



*Basingstoke
and Deane*

BASINGSTOKE AND DEANE BOROUGH COUNCIL
SEX ESTABLISHMENT LICENSING POLICY

2013

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1 Introduction

- 1.1 Basingstoke and Deane Borough Council has adopted schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 (as amended by section 27 of the Policing and Crime Act 2009) so that it can regulate sex shops, sex cinemas and sexual entertainment venues in the Borough. In this policy, we refer to these as “sex establishments” unless we say otherwise.
- 1.2 The council resolved to adopt the Schedule in order to allow for the regulation of sex establishments. Local authorities have no authority to regulate such establishments without adopting the schedule.
- 1.3 A consultation on this policy was undertaken between 1 November 2012 and 1 January 2013 and it was formally approved by the Licensing Committee on 16 May 2013.
- 1.4 This document relates to the administration of applications for licences for Sex Establishments. Sex Establishments fall into one of the following categories
 - Sex shops
 - Sex Cinemas
 - Sexual Entertainment venues.

2 Aim of the Policy

- 2.1 The aim of this Policy is to provide guidance for prospective applicants, persons who may wish to object to or support an application and members of the Council’s Licensing Committee when making a determination on an application.
- 2.2 Whilst each application will be dealt with on its individual merits this policy should give prospective applicants an early indication of whether their specific application is likely to be successful. It also sets out the expectations of the licensing authority on the applicant when receiving an application.

3 Background Information

- 3.1 Basingstoke and Deane is a large Borough situated in the County of Hampshire covering 634.5 square kilometres with a population of 157,000¹. The town centre of Basingstoke has a busy day and night time

¹ 2006

economy with the main retail and restaurant areas located in the Festival Place shopping centre. The night time economy is centred on the 'Top of Town' area to the south of the town centre. It is in this area that most of the town's entertainment and drinking establishments can be found.

- 3.2 Other smaller urban areas in the Borough with smaller day and night time economies are the towns of Tadley to the north and Overton and Whitchurch to the West. The remainder of the borough is made up of smaller rural villages and large areas of countryside. The Borough also has many commercial areas and estates catering for very small through to very large businesses including some national head office locations.
- 3.3 At the time of drafting this policy there were no licensed sex establishments in the Borough.
- 3.4 Further information about the Borough of Basingstoke and Deane can be found at www.basingstoke.gov.uk.

4 Definitions

For the purposes of this policy the following definitions will apply, provided that any subsequent amendments to the relevant articles of schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 will also be taken into account:

4.1 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:

- a) sex articles; or
- b) 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.

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.

4.2 Sex Article

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
- anything to which the sub-paragraph below applies.

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.

4.3 Sex Cinema

Any premises, vehicle, vessel or stall used to a significant degree for the exhibition of moving pictures, by whatever means produced, which—

- 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.

No premises shall be treated as a sex cinema by reason only—

- a) if they may be used for an exhibition of film (within the meaning of paragraph 15 of Schedule 1 to the Licensing Act 2003) by virtue of an authorisation (within the meaning of Section 136 of that Act), of their use in accordance with that authorisation.
- b) by 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 the Cinemas Act 1985.

4.4 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, for example;

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

However this list is not exhaustive and the licensing authority 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.

4.5 The following are not sexual entertainment venues for the purposes 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 so provided which fall (wholly or partly) within the period of 12 months ending with that time;
 - ii. no such occasion 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 occasion falls within the 12 month period mentioned in subparagraph (i));
- c) premises specified or described in an order made by the relevant national authority.

5 "Nil Limit" Area

- 5.1 The Licensing Authority has set a nil limit on the number of sex establishments it permits within the Basingstoke Town Centre area defined as the Night Time Economy areas and the area of Basing View under development as part of the 'Central area Vision project'.
- 5.2 A map is available at page 15 of this policy document showing the boundaries of areas designated as a 'Nil Limit.'

- 5.3 Applicants are advised to consider the impact of their proposed application within these areas prior to considering whether or not they wish to operate a sex establishment business in an area and state how they believe any potential impacts could be mitigated. The Licensing Authority reserves the right to take into account other issues or considerations that may arise at the application and consultation stage as well as during the period of a licence.
- 5.4 The Licensing Authority will review this Policy with regard to the number and location of Sex establishments across the Borough as necessary.

6 Making an Application

- 6.1 Applications may be made for the grant of a new licence, renewal, variation or transfer of an existing licence. Applications must be made in accordance with the legislation. Forms and guidance notes are available on the council's website and it is recommended that applicants read this policy and the licence conditions and discuss applications with the council's Licensing Team prior to submitting an application.
- 6.2 All applications must be advertised at the relevant premises for a period of 21 days from the date of the application by displaying the application details on an A4 sized poster. The poster must be placed where it can be easily read by the public.
- 6.3 A notice must also be published in a newspaper circulating within the vicinity of the premise to be licensed. Details of the application such as proposed hours must be declared on the public notice along with information on how to object to the application. Templates for public notices are available from the Licensing Team and on the council's website. In some cases the Licensing Authority may consider that more widespread consultation or publicity is appropriate. This will be determined on a case by case basis.
- 6.4 It is recommended that applicants discuss their application with potential interested parties who may be affected by the application prior to submitting it to the Licensing Authority.
- 6.5 Applicants will be expected to complete all parts of the application form and provide all requested supporting documentation and fees. Applicants will be asked to provide a plan of the premises at a scale of 1:100 to show the layout, entertainment areas as appropriate, welfare facilities, dance floors and stages etc depending on the type of sex establishment being proposed.
- 6.6 An application will not be deemed valid until all elements are complete. Invalid applications will be returned and this may impact on public notices and newspaper advertising already published, causing further costs to be incurred by the applicant if advertising has to be repeated.

- 6.7 The Licensing Authority would expect all applicants for a sexual entertainment venue licence to have consulted with and taken advice from the Lap Dancing Association prior to submitting an application.

7 Objecting to an Application

- 7.1 Objectors must give notice of their objection in writing, stating the general terms of the objection. Any person can object to an application, however the licensing authority is likely to give greater weight to objections relevant to the grounds set out in paragraph 12, of Schedule 3, Local Government (Miscellaneous Provisions) Act 1982 for refusing a licence (See details at section 10 below.)
- 7.2 Where the Licensing Authority receives notice of any objection the authority will, before considering the application, give notice in writing of the general terms of the objection to the applicant. Following verification an objector's name and address will not be revealed to the applicant or to the public as part of the hearing process.
- 7.3 Guidance for objectors is available on the Basingstoke and Deane Borough Council Website at www.basingstoke.gov.uk and from the Licensing team on 01256 844844 or email licensing@basingstoke.gov.uk

8 Considering an Application

- 8.1 The Licensing Authority will have regard to all of the information provided by the applicant, and in particular will consider the points described in more detail in the following paragraphs of this section.

Suitability of the Applicant

- 8.2 In determining the suitability or otherwise of an applicant the local authority will consider 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.
- 8.3 The Licensing Authority will determine through evidence whether the applicant is suitable to operate a licensed sex establishment. All necessary evidence will be sought on application and the council reserves the right to ask for any further information deemed appropriate to establish the suitability of an applicant including questions on the following:
- Experience in the management of a licensed sex establishment
 - Understanding of the law and the licence conditions
 - Understanding of gender equality issues
 - Understanding of public sensitivities around licensed sex establishments

- Any other factors relating including the existence of a relevant police caution, representations from the police or others.
- 8.4 The local authority takes a serious view of any application that seeks to subvert the underlying principles 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.

Character of the Locality of the proposed Sex Establishment

- 8.5 Careful consideration will be given to the suitability of the proposed location of any premises in the Borough for which an application or enquiry is received.
- 8.6 The Licensing Authority will have regard to the nature and unique characteristics of the individual locality surrounding a proposed sex establishment, and will usually refuse applications where the proposed Sex Establishment is considered inappropriate given the character of the area.

Appropriate number of Sex Establishments for the Locality

- 8.7 The Council has set a formal “Nil Limit” for certain areas of the Borough as set out in Section 5 above.
- 8.8 Notwithstanding the above, the Licensing Authority is unaware of any localities within this borough where it would be appropriate for a licensed sex establishment to be situated.

Proximity of the Locality to sensitive areas

- 8.9 Applicants should be aware that applications for licences for sex establishments are unlikely to be considered acceptable in localities that include or are adjacent to the following:
- A place of religious worship / education;
 - A pre-school facility /school;
 - A higher education campus;
 - Any residential accommodation;
 - An enclosed shopping mall, arcade or centre;
 - A market;
 - A public building open to the general public;
 - A community meeting place;
 - A community leisure facility;

- A “Gateway” to an identifiable ‘locality’;
- A location where children may be at risk but not previously referred to in the list above; or
- A conservation area within the meaning of the Town and Country Planning Acts.

Nature of the Premises and Operational Issues

8.10 The Licensing Authority will also take the following into consideration:

- proposals for how the premises will be operated, managed and staffed;
- the layout, size, facilities at and condition of the proposed premises;
- 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;
- any nuisance associated with the premises or the activities undertaken thereon;
- 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; and
- the proposed management arrangements of the business.

8.11 When considering an application for the grant, renewal or transfer of a licence the Licensing Authority will have regard to any observations submitted to it by the Chief Officer of Police and any objections that they have received from anyone else (including statutory agencies such as Hampshire Fire and Rescue Service, UK Border Agency, The Local Safeguarding Children’s Board) within 28 days of the application.

9 Determination of an Application

9.1 All applications apart from non-contested renewals will be referred to the Licensing Sub-Committee for determination at a hearing and all parties will be given the opportunity to put forward their case at the hearing.

9.2 The Licensing Authority will consider each application on its individual merits. Reasons for grant or refusal may vary depending on whether the application is for a Sex Shop, Sex Cinema or Sexual Entertainment Venue.

9.3 The Licensing Authority will have regard to all relevant objections and will disregard those that are irrelevant. In particular, objections which do not relate to paragraph 12 of schedule 3 (see section 11), and those which do not relate to the factors set out in section 8.10, are more likely to be considered irrelevant.

- 9.4 The Licensing Authority will have regard to the applicant's status, opening hours, activities and location when determining an application.

10 Hearings

- 10.1 Hearings will be convened as soon as is reasonably practicable following the end of the consultation period. Applicants will be given at least 10 days' notice of a proposed hearing and more where possible.
- 10.2 All applicants will be given the opportunity to appear before and be heard by the Licensing Sub Committee that is responsible for determining an application.
- 10.3 Persons objecting to an application will be given the opportunity to appear at the hearing to discuss their objections so long as they are deemed relevant by the Licensing Authority. Only matters raised in the initial written objection may be discussed unless all parties agree new or additional evidence can be disclosed.
- 10.4 In general only objections received within 28 days of the application will be considered. However, the Licensing Authority does have discretion to consider later objections if it considers it appropriate to do so and providing that the applicant has been given sufficient opportunity to deal with late objections. Each application will be considered on its individual merits.

11 Refusal of a Licence

- 11.1 A licence must not be granted:
- a) to a person under the age of 18
 - b) 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;
 - c) to a 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 was made; or
 - d) to a body corporate which is not incorporated in an EEA State; or
 - e) 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.
- 11.2 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 the application is determined is equal to or exceeds the number which the authority consider is appropriate for that 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 use to which any premises in the vicinity are put; or
 - iii. to the layout, character or condition of the premises, vehicle, vessel or staff in respect of which the application is made.
- 11.3 A decision to refuse a licence must be relevant to one or more of the above grounds.
- 11.4 When determining a licence application, the local authority will have regard to any rights the applicant may have under Article 10 (right to freedom of expression) and Article 1, Protocol 1 (protection of property) of the European Convention on Human rights.
- 11.5 The Provision of Services Regulations 2009 amended Schedule 3 to the 1982 Act to state that, if having considered an application for the grant, renewal or transfer of a licence, the appropriate authority decides to refuse it on one or more of the above grounds, it will provide the applicant with reasons for the decision in writing.

12 Licence Conditions

- 12.1 The Licensing Authority may impose terms, conditions and restrictions on a licence that are specific to that licence. It will also impose standard conditions that are relevant to all licensed sex establishments. These may include conditions on the following:
- Opening and closing hours
 - Displays and advertisements on or in sex establishments
 - Visibility of the interior of a sex establishment to passers by
 - Any change of use from one kind of sex establishment to another.
- 12.2 The authority may specify other conditions specific to individual premises dependant on the type of activity undertaken and the type of premises. These may include specifying minimum distances between the audience and performers, the control of access to changing room facilities, and the

control of private viewings. Additional conditions may be imposed where appropriate and where necessary.

- 12.3 Where applicants believe that certain standard conditions should not apply to their licence, they must include in the application a statement as to why they consider those specific conditions should not be applied and what steps they propose to take in the conduct of their business to mitigate any impacts on exempting such conditions. It will be for the Licensing Authority to agree or deny such a request and reasons will be given in writing.

The licence conditions are attached at Appendix 1A to this Policy

13 Appeals

- 13.1 In the event that the appropriate authority refuses an application for the grant, renewal or transfer of a sex establishment licence the applicant may appeal the decision in a magistrates' court, unless the application was refused under 12(3) (c) or (d) (as set out paragraph 11.2), in which case the applicant can only challenge the refusal by way of judicial review.

14 Duration of Licences

- 14.1 Licences for sex establishments can be granted for up to one year. However, the Licensing Authority may grant a licence a period of less than a year where it is considered appropriate in the circumstances of the particular application.

15 Variation of Licences

- 15.1 Applications to vary a sex establishment licence will be considered in the same way as applications for new licences.
- 15.2 Although Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 does not set out the publicity requirements for variation applications, the Licensing Authority will expect the notification given to be consistent with the required procedure for new applications.

16 Waiving of the need for a Sexual Entertainment Venue Licence

- 16.1 The amendments to Schedule 3, Local Government (Miscellaneous Provisions) Act 1982, allow for the Licensing Authority to waive the need for a sex establishment licence under certain circumstances.
- 16.2 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.

- 16.3 The Licensing Authority will consider applications for such waiving of the need for licences on an individual basis. However it is considered 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

17 Exchange of Information

- 17.1 The authority may from time to time exercise its powers under section 115 of the Crime and Disorder Act 1998 to exchange data and information with the police and other partners to fulfil its statutory objective of reducing crime in the area.

18 Enforcement

- 18.1 The Licensing Authority has established protocols with the local Police, Fire and Rescue Services and Trading Standards on enforcement issues. These enable the more efficient deployment of staff who are commonly engaged in enforcing licensing law and the inspection of licensed premises. The aims of the protocol are to target agreed problem and high risk premises which require greater attention while providing a lighter touch in respect of low risk premises which are well run.

If you have any comments on this document, please send them to:

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19 Area of Nil limit for licensed Sex Establishments

