertainment where he has permitted the activity to take place, whether expressly or impliedly.

## **11. The Organiser**

11.1 Any person who is responsible for the organisation or management of the relevant entertainment at a premises at which relevant entertainment is provided. In most circumstances, this will refer to the manager of the premises, but could also refer to someone who is responsible for organising the relevant entertainment on behalf of the persons responsible for the management of the premises.

11.2 The organiser must be someone who is in a position of responsibility over the provision of the relevant entertainment and should not be interpreted to mean a member of staff who is merely employed to work during the provision of relevant entertainment. It is only necessary for one person to hold a sexual entertainment venue licence for premises, even if there is more than one person who is responsible for the organisation or management of the relevant entertainment or the premises.

## **12. Planning**

12.1 The Licensing Authority will not normally undertake action where another, more appropriate, regime exists to resolve matters. Failure to obtain planning permission is not a ground for refusal of the grant of an application under the Local Government (Miscellaneous Provisions) Act 1982 and such a failure to obtain planning permission will normally be dealt with as part of the normal planning process.

12.2 Operators and persons making representations should be aware that in many cases there would be a need to obtain planning permission before a premise may be used for the purposes relevant to this policy. The Licensing Authority will not normally consider planning matters such as 'need' in determining a licence application as this is more appropriately dealt with by Planning.

12.3 Applicants are advised to seek independent advice in relation to both planning and licensing prior to making any application under Schedule 3 Local Government (Miscellaneous Provisions) Act 1982

### **13. European Convention on Human Rights**

13.1 The Local Authority fully supports the European Convention on Human Rights. When determining applications for licences under this policy the Licensing Authority will have consideration to any rights an existing operator may have under Article 1, Protocol 1 of the European Convention on Human Rights (ECHR) which entitles every person to the peaceful enjoyment of their possessions and Article 10 (freedom of expression).

13.2 The Secretary of State has certified that the Policing and Crime Act 2009 is covered by Section 19, Human Rights Act 1998 as being in compliance with the ECHR.

13.3 Whilst the rights under Article 1 and 10 may be activated the weight to be accorded to these rights in this context is low level. The right of freedom of expression to participate in the activities of sex shops, sex cinemas and sexual entertainment venues is not prohibited but may be controlled by licensing. Similarly the right to possession of an existing licence is proportionally protected subject to a fair balance of the rights of the holder and the public interest.

### **14. Locality, Character and Layout**

14.1 Paragraph 12 (3) (c) and 12 (3) (d) of Schedule 3 allow appropriate authorities to refuse applications on grounds related to an assessment of the relevant locality. A licence can be refused if either, at the time the application is determined the number of sex establishments or sex establishments of a particular kind, in the relevant locality is equal to or exceeds the number that the authority considers appropriate for that locality; or that a sex establishment would be inappropriate having regard to the character of the relevant locality the use to which any premises in the vicinity are put or the layout, character or condition of the premises.

14.2 Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 does not define 'relevant locality' further than to say that:

- In relation to premises, it is the locality where they are situated
- In relation to a vehicle, vessel or stall, any locality where it is desired to use it as a sex establishment.

14.3 Once the Council has determined the relevant locality, it 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, it considers appropriate for that relevant locality. The Council may consider a particular locality is suitable for a sex shop but is not suitable for a sexual entertainment venue or vice versa.

14.4 Case law has indicated however that in defining the relevant locality the local authority should not seek to specify wide areas.

14.5 Although a ward area could be considered as a relevant locality it is determined that certain wards are substantial in size and would cover a wide area. It could also raise a problem with borders of other wards where there could be a cluster of sex establishments.



- 14.6 The Licensing Authority has determined not to set specific relevant localities in respect of each type of sex establishment, instead judging each application on its own individual merits.
- 14.7 In defining the location for sexual entertainment venues the Licensing Authority is mindful of the potential for crime and disorder where such premises do not have robust management systems in place.
- 14.8 Where there is a high volume of other premises licensed under the Licensing Act 2003, there is a potential for conflict at the entrance to sexual entertainment venues originating, not within the premises, but with potential customers who maybe refused entry. The location of sexual entertainment venues near to licensed premises under the Licensing Act 2003 will be considered to determine if there is an impact to crime and disorder.
- 14.9 In licensing of sexual entertainment venues the Licensing Authority will consider the impact of such premises and their operation on the vicinity. This would include:
- The likely effects of any increased footfall or vehicular traffic
  - Any advertising or displays of an erotic or pseudo-erotic nature
  - The type of location (residential, commercial, industrial)
  - The vicinity of establishments whose patrons are likely to be effected by the operation of the premises
  - The proximity of residential premises, including any sheltered housing and accommodation for vulnerable people
  - The proximity of educational establishments to the premises
  - The proximity of places of worship to the premises
  - Access routes to and from schools, play areas, nurseries, children's centres or similar premises in proximity to the premises
  - The proximity to shopping centres
  - The proximity to community facilities/halls and public buildings such as swimming pools, leisure centres, public parks, youth centres/clubs (this list is not exhaustive)
  - The proximity to historic buildings and tourist attractions
  - Localities where the cumulative impact of the venue, taken with other licensed premises or commercial interests, is likely to have an adverse effect on crime and disorder and public nuisance
  - The nature and concerns of any objections received from residents or businesses
  - Any evidence of complaints about noise and/or disturbance caused by the premises
  - The proximity of other sex establishments
- 14.10 When considering an application for the grant, renewal, variation or transfer of a licence the Council will also take into account the following
- The type of activity to which the application relates
  - The duration of the proposed licence
  - The days and hours of operation of the activity
  - The layout and condition of the premises
  - The use to which other premises in the vicinity are put
  - The levels of crime and disorder in the area.

14.11 Sex establishments should not be functionally visible to passers by on retail thoroughfares or pedestrian routes. In more sensitive locations applicants should consider whether it would be appropriate to locate such premises at basement level or locate entrances away from retail thoroughfares or busy pedestrian routes.

## 15. Waivers

15.1 The amendments to Schedule 3, Local Government (Miscellaneous Provisions) Act 1982 allow for the Licensing Authority to waive the need for a sex entertainment venue licence under certain circumstances.

15.2 An applicant can apply for a waiver either as part of the application for a licence or separately. The Local Authority can grant a waiver if they consider that to require a licence would be unreasonable or inappropriate. Where a waiver is granted the appropriate authority should inform the applicant that a waiver has been granted. The waiver may last for such a period that the appropriate authority think fit, but can be terminated by the appropriate authority at any time with 28 days notice.

15.3 The Licensing Authority will consider applications for such waiving of the need for licences on an individual basis. However, it is felt that unless clear and unambiguous evidence can be produced to support such a waiving of licence, the default position will be that a licence will be required.

## 16. Application Process

16.1 In determining any application the Licensing Authority is aware of its ability to impose restrictions on the licence or to place conditions on the licence. Where such restrictions or conditions are applied, the Licensing Authority will ensure that they are necessary, reasonable and proportionate to achieve the objectives of any primary legislation, in particular the Local Government (Miscellaneous Provisions) Act 1982 (as amended) and any subsequent, relevant legislation.

16.2 The Licensing Authority will consider all factors especially but not exclusively,

- The locality, character and layout of the premises
- The times of operation
- The suitability of the applicant
- The cumulative impact of the premises when taken together with other licensed premises in the locality.
- The management procedure in place to ensure the premises is operated in a way conducive to the area.

16.3 Applications for licences for sex shops, sex cinemas and sex entertainment venues must be made on the prescribed form (**appendix B**) and accompanied by the relevant fee (**appendix C**).

16.4 A site plan of radius of  $\frac{1}{4}$  of a mile (scale 1:500) clearly outlining the locality in which the proposed sexual entertainment venue will be situated. The plan should clearly identify the proposed sexual entertainment venue marking the site/premises boundary with a red line and define other types of businesses and residential properties around the site as listed at 14.9.

16.5 A plan of the premises (scale 1:100) showing the part(s) of the premises that it is proposed to licence as a sexual entertainment venue. All areas requiring to be licensed should be outlined in red on the plan. If a part of the premises is within a

licensed premises under the licensing act 2003 which will have a dual purpose then the plan should show the site where facilities for the public are shared such as toilets and bar.

- 16.6 The plan of the premises must show the position of all CCTV cameras and shall be with the approval with Kent Police and the CCTV code of practice.
- 16.7 Plans may be considered in other scales with prior agreement with the licensing authority.
- 16.8 Applicants must give public notice of the application by publishing an advertisement in a local newspaper that is circulated in the local authority area no later than 7 days after the date the application is made.
- 16.9 Applicants must display a notice of the application on or near the premises in a place where it can be conveniently read by members of the public. The notice should be displayed for a period of 21 days beginning with the date the application was made.
- 16.10 All notices should be in the form prescribed (appendix D) and identify the premises or, if the application relates to a vehicle, vessel or stall, specify where it will be used as a sex establishment.
- 16.11 The applicant must serve the application on Chief Officer of Police at Tunbridge Wells Police Station no later than 7 days after the date of application.
- 16.12 On determining an application the council shall have regard to all relevant considerations, including any comments made by:
- Police
  - Fire Authority
  - Planning and Building Control
  - KCC Safeguarding Children Board
  - UK Border Agency
  - Environmental Health (Environmental Protection and Food and Safety)
  - Ward Councillors
  - Interested Parties (local residents/businesses)
- 16.13 Officers from any of these authorities may inspect the premises to ensure that the required technical standards are met under a variety of legislation.
- 16.14 The council will not determine an application for the grant of a licence, unless, the applicant allows an authorised officer a reasonable opportunity to enter the proposed sex establishment to make such examination and enquiries as may be necessary to determine the suitability of the applicant and the premises.

## **17. Objections on an application**

- 17.1 Any person can object to an application.
- 17.2 Objections must not be based on purely moral grounds/values religious grounds as the legislation specifically prohibits this. Any objections on this basis will be refused or disregarded if presented with other reasons for objection.

- 17.3 Objections to the application must be made in writing and be received by the licensing authority within 28 days of the application being made. The objection must contain the general terms of the objection.
- 17.4 The general terms of any objection must be provided to the applicant prior to the determination of the application.
- 17.5 The report to the relevant Sub-Committee may have full details of the objectors and their objection; it will include any actions/undertaking proposed by the applicant to address the matters raised in the objections.

## **18. Conditions**

- 18.1 The Local Government (Miscellaneous Provisions) Act 1982 allows the Licensing Authority to attach conditions to a licence. To assist applicants the Licensing Authority has formulated a pool of conditions (**appendix E**) in respect of each type of licensed premises. However this list is not exhaustive and is merely to give an indication of what may be imposed on any individual licence.
- 18.2 Some of the conditions will be placed on the particular type of establishment as mandatory conditions and others may be applied only where a perceived necessity exists and in a manner that is both proportionate and reasonable to promote a safe and well managed venue. Each case will be dealt with on its individual merit.
- 18.3 Whilst conditions may be prescribed on any matter it is likely that the following considerations will attract the attachment of conditions:
- Hours of opening and closing
  - Visibility of the interior of the premises
  - Displays or advertisements
  - Any change to the type of premises
  - Minimum distance between audience and performers
  - The control of access to changing room facilities
  - The control of private viewings
- 18.4 The authority may specify other conditions specific to individual premises dependant on the type of activity undertaken. Such condition may not be listed in the pool of conditions.

## **19. Hearings**

- 19.1 Under paragraph 10 (19) of Schedule 3, before refusing an application, renewal or application to transfer a licence all applicants will be given the opportunity to appear before and be heard by the Licensing sub-committee that is responsible for determining the application.
- 19.2 Whilst Schedule 3 does not make explicit provision for objectors to be heard, this Council believes it right to offer an oral hearing to objectors. This does, however remain within their discretionary powers. Although a local authority is under a duty to consider any objection made within 28 days of the application, it has discretion to hear later objections provided the applicant is given the opportunity to deal with those objections.

- 19.3 Persons making written objections will also be informed of the date and time of the Licensing Sub-Committee hearing where they will be invited to address the committee and ask questions relating to the application.
- 19.4 All objectors and applicants are reminded that they can if they wish be legally represented at their own expense at the hearing. Alternatively they may if they wish ask a Councillor to represent them.
- 19.5 In determining an application the Licensing Sub-Committee will consider the applicants presentation, the Council's authorised officer report and representation/objections.
- 19.6 All parties may use witnesses and supporting documentation however, copies of documents and details of witnesses must be submitted to the Licensing Sub-Committee for consideration prior to the hearing and in special circumstances with approval of all parties at the hearing.
- 19.7 If one of the parties wishes to show video/dvd evidence at the hearing they must inform the licensing authority prior to the publication of the agenda papers. At least one copy of the video evidence shall be supplied to the licensing authority prior to the hearing to make sure suitable equipment is available so that the evidence can be viewed at the hearing.
- 19.8 Officers will view the evidence prior to the hearing and advise the chairman of any sensitive images and will establish whether any party objects to the video/dvd being shown. If an objection is raised then the parties concerned should give their reasons for and against the proposed showing.
- 19.9 The Licensing Sub-Committee will consider all the evidence presented to it during the hearing and members may ask questions of officers, applicant and objectors. After the evidence has been presented all parties will be asked to leave to allow for the Licensing Sub-Committee to come to a decision on the application.
- 19.20 When a decision is reached the Licensing Sub-Committee will inform the applicant and relevant parties of their decision and the reasons for coming to that particular decision.
- 19.21 The decision of the Licensing Sub-Committee will be confirmed, in writing, to the applicant within 5 working days of the meeting at which the application was considered giving reasons for the decision.

## **20. Refusal of a Licence**

- 20.1 Paragraph 12 of Schedule 3 sets out the grounds for refusing an application for the grant, renewal or transfer of a licence. A licence **must not** be granted:
- To a person under the age of 18
  - To a person who is for the time being disqualified due to the person having had a previous licence revoked in the area of the appropriate authority within the last 12 months
  - To a person other than a body corporate who is not resident in an European Economic Area (EEA) State or was not so resident throughout the period of six months immediately preceding the date when the application was made or
  - To a body corporate which is not incorporated in an EEA State or

- To a person who has within a period of 12 months immediately preceding the date when the application was made, been refused the grant or renewal of a licence for the premises, vehicle, vessel or stall in respect of which the application is made, unless the refusal has been reversed on appeal.

## 20.2 A licence may be refused where

- The applicant is unsuitable to hold the licence
- If the licence were to be granted, renewed or transferred the business to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant, renewal or transfer of such a licence if he made the application himself
- The number of sex establishments or of sex establishments of a particular kind, in the relevant locality at the time the application is determined is equal to or exceeds the number which the authority considers is appropriate for that locality
- That the grant or renewal of the licence would be inappropriate, having regard to the character of the relevant locality or to the use to which any premises in the vicinity are put or to the layout, character of the premises, vehicle, vessel or stall in respect of which the application is made.

## 20.3 In making any determination to refuse an application, renewal or transfer the local authority will give consideration to:

### a) **Unsuitability of applicant**

In determining the suitability or otherwise of an applicant the local authority will consider

- previous knowledge and experience of the applicant
- any evidence of the operation of any existing/previous licence held by the applicant, including any licence held in any other local authority area
- any report about the applicant and management of the premises received from objectors
- any previous convictions and in particular those that have been imposed in respect of offences involving violence, dishonesty, or a breach of the requirements of the legislation covering the type of establishment in respect of which the application is made.

### a) **Business carried out on behalf of a person who would be refused**

The local authority takes a serious view of any application that seeks to subvert the underlying principals of the Act. Where it is considered that the applicant is effectively operating the business on behalf of a person who would, for whatever reason be refused or disqualified from the grant of a licence due to the mandatory or discretionary grounds for refusal there will be a presumption towards refusal unless overwhelming reasons are accepted for the contrary decision to be made.

### b) **The application exceeds the limit set on the number of the specific type sex establishment in an area**

The local authority has not set a limit as to the number of establishments of a specific type. In deciding whether to allow the application the authority will have consideration to:

- Any nuisance associated with the premises or the activities undertaken thereon

- The possibility of children or other vulnerable persons being harmed or exploited by the provision of sexual entertainment or the operation of sex shops or sex cinemas
- The potential of the activities associated with the operation of the premises being a source of crime and disorder, being associated with crime or being used to support crime.
- Any other reason including the existence of a police caution, representations from the police or by other enforcement agencies in relation to crime and disorder.

**c) The grant of the licence would be inappropriate**

In deciding whether the grant of a is appropriate the local authority will consider the type of area in which it is intended to site the premises and the hours during which it is intended to operate. The authority is also likely to consider:

- The proximity as per the list at 14.9
- Whether the area is predominantly residential rather than commercial in nature and premises may cause disturbance to local community.
- Management systems are not suitable to take into account the safety of its performers, customers and staff.

## **21. Duration of Licences**

21.1 Licences for sex establishments will be granted for up to one year.

## **22. Renewal of Licence**

22.1 It will be the applicants responsibility to apply for the renewal of the licence 6 weeks prior to the expiry of the existing licence. Failure to apply prior to the expiry will result in the applicant applying for a new licence and or the need to stop the activity until a licence is granted.

## **22. Appeals**

23.1 The Local Government (Miscellaneous Provisions) Act 1982, Section 27 permits appeals against the decision of the Council in relation to sexual entertainment venues. Appeals will be heard in the first instance by the Magistrates Court. An appeal must be made within 21 days of the decision of the Licensing Sub-Committee to the Magistrates Court.

23.2 An appeal can be made in the following circumstances:-

- Refusal of an application for grant, renewal or transfer of a licence
- Refusal of an application to vary terms, conditions or restrictions on or subject to which any licence is held
- A grievance relating to any term, condition or restriction on or subject to which a licence is held
- Revocation of a licence

23.3 There is no right of appeal for objectors.

23.4 There is no right of appeal against refusal on the ground that there are sufficient sex establishments in the locality or that to grant would be inappropriate having

regard to the character of the locality, use of premises in the vicinity and the layout, character, condition and location of the premises.

23.5 A person wishing to appeal against the council decision is strongly advised to seek assistance from a solicitor prior to commencing action in a Court of Law.

## **24. Enforcement**

24.1 The Council delivers a wide range of enforcement services aimed at safeguarding the environment and the community and at providing a 'level playing field' on which businesses can fairly trade. The administration and enforcement of the licensing regime is one of these services. The Council fully supports the principals of the Government's Enforcement Concordat designed to ensure effective and efficient public protection services. Specifically, the Council is committed to accord with the principles of good enforcement practice by carrying out its regulatory functions in a fair, open and consistent manner.

24.2 The Enforcement Concordat is based on the principles that businesses should:

- Receive clear explanations from enforcers of what they need to do and by when
- Have opportunities to resolve differences before enforcement action is taken, unless immediate action is needed
- Receive an explanation of their rights of appeal

24.3 The Council recognises the interests of both individual citizens and the requirements of businesses and will work closely with partners to assist licence holders to comply with the law. However, proportionate but firm action will be taken against those who commit serious offences or persistently break the law.

24.4 The Council has established protocols with a number of enforcement agencies. These protocols provide for the targeting of resources towards premises and activities that require greater attention, while providing a lighter touch in respect of premises that are well operated.

24.5 Authorised officers may make regular visits to premises to check that conditions are being complied with and that the premises is operating as stated in their application.

24.6 Any breaches found in existing licensed premises may impede the renewal of the licence.

24.7 Authorised officers will make visit to premises advertising relevant entertainment to determine if they fall within the exemptions, hold a waiver issued by the council to determine that no breaches of the legislation is taking place.

24.8 Any breaches found in relation to holding activities that require a licence will have enforcement action taken this may include prosecution.



