

Bracknell Forest Council

Sex Establishment Licensing Policy Statement

March 2011

1. Introduction

- 1.1 This Policy Statement sets out the Bracknell Forest Borough Council guidance, application procedure, terms and conditions and fees regarding the regulation of Sex Establishments.
- 1.2 This document relates to applications for Sex Establishment Licences covering
- Sex Cinemas
 - Sex Shops
 - Sexual Entertainment Venues
- 1.3 This document will guide applicants and the Council when considering applications for Sex Establishment Licences.

2. Definitions

2.1 The Act

This refers to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended by section 27 of the Policing and Crime Act 2009).

2.2 Policy Statement

This refers to the Bracknell Forest Sex Establishment Policy Statement.

2.3 Relevant Locality

The Council has resolved that the Relevant Locality shall be the Ward in which the premises, vehicle, vessel or stall for which the application is being made is situated, or such other area as the Committee considers appropriate as the relevant locality for the application which they are hearing.

2.4 Character of the Relevant Locality

The character or characteristics of the locality where the premises are situated will be instrumental in determining whether or not the granting of a licence will be appropriate. This is a proper matter for the Council to consider based on local knowledge, factors and circumstances.

2.5 The Council

This means Bracknell Forest Borough Council.

2.6 Licensed Premises

This is the premises, vessel, vehicle or stall which is subject to a Sex Establishment Licence. The premises will be in possession of all appropriate consents and permissions required to operate.

Note: Licences are not required for 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.

2.7 Permitted Hours

These are the hours of activity and operation that have been authorised under the Sex Establishment Licence.

2.8. Sex Cinema

- (1) "Sex Cinema" means any premises, vehicle, vessel or stall used to a significant degree for the exhibition of moving pictures, by whatever means produced, which
 - (a) are concerned primarily with the portrayal of, or primarily deal with or relate to, or are intended to stimulate or encourage
 - (i) sexual activity or
 - (ii) acts of force or restraint which are associated with sexual activity; or
 - (b) 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-house to which the public is not admitted.
- (2) No premises shall be treated as a sex cinema by reason only:
 - (a) if they are licensed under [F1section 1 of the Cinemas Act 1985], of their use for a purpose for which a licence under [F1that section] is required; or
 - [F2(b) of their use for an exhibition to which section 6 of that Act (certain non-commercial exhibitions) applies given by an exempted organisation within the meaning of section 6(6) of that Act.]

2.9 Sex Shop

- (1) "Sex Shop" means any premises, vehicle, vessel or stall used for a business which consists to a significant degree of selling, hiring, exchanging, lending, displaying or demonstrating
 - (a) sex articles; or
 - (b) other things intended 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.
- (2) No premises shall be treated as a sex shop by reason only of their use for the exhibition of moving pictures by whatever means produced.
- (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.

2.10 Sexual Entertainment Venue

(1) "Sexual Entertainment Venue" means any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer.

(2) In this paragraph "relevant entertainment" means:

- (a) any live performance; or
- (b) any live display of nudity;

which is of such a nature that, ignoring financial gain, it must reasonably 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).

(3) The following are not sexual entertainment venues for the purposes of this Schedule:

- (a) sex cinemas and sex shops;
- (b) premises at which the provision of relevant entertainment as mentioned in sub-paragraph (1) is such that, at the time in question and including any relevant entertainment which is being so provided at that time;

(1) there have not been more than eleven occasions on which relevant entertainment has been so provided which fall (wholly or partly) within the period of 12 months ending with that time;

- (i) no such occasion has lasted for more than 24 hours; and
- (ii) 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 occasion falls within the 12 month period mentioned in Sub paragraph (i));

(c) premises specified or described in an order made by the relevant national authority.

3. Applications

3.1 Mandatory Grounds for Refusal

Specific mandatory grounds for refusal of a licence are set out in the Act. A licence cannot be granted:

- (a) to any person under the age of 18 years;

- (b) to any 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;
- (c) to any person, other than a body corporate, who is not resident in an EEA state or was not so resident throughout the period of six months immediately preceding the date when the application made; or
- (d) to a body corporate which is not incorporated in an EEA State; or
- (e) to any person who has, within a period of 12 months immediately preceding that date when the application was made, been refused that 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.

3.2 **Reasons for Refusal of a Licence**

A licence may be refused where:

- (a) the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason;
- (b) 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) the number of sex establishments, or of sex establishments of a particular kind, in the relevant locality at the time which the authority considers is appropriate for the locality;
- (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 impact upon the locality
 - (iii) to the use to which any premises in the vicinity are put; or
 - (iv) to the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.
- (e) Nil may be an appropriate number for the purposes of (c) above.

3.3 **Impact and Location**

In considering applications for the grant of new licences or variation of conditions, the Council will assess the likelihood of a grant causing adverse impacts, particularly on the relevant locality and residents. The Council will take the following general matters into account:

- (i) type of activity;
- (ii) duration of proposed licence;
- (iii) proposed hours of operation;
- (iv) layout and condition of the premises;
- (v) the use to which premises in the vicinity are put;
- (vi) the character of the locality in which the premises are situated.

3.4 In considering all applications for the grant of new licences or applications for variation of conditions, the Council will take into account the potential impacts of the licensed activity on:

- (i) crime and disorder;
- (ii) cumulative impact of licensed premises in the area, including hours of operation;
- (iii) the character of the locality in which the premises is situated.

3.5 In considering all applications for renewal the Council will take into account:

- (i) levels of recorded crime and disorder in the area;
- (ii) past demonstrable adverse impact from the activity;
- (iii) whether appropriate measures have been agreed and put into effect by the applicant to mitigate any adverse impacts.

3.6 **Relevant Locality**

In deciding the appropriate number of premises to be licensed, the Committee must consider the character of the relevant locality and what is the appropriate number of sex establishments for the relevant locality. The number can be nil.

In considering if the grant, renewal or variation of the licence would be inappropriate, having regard to the character of the relevant locality or to the use of which any premises in the vicinity are put, the Committee shall consider, among other considerations, whether the grant of the application would be inappropriate, having to:

- (a) The fact that the premises are sited in a residential area.
- (b) The premises are sited near shops used by or directed to families or children, or on frontages frequently passed by the same.
- (c) The premises are sited near properties which are sensitive for religious purposes e.g. churches, mosques, temples.
- (d) The premises are sited near premises or areas which are sensitive because they are frequented by children, young persons or families, including but not limited to educational establishments, leisure facilities such as parks, libraries or swimming pools, markets and covered markets.

3.7 **Fitness of Applicant**

An applicant must be a fit and proper person to hold a licence. In determining suitability for a new licence or a transfer the Council will in most cases take into account:

- (i) previous knowledge and experience of the applicant;
- (ii) any evidence of the operation of any existing or previous licence held by the applicant, including any licence held in any other Borough;
- (iii) and any report about the applicant and management of the premises received from statutory objectors.

4. **Proposed Operation and Management Policies**

4.1 The Council requires all licensees to ensure that they and their employees comply with all relevant licence conditions and health and safety regulations and that the premises are not a source of nuisance to residents in the vicinity.

4.2 In terms of management of licensed premises, the Council strongly encourages where possible and appropriate that licensees:

- (i) work with statutory agencies such as the Police and the Council in order to create and maintain a safe environment, both within licensed premises and in the environments around them;
- (ii) particularly those whose premises are located in areas with the highest levels of recorded crime, develop crime prevention strategies in consultation with the Police and Council.

4.3 In terms of the management of licensed premises, the Council strongly encourages and where possible and appropriate will require all licensees to develop strategies and procedures to increase access for disabled people to the premises.

4.4 In terms of the employment of staff in licensed premises, the Council requires that all relevant staff be appropriately trained in areas such as health and safety, first aid and fire precautions.

5. Public Notice of Application

5.1 Applicants are required to give public notice of the application by publishing an advertisement in a local newspaper circulating in the area where the premises are situated and to display a similar notice on or near the premises for 21 days beginning with the date of the application.

5.2 A notice must be displayed at or on the premises to which the application relates for a period of not less than 21 consecutive days from the day following the day the application was given to the Council, where it can be conveniently read from the exterior of the premises.

5.3 Where the premises cover an area of more than 50 square metres, a further identical notice must be displayed every 50 metres along the external perimeter of the premises abutting any highway.

5.4 The notice must be on pale blue paper sized A4 or larger and printed legibly in black ink or typed in black in a font size equal to or larger than 16.

5.5 The notice must state:

- (a) details of the application and activities that it is proposed will be carried on or from the premises,
- (b) the full name of the applicant,
- (c) the postal address of the premises, or in the case where there is no postal address, a description of the premises sufficient to enable the location and extent of the premises to be identified,
- (d) the date, being 28 days after that on which the application is given to the Council, by which objections may be made to the Council and that the objections should be made in writing,
- (e) a similar notice must be published in a local newspaper or similar document within 7 days of giving the application to the Council.

6. Public Consultation

6.1 Local Residents

The Council will normally consult local residents in relation to applications for the grant or variation of a licence. The nature and extent of consultation will depend on the history of a particular premises and the perceived likelihood of problems occurring and objections being received.

6.2 Consultation with Statutory Agencies and other Organisations

In most cases the Council will consult with all relevant services within the Council and the Fire Authority to ensure that all relevant information is available when considering an application.

6.3 Consultation with Ward Councillors

Relevant Ward Councillors will be notified in writing of all applications for grant or variation of a licence within their Ward.

7. Making an Application

7.1 An application for the grant, variation, renewal or transfer of a licence must be made in writing to the Council in accordance with the requirements set out below. Individuals, limited companies and firms may apply for licences.

7.2 In keeping with the Council's policy on the introduction of e-Government, the Council consents to applications and other notices being given electronically. The address at which the Council will accept applications and notices is:-

- (a) By post / personal service to the Licensing Team, Time Square, Market Street, Bracknell, RG12 1JD
- (b) By e-mail to licence.all@bracknell-forest.gov.uk

7.3 Specimen application forms can be found at Appendices A and B.

8. Application for the Grant of a Licence

8.1 To apply for the grant of a sex establishment licence an applicant must submit:

- (i) A completed application form with the fee;
- (ii) A plan to the scale of 1:100 of the premises to which the application relates showing (inter alia) all means of ingress and egress to and from the premises, parts used in common with any other building, and details of how the premises lie in relation to the street.
- (iii) A site plan scale 1:1250.
- (iv) Drawings showing the front elevation as existing and as proposed to a scale of 1:50.

The applicant must also:

- (v) Display a notice on or near the premises (see Section 5);
- (vi) Advertise the application in a local newspaper;
- (vii) Send a copy of the application and plan to the Chief Officer of Police, (Licensing Officer) at Bracknell Police Station, within 7 days of making the application to the Council.

8.2 Applications in respect of premises must state the full address of the premises. Applications in respect of a vehicle, vessel or stall must state where it is to be used as a Sex Establishment.

8.3 The Council would recommend that applications for licences for permanent commercial premises should be from businesses with planning consent for the property concerned or that the applicant has sought advice through the pre-application process.

9. Variation of a Licence

- 9.1 The holder of a Sex Establishment Licence may apply at any time for any variation of the terms, conditions or restrictions on or subject to which the licence is held.
- 9.2 The process of applying for a variation is the same as that for applying for an initial grant except that a plan of the premises is not required unless the application involves structural alterations to the premises.

10. Renewal of a Licence

- 10.1 The holder of a Sex Establishment Licence may apply for renewal of the licence. In order for the licence to continue to have effect during the renewal process, a valid application form together with the appropriate fee must be submitted before the current licence expires.
- 10.2 The process of applying for the renewal of a licence is the same as that for applying for an initial grant except that a plan of the premises is not required.

11. Transfer of Licence

- 11.1 A person may apply for the transfer of a licence at any time.
- 11.2 The process of applying for the transfer of a licence is the same as that for applying for an initial grant except that a plan of the premises is not required.

12. Determination of Applications

- 12.1 When considering an application for the grant, renewal, variation or transfer of a Sex Establishment Licence the Council will have regard to any observations submitted to it by the Chief Officer of Police and any objections that have been received from anyone else within the statutory 28 day period from the date of the application being given to the Council.
- 12.2 All applications for the grant of a **new** Sex Establishment Licence and any other applications where a relevant objection is received will be referred to a Licensing Sub Committee for determination.
- 12.3 In determining the application the Sub Committee will have regard to this Policy Statement, the application itself and any objections that may have been made. In all cases, each application will be determined on its own merits.
- 12.4 Any person can object to an application but the objection should be relevant to the grounds set out in **Section 3** above. Objections should not be made on moral grounds or values and the Council should not consider objections that are not relevant to grounds other than those in **Section 3**.
- 12.5 Objectors must give notice of their objection in writing, stating the general terms of the objections.
- 12.6 Where the Council receives notices of any objections it will, before considering the application, give notice in writing of the general terms of the objection to the applicant. However, the Council shall not, without the consent of the person making the objection, reveal their name or address to the applicant.

13. Hearings

- 13.1 Where applications are referred to a Licensing Sub Committee, the hearing will take place within 20 working days of the end of the period in which objections may be made.
- 13.2 The hearing provides all parties to the application including those making objections, the opportunity to air their views openly and will be considered by the Sub Committee.

14. Appeals

- 14.1 There is no right of appeal:
- (i) against the grounds of refusal as detailed in **Section 3.1 (a), (b), (c), (d), and (e)** above, unless the applicant can prove that the ground of refusal does not apply to them, and
 - (ii) against the grounds as detailed in **Section 3.2 (c) and (d)**.
- 14.2 The grounds for refusal under Section 3.2 (c) and (d) above can only be challenged by the applicant by way of judicial review.
- 14.3 All relevant grounds for appeal, other than these detailed at point (i) and (ii) above can be made to the Magistrates' Court within 21 days from the date on which the person is notified in writing of the decision.

15. Fees

- 15.1 The fees for all Sex Establishments (Sex Cinema, Sex Shop and Sexual Entertainment Venue) will be determined annually by the Council
- 15.2 The fees set are deemed to be reasonable to cover the cost of administration, enforcement, the cost of any hearings and are not refundable.

16. Licence Conditions

- 16.1 The Standard Conditions for Sex Establishments are attached at Appendix C.
- 16.2 Under paragraph 8 of schedule 3 the Council may grant to an applicant, and from time to time renew, a licence for Sex Establishment on such terms and conditions and subject to any restrictions as may be specified. These specific terms and conditions will be tailored for each individual premises and each type of Sex Establishment licence.

17. Human Rights

- 17.1 As far as existing operators are concerned, the Government has decided that 'Grandfather Rights' will not apply. The Transitional Order allows local authorities to refuse applications whether they are from existing operators or new applicants.
- 17.2 When making such decisions, local authorities must take into account any rights the existing operators have under Article 1, Protocol 1 of the European Convention on Human Rights (which entitles every person to peaceful enjoyment of their possessions) and Article 10 (freedom of expression).

- 17.3 The Council will have regard to the fact that it will be prudent to assume that freedom of expression includes the right to use particular premises as Sexual Entertainment Venues and that a person who is denied the right to use his premises as a Sexual Entertainment Venue where he already has a licence to do so under the Licensing Act 2003 (or in future under the 1982 Act) has been deprived of possessions.

18. Waivers

The Council does not consider that it would appropriate to permit 'Waivers' from the requirement to hold a Sexual Entertainment Venue licence particularly as the legislation allows relevant entertainment on an infrequent basis of no more than 11 occasions within a 12 month period, providing there is at least 1 month between each period of entertainment which itself does not last for more than 24 hours.

19. Duration of Licence

The Council shall, unless there are exceptional circumstances, grant a licence for the maximum duration of one year at a time.

20. Offences

- 20.1 The offences under Schedule 3 are set out in paragraphs 20 to 23 of that schedule and include:

- Knowingly causing or permitting the use of any premises as Sex Establishment without a licence;
- Being the holder of a licence, knowingly employing a person in a Sex Establishment who is disqualified from holding a licence;
- Being the holder of a licence, knowingly contravenes, or without reasonable excuse knowingly permits the contravention of, a term, condition or restriction specified in a licence;
- Being the servant or agent of the holder of a licence, without reasonable excuse knowingly contravenes, or without reasonable excuse knowingly permits the contravention of, a term, condition or restriction specified in a licence;
- Being the holder of a licence, without reasonable excuse knowingly permits a person under the age of 18 years to enter the establishment;
- Being the holder of a licence, employs a person known to them to be under 18 years of age in the business of the establishment.

- 20.2 A person guilty of any of the above offences is liable on summary conviction to a fine not exceeding £20,000.

- 20.3 It is also an offence for the holder of a licence, without reasonable excuse to fail to exhibit a copy of the licence and any standard conditions applicable to the licence in a suitable place as specified in the licence. A person guilty of this offence shall be liable on summary conviction to a fine not exceeding level 3 on the Standard Scale.