

## **POLICY FOR THE CONTROL OF SEXUAL ENTERTAINMENT VENUES UNDER THE LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982.**

### **Control of Sexual Entertainment Venues**

#### **1. Introduction**

- a. The Local Government (Miscellaneous Provisions) Act 1982 introduced a regime for the control of sex establishments. The regime is adoptive and Rossendale Borough Council has for many years been able to control the provision of sex shops and sex cinemas within its administrative area. The 1982 Act has recently been amended, enabling the control of “sexual entertainment venues” and the Council has adopted the amended Schedule. This will enable applicants to seek to obtain a licence to operate a sexual entertainment venue, or to secure a waiver.
- b. The Act imposes a duty on the Council to refuse a licence in certain cases (for example if an individual applicant is under the age of 18 years) and confers powers on the Council to refuse to grant or refuse to renew a licence by reference to matters such as the maximum number of sex establishments which the Council considers appropriate for the locality of the premises, the premises that are subject of the application and the character of the locality.

#### **2. Scope of this policy**

- a. This policy will guide the Council when determining applications made in connection with sexual entertainment venues. It will assist it in achieving the purpose of the legislation in a manner that is consistent with the body of case law that has developed since the regime was first enacted.
- b. This policy applies to every type of sexual entertainment venue (as defined in the Act) unless an exemption applies. Reference should be made to the legislation itself for a full understanding of what might fall within the definition and when exemptions may apply, but in summary a sexual entertainment venue is:

- c. any **premises** (which includes traditional premises as well as vehicles, vessels and stalls etc. – but not private dwellings to which the public are not admitted) at which

(b) **relevant entertainment** (i.e. either: a live performance of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purposes of sexually stimulating any member of an audience\* whether by verbal or other means;

or (ii) a live display of nudity\* of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purposes of stimulating any member of the audience\* whether by verbal or other means.

(c) **Is provided** (i.e. provided or permitted to be provided by or on behalf of the organiser\*)

(d) **before a live audience**

(e) **for the financial gain of the organiser or entertainer** (this can be direct or indirect)

(f) **unless an exemption applies** (exemptions are detailed in par 2A of the third Schedule)

#### **Definitions.**

(a) \*audience includes an audience of only one person.

(b) \*nudity is the exposure of the pubic area, genitals or anus and, in the case of women, their nipples.

(c) \*organiser - the person who is responsible for the organisation or management of the entertainment itself or the premises.

(d) \*Licensing of sex cinemas and sex shops is outside the scope of this policy, which is directed at the new aspect of the regime under which sexual entertainment venues are regulated.

### **3. Decision making responsibility**

- a. By law all functions of the local authority concerning this regime, including the making of this policy and determination of applications are matters that cannot be the responsibility of its Executive. As such the Full Council is the body that controls the way decisions are made. The Full Council exercised its powers under Section 7 of the Licensing Act 2003 to arrange for the Licensing Committee to be responsible for the Schedule 3 functions on behalf of the Council. By virtue of Section 10 the Licensing Act 2003 a licensing committee may arrange for the discharge of any functions exercisable by it:-
  - (a) By a sub-committee established by it, or
  - (b) (Subject to statutory restrictions) by an officer of the licensing authority.

#### **4. Determining applications**

The Council will take all relevant factors into consideration when determining applications and each and every case will be decided on its merits.

#### **5. General obligations that apply to the discharge of all of the Council's powers and duties.**

- a. There are a number of general obligations that apply whenever the Council is discharging any of its many functions. Those most likely to be relevant are highlighted in this part of the policy and must be borne in mind when considering any aspect of the regime including all of the things specifically addressed in the following paragraphs. For the avoidance of doubt, the Council has screened this policy statement to ensure it is compatible with those obligations and will, through its information gathering powers, seek to ensure that relevant information may come forward through the application process to enable all of its general obligations to be satisfied in the discharge of the function of determining applications for sexual entertainment venue licences. Material that is relevant to the achievement of these obligations will be properly taken into account.
- b. There are many such general obligations applying to the work of a local authority, amongst which are (in no particular order of priority):-
  - its fiduciary duties to the Council Tax and Rate payers of the Borough (protection of the public purse).
  - its obligations to act compatibly with rights conferred under the European Convention of Human Rights
  - its general and specific duties under Equalities Law
  - its obligations under Crime and Disorder legislation
- c. In order to ensure compliance with the Provision of Services Regulations, the Council will ensure that any refusal of a licence or addition of conditions to a licence is non-discriminatory as to nationality or with regard to an European Economic Area state in which the applicant is established, necessary, in that it is justified for reasons of public policy, public security, public health or the protection of the environment; and proportionate, in that it is suitable for attaining the objective pursued and does not go beyond what is necessary to attain that objective.

#### **6. Considering applications and representations.**

- a. Applications have to be made in writing and must contain the particulars specified in paragraphs 10.2 to 10.5 of the Third Schedule and such particulars as the appropriate authority may reasonably require in addition. The Council's application form will be designed to elicit information that enables its decision

making to be guided by this policy, including information that is relevant to enabling it to meet all of its general obligations such as those referred to in the preceding paragraph.

- b. Public notice must be given of all applications and that notice shall be in the form that the Council may prescribe. The Council intends to prescribe a form of application that facilitates public representations, including, for example, requiring applicants to identify the brand name under which the premises are intended to operate and other material information.
- c. The council will record that applications have been received on its licensing web pages and will also display additional notices in the area making use of street furniture and community notice boards.
- d. It also intends to notify Ward Members about applications made within their areas and the relevant Neighbourhood Forum co-ordinators.

### **Objections,**

- a. Persons objecting to an application for the grant renewal or transfer of a licence must give notice in writing of their objection to the Council, stating in general terms the grounds of the objection not later than 28 days after the date of the application.
- b. Providing they comply with the statutory requirements, their format of written objections is entirely a matter for the objector. However, to assist the public, the Council will make available a form for objectors to use if they so choose.
- c. The Council will give an opportunity of appearing before and being heard by a committee or sub-committee:
  - (a) before refusing to grant a licence, to the applicant;
  - (b) before refusing to renew a licence, to the holder; and
  - (c) before refusing to transfer a licence, to the holder and the person to whom he desires that it shall be transferred.
- d. The Council will also usually permit objectors to address the Committee or sub committee in respect of the matters raised in their written objection (but no other matter).
- e. The Council arranges for hearings to take place before committees and subcommittee who's Members are accustomed to conducting such business in accordance with the rules of natural justice and other relevant obligations.
- f. Training has been made available to all Councillors concerned in the conduct of hearings and determination of such matters. When considering applications the

Councillors will usually enhance their existing local knowledge of the locality by use of maps and site visits.

- g. Applicants should be required to provide a location map and plan of the premises.

## **7. Grounds for refusal.**

### **Mandatory grounds.**

A licence shall not be granted where one of the mandatory refusal grounds applies, that is:-

- (a) to a person under the age of 18; or
- (b) to a person who is for the time being disqualified by virtue of revocation in the previous year;
- (c) to an individual applicant who has not been resident in the UK for the previous six months;
- (d) to a body corporate which is not incorporated in an European Economic Area state;
- (e) to an applicant 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 was reversed on appeal.

If the Council finds any of these grounds apply then it must refuse the application

### **Discretionary grounds for refusal**

A licence may otherwise be refused on one or more of the following grounds.

- (a) That the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or any other reason
- (b) That 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;
- (c) That 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. (Nil may be an appropriate number for these purposes)
- (d) That the grant or renewal of the licence would be inappropriate, having regard -

- (i) to the character of the relevant locality; or
- (ii) to the use to which any premises in the vicinity are put; or
- (iii) to the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made

If the Council finds any of these grounds apply then it may refuse the application.

### **Factors for consideration**

#### **Discretionary grounds (a) and (b)**

In considering the suitability of those persons referred to in (a) and (b) above the factors the Council may take into account include:

- relevant experience;
- relevant criminal convictions;
- whether the person has committed relevant offences;
- relevant observations or findings by public authorities, including licensing authorities,
- in connection with the conduct of the person or their ability to manage and control
- premises;
- relevant findings by courts and tribunals in connection with the treatment of protected groups (within the meaning of the Equalities Act 2010);
- information germane to the person's ability to, among other things:
- ensure the safety and wellbeing of performers;
- ensure the proper protection of the public;
- ensure the suitability of employees, performers and others using the venue;
- prevent performance by or for those who may thereby be harmed, including minors;
- understand and adhere to conditions imposed on any licence granted and
- ensure they are observed by others on the premises;
- engage constructively with the Council and other relevant regulators

#### **Discretionary ground (c)**

- a. The Council is mindful of its power to determine an appropriate maximum number of sex establishments, or of sexual entertainment venues, in the relevant locality at the time of application is determined. The Council will adopt the same approach to this issue when determining applications for sexual entertainment venues as it has taken with respect to applications for sex shop licences. It will not seek to predetermine the localities that are comprised within the Borough of Rossendale or predetermine the appropriate number for each such locality, but will consider this issue on a case by case basis. That is to say, it will decide what is the relevant locality as a matter of fact in each particular application, and not by drawing boundaries on a map or some other method.

- b. Having established the relevant locality in considering the issue in ground 'c', the Council will take into account all relevant considerations including:-
- The character of the locality - residential, leisure, educational establishments.
  - Other uses in the locality - Faith / religious institutions, churches, family friendly facilities;
  - Impact on regeneration;
  - Impact on tourism, including considerations of the perception of the Borough at gateway locations;
  - Impact on retail attraction;
  - Risk of public nuisance;
  - Whether the locality is subject of stress caused by a cumulative impact of premises authorised to provide licensable activities under the Licensing Act 2003;
  - Impact on crime and disorder;
  - Public perception of the safety of the locality and impact on that perception, e.g. typical footfall at material times, level of street lighting, use by lone females;
  - Existence of social problems in the locality and impact on any initiatives to tackle them e.g. kerb-crawling, prostitution, levels of recorded crime, levels of anti social behavior.

A dedicated Appendix will be maintained with this policy to record all decisions made to control the number of sex establishments under this provision.

### **Discretionary grounds (d)**

#### **For d(i)**

Having regard to the character of the locality (see ground (c) above) the Council will consider whether the particular application is appropriate, taking into account:

- the size and appearance of the premises
- Their proximity to places where the public congregate for purposes other than use of the
- premises, such as bus stops and taxi ranks
- The nature and style of the relevant entertainment that is proposed
- The nature of the clientele it is likely to attract and their number
- The duration of the proposed licence/activity
- The manner in which the relevant entertainment is likely to be managed
- The risk of nuisance to others engaged in legitimate activity
- The proposed hours of operation.

#### **For d(ii)**

- Whether premises in the vicinity are put to any of the following uses:
- residential, in particular homes occupied by families

- leisure
- educational establishments
- churches and other places of worship
- family friendly facilities
- other sex-oriented/adult premises (whether or not they are licensed/licensable)
- youth clubs
- women's refuges
- community centres, parks and other open spaces
- swimming pools
- public transport

**For d (iii)**

- whether the premises are fit for the purpose proposed
- their planning status
- the general appearance to others using the locality
- whether premises are self contained
- means of access and egress, whether shared with other building users (if any)
- accessibility
- sightlines
- 'hidden' areas and other places where effective monitoring may be hampered
- standard of decoration and "fit –out"
- visibility from the street
- facilities for smokers
- facilities for performers (changing, washing, w.c., smoking areas etc) and whether they are adequately separated from those provided for customers.

**9. Reasons**

- a. The Council will usually make available the reasons for its Committee and sub committee decisions on its web pages. Rarely, publication of reasons may be deferred where there is good reason (for example where relevant information is sub- judice or otherwise reasonably judged to be exempt from publication).

**10. Waiver**

- a. In circumstances in which the Council reasonably judges that it would be unreasonable or inappropriate to require a licence for the sexual entertainment venue concerned it may waive the requirement for a licence. An applicant for a waiver must submit the information prescribed in the legislation and such other information as the council may reasonably require. There are no advertising or



publicity provisions governing waivers. If an application for waiver is allowed a waiver notice is given which can be for a specific period or open ended. When it is open- ended the council, by giving at least 28 days Notice, can bring it to an end.

- b. The Council will consider each waiver application received on its own merits. It is unlikely a waiver will be granted for relevant entertainment that includes a performance of nudity.