

Sexual Entertainment Venue Licensing Policy

1 INTRODUCTION

1.1 The Policy

- 1.1.1 This document states Borough Council of Wellingborough's policy on the regulation of Sexual Entertainment Venues. (SEV's)
- 1.1.2 This policy has been drafted as a result of new provisions that allow the Council to regulate Sex Establishments. This Policy will guide the Council when considering applications for licences, bearing in mind the spirit and intent of the legislation, government guidance and relevant case law. The Council will not follow this Policy inflexibly but shall consider each application on its merits.
- 1.1.3 The Council does not take a moral stance through the adoption of this policy. We recognise that Parliament has made it lawful to operate a sex establishment, and that such businesses are a legitimate part of the retail and leisure industries. It is our role as a licensing authority to regulate such premises in accordance with the law.

1.2 Relevant legislation

- 1.2.1 Borough Council of Wellingborough has adopted schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 (as amended by section 27 of the Policing and Crime Act 2009).
- 1.2.2 This means that the Council can control and regulate the operation of certain kinds of Sex Establishment within its District. No sexual entertainment venue can operate unless it has obtained a licence from the Council – any such licence will contain conditions that will restrict how that premises may trade.
- 1.2.3 Licences for sexual entertainment venues are required for “any premise at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer”. A sexual entertainment venue is defined under the Act.
- 1.2.4 In deciding whether entertainment is “relevant entertainment” we will judge each case on its own merits, but generally this will apply to:
 - a) lap dancing
 - b) pole dancing
 - c) table dancing
 - d) strip shows
 - e) peep shows
 - f) live sex shows
- 1.2.5 Under Section 17 of the Crime and Disorder Act 2001, local authorities must have regard to the likely effect of the exercise of their functions on, and do all they can to prevent crime and disorder in their area. This policy has regard to the likely impact of such licences on related crime and disorder in the District.
- 1.2.6 This Policy should be read in conjunction with, and without prejudice to, other existing National and European Union legislation, such as the Human Rights Act 1998 and the Equalities Act 2010.

2 SEXUAL ENTERTAINMENT VENUE LICENCE APPLICATIONS

2.1 Right to Waiver

2.1.1 The Licensing Authority does not consider it would be appropriate to permit waivers from the requirements to hold a Sex Establishment licence in respect of Sexual Entertainment Venues, particularly as the legislation allows relevant entertainment on an infrequent basis of no more than eleven occasions within a 12-month period, providing there is at least one month between each period of entertainment which itself does not last for more than 24 hours.

2.2 Application details

2.2.1 An application for the grant, renewal, transfer or variation of a licence must be made in writing to the council in accordance with the requirements set out in paragraph 10 of Schedule 3 to the 1982 Act.

2.3 Impact of the Sexual Entertainment Venue

2.3.1 In considering applications for the grant of new licences or variation of conditions, the Council will assess the likelihood of such grant causing adverse impacts, particularly to local residents. The council will take the following general matters into account:

- a) type of activity
- b) duration of proposed licence
- c) proposed hours of operation
- d) layout and condition of the premises
- e) the use to which the premises in the vicinity are put
- f) the character of the locality in which the premises are situated

2.3.2 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 application on:

- a) crime and disorder
- b) cumulative impact of licensed premises in the area including hours of operation
- c) the character of the locality in which the premises is situated

2.3.3 In considering all applications for the renewal of a sexual entertainment venue licence the council will take into account:

- a) levels of recorded crime in the area of a sexual entertainment venue that give the police cause for concern;
- b) past demonstrable adverse impact from the licensed activity;
- c) whether appropriate measures have been agreed and put into effect by the applicant to mitigate any adverse related impacts.

2.4 The location of the premises

- 2.4.1 Applicants should be aware that planning permission to operate a premises as a sex establishment may not be in place. Planning is a separate process to obtaining a Sex Establishment licence. The Licensing Authority would recommend that potential licence applicants ensure that the appropriate planning permission is in place prior to submission of an application for a licence.
- 2.4.2 In accordance with relevant case law, the Council shall decide upon the suitability of a particular locality for a Sexual Entertainment Venue by the particular circumstances of each case.
- 2.4.3 The Council is mindful of its power to determine that no Sexual Entertainment Venue should be located in a particular locality.
- 2.4.4 Notwithstanding the above, licences will only be granted in predominantly commercial areas and the Council is mindful of its power to determine each application on its own merits. Applications will *not normally be granted* if they are to be within:
- a) areas that are exclusively, or predominantly, residential in character, or;
 - b) the vicinity of residential properties, "vicinity" is not defined in the Schedule but in other statutory provisions has been defined as, "the state of being near in space", or;
 - c) close proximity of a school or any other Premises used by children or vulnerable adults; or
 - d) A publicly accessible open space that is regularly frequented by children or vulnerable adults, or;
 - e) close proximity of a place of worship, or;
 - f) areas with a level of recorded crime that give the police cause for concern, or;
 - g) areas that are likely to be adversely effected due to the cumulative impact of existing Sexual Entertainment Venues or;
 - h) 200m of an existing Sexual Entertainment Venue.

2.5 Consultation Arrangements

2.5.1 Public Consultation

The applicant 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.

2.5.2 A notice must also be displayed on or nearby the premise in a place where it can be read by members of the public for a period of 21 days beginning with the date the application was made. 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. The notice must be laminated or suitably protected to ensure that it remains legible throughout the public notice period.

2.5.3 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,

2.5.2 There are similar notification requirements under the Licensing Act 2003 and where an applicant is making an application under both Schedule 3 and the 2003 Act at the same time they may wish to combine those requirements.

2.5.3 The applicant shall, not later than seven days after the date of application send a copy to the Chief Officer of Northamptonshire Police.

2.6 Commenting On Licence Applications

2.6.1 Unlike some other licensing regimes (such as for alcohol, entertainment, or gambling), a wide range of people can raise objections about Sex Establishment licences. The police are a statutory consultee for all applications.

2.6.2 Although applicants are only required to provide notice of the application to the police, the Licensing Officer will publish a list of current sex establishment premises applications on the Council's website, to allow the public to view basic details and provide a contact number for the office processing the application.

2.6.3 Objectors should limit their objection to matters which are relevant to the statutory grounds for refusal as set out in the 1982 Act. The grounds relevant to the majority of objectors are as follows:

- 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 of the premises, vehicle, vessel or stall in respect of which the application is made.

2.6.4 Any objections received by the Licensing Authority which do not relate to the grounds set out in the Act must be rejected by the Licensing Sub-Committee. Where objections are rejected, the objector will be given written reasons.

2.6.5 Objectors can include individual residents or businesses, residents'/tenants' associations, community associations and trade associations. Councillors and MPs may also raise objections. Petitions may be accepted as an objection but must follow the guidelines set out in the Council's Procedure Rules for Petitions set out in the Council's Constitution.

2.6.6 The Licensing Authority will not consider objections that are frivolous or vexatious, or which relate to moral grounds (as these are outside the scope of the 1982 Act). Decisions on whether objections are frivolous or vexatious will be made objectively by the Licensing Sub-Committee and not on the basis of any political judgement. Where objections are rejected, the objector will be given written reasons. A report will be made to the Licensing Sub-Committee determining the application, indicating the general grounds of the representation and the reasons why it should be considered for rejection. The Licensing Sub-Committee will determine whether the representation will be accepted or not.

2.6.7 An unreasonable objection is generally taken to be one which is repetitive, without foundation or made for some other reason such as malice. A frivolous objection is generally taken to be one that is lacking in seriousness.

2.6.8 Objections must be made in writing (email is acceptable) and should include the following:

- the name and address of the person or organisation making the objection
- the premises to which the objection relates
- the proximity of the premises to the person making the objection; a sketch map or plan may be helpful to show this
- the reasons for making the objections, which are clearly set out in relation to the grounds for refusal (as above).

3. DETERMINATION OF APPLICATIONS

3.1 General

3.1.1 In determining an application relating to a Sexual Entertainment Venue licence the Council will assess the application on its merits having regard to the content of this Policy, the relevant legislation and any relevant guidance that may be issued from time to time.

3.1.2 Where it is necessary for the Council to depart substantially from this policy, clear and compelling reasons for doing so will be given. Only a Licensing Sub-committee may authorise a departure from the policy if it feels it appropriate for a specific application.

3.1.3 We will, unless there are exceptional reasons otherwise, grant licences for the maximum duration of 12 months at a time to provide certainty to those operating businesses. In certain circumstances, the Licensing Sub-committee may issue a licence for a lesser period where it deems this necessary.

3.1.4 If a cheque is dishonoured by a bank this will result in the revocation of the Sexual Entertainment Venue Licence issued by the Council unless satisfactory arrangements are made for payment of the outstanding fees within 5 working days of the initial contact with the Council.

3.2 Grant of a new Licence

3.2.1 All applications for the grant of a new licence will be determined by the Licensing Sub-committee whether or not representations are received.

3.2.2 The Council will give the applicant(s) the opportunity of appearing before and being heard by a Licensing Sub-committee before:

- a) refusing to grant a licence; or
- b) refusing to renew a licence; or
- c) refusing to vary an existing licence.

3.2.3 In determining an application for the grant, renewal or variation of a licence, the Council must have regard to any representations that it has received.

3.2.4 Mandatory Reasons for Refusal: The Local Government (Miscellaneous Provisions) Act 1982 Schedule 3 Section 12 (1)(a-e) prohibits the Licensing Authority from granting a licence:

- a) to a person under the age of 18; or
- b) to a person who is for the time being disqualified from holding a licence following revocation of such a licence; or
- 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 6 months immediately preceding the date when the application was made; or
- d) to a body corporate which is not incorporated in an EEA state;
- e) to a person who had, 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.

Please note there is no right of appeal against refusal on these grounds.

3.2.5 Discretionary Grounds for Refusal: Under the Local Government (Miscellaneous Provisions) Act 1982 Schedule 3 Section 12 (3)(a-d) the Licensing Authority may refuse an application for the grant or renewal of a licence 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 for 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 made (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 –
 - 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 or condition of the premises, vehicle, vessel or stall in respect of which the application is made.

3.2.5 An application for the transfer of a licence can only be refused by virtue of grounds (a) & (b) above. Holders of premises licences are not permitted to transfer licences between sites.

3.3 Fitness of the applicant

3.3.1 An applicant must be a fit and proper person to hold a licence. In determining suitability for a new licence, or a transfer of an existing one, the Council will take the following into account:

- a) Previous relevant knowledge and experience of the applicant;
- b) Any evidence of the operation of any existing or previous licence(s) held by the applicant, including any licence held in any other Licensing Authority area.
- c) Any report about the applicant and management of the premises received from statutory objectors.

d) Any responses from statutory consultees.

3.4 Renewal or Variation of an Existing Licence

- 3.4.1 The granting of an application for renewal or variation of an existing licence will be considered by the Principal Health Protection Manager unless representations are received.
- 3.4.2 Where representations are received, the application will be referred to a Licensing Sub-committee for determination.

3.5 Refunds

- 3.5.1 In the event of an application being refused, the required application fee is non-refundable.

4. CONDITIONS

- 4.1 We have adopted standard conditions for Sexual Entertainment Venues which are set out in **Appendix A** of this policy.
- 4.2 Where it is reasonable and necessary to do so, the Licensing Sub-committee will impose additional proportional conditions on a licence. Wherever possible these will be discussed in advance with applicants by our licensing officers.
- 4.3 All licences will be granted, renewed or varied subject to these Standard Conditions unless expressly excluded or varied by a Licensing Sub-committee.

5. HEARING PROCEDURE

- 5.1 Where the Council is required to determine an application by reference to a Licensing Sub-committee, the applicant and objectors will be advised of the date, time and venue of the hearing.
- 5.2 In preparation for the hearing, all parties will receive a copy of the Licensing Officer's report prior to the hearing. The report will contain a summary of the application, representations and any other relevant information.
- 5.3 At the hearing, all parties will have the opportunity to address the Licensing Sub-committee and ask questions of fact of other parties. The Licensing Authority accepts that in terms of the legislation it has no power to restrict either the duration of the applicant's presentation to Committee, or the content thereof. The Licensing Sub-committee may also ask questions of all parties that they feel relevant to the determination process.
- 5.4 The Licensing Sub-committee will communicate their decision at the end of the hearing and the applicant will receive written confirmation of the decision.

6. OPERATION AND MANAGEMENT

- 6.1 The Council requires all licensees to ensure that they and their employees comply with all relevant licence conditions and health and safety regulations.
- 6.2 In terms of management of licensed Premises, the Council strongly encourages where possible and appropriate, that licensees:
- a) 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 immediate vicinity;
 - b) Develop crime prevention strategies in consultation with the Police and the Council particularly those whose Premises are located in areas with high levels of recorded crime,
 - c) Develop strategies and procedures to increase access for disabled people to the Premises.
 - d) Ensures that all relevant staff are appropriately trained in areas such as health and safety, first aid, and fire precautions.
- 6.3 The Licensee shall forthwith notify the Council in writing of his ceasing to carry on the business of a sexual entertainment venue.

7. ENFORCEMENT

- 7.1 This organisation recognises that well-directed enforcement activity by the Council benefits not only the public but also the responsible members of the trade.
- 7.2 In pursuing its objective of encouraging responsible businesses, the Council will operate a proportionate enforcement regime in accordance with the Council's Enforcement Policy and Regulators' Compliance Code.
- 7.3 The Council will not determine an application for the grant or renewal of a licence unless the applicant affords a duly authorised officer of the Council or a Police Constable a reasonable opportunity to enter the premises to make such examinations or enquiries as is necessary to determine the suitability of the applicant and the premises.

8. REVOCATION OF LICENCE

- 8.1 The Licensing Authority is given jurisdiction to revoke a Sex Establishment licence by virtue of Schedule 3 paragraph 17(1) of the Local Government (Miscellaneous Provisions) Act 1982.
- 8.2 The Licensing Authority may call a hearing, without requiring a third party to request such a hearing, and give the licence holder an opportunity to appear before them.
- 8.3 The Licensing Authority may revoke the licence on any of the mandatory grounds which are detailed above at Section 3.2.4 or in respect of (a) or (b) detailed at section 3.2.5 (above), namely that the licence holder is unsuitable or that the manager or beneficiary of the licence is unsuitable.

- 8.4 Should the Licensing Authority revoke a Sex Establishment licence then full reasons for the revocation would be provided to the licence holder within 7 days of the decision.
- 8.5 Revocation of a Sex Establishment licence would disqualify the licence holder from holding or obtaining another Sex Establishment licence in the Licensing Authority's area for a period of 12 months. However, this does not prevent the licence holder from holding a Sex Establishment licence in another Licensing Authority's area.

9. RIGHT TO APPEAL A DECISION

- 9.1 If an application is refused, or revoked, following a hearing, then the applicant will be informed of the decision and whether there is any right of appeal.
- 9.2 Appeals must be made to the local Magistrates' Court within 21 days, starting from the date the applicant is notified of the Licensing Authority's decision.
- 9.3 Please note that you cannot appeal against the Licensing Authority's decision if the application was refused on the grounds that:
- a) 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; or
 - b) the grant of the licence would be inappropriate considering the character of the area, the nature of other premises in the area, or the premises themselves.
- 9.4 The Magistrates' Court will determine the appeal application. If you do not agree with the decision made by the Magistrates' Court, you can appeal to the local Crown Court. The decision made by the Crown Court will be final.
- 9.5 The Licensing Authority must comply with a decision made by the Magistrates' or Crown Court.

9. AMENDMENTS TO THIS POLICY

- 9.1 Any significant amendment to this policy will only be implemented after further consultation with the trade and the public. All such amendments to this Policy will be undertaken in accordance with the Council's Constitution.

For the purpose of this section, any significant amendment is defined as one that:

- a) is likely to have a significant financial effect on licence holders, or
 - b) is likely to have a significant procedural effect on licence holders, or
 - c) is likely to have a significant effect on the community.
- 9.2 Any minor amendments to this Policy may be authorised by the Head of Service responsible for Licensing and undertaken in accordance with the Council's Constitution. For the purpose of this section, any minor amendment is an amendment not defined as significant in Section 8.1 of this Policy.
- 9.3 The Standard Conditions appended to this policy (Appendix A) does not form part of the policy document, although may be referred to within the policy. These Standard

Conditions could be subject to change during the duration of this policy, but such amendment may not result in review of this policy.

APPENDIX A

SEXUAL ENTERTAINMENT VENUE STANDARD CONDITIONS

In these conditions, the following expressions shall have the following meanings:

- a) "The Council" – shall mean Borough Council of Wellingborough
- b) "The Act" – Local Government (Miscellaneous Provisions) Act 1982, as amended by S.27 of the Policing and Crime Act 2009
- c) "Sex Entertainment Venue (SEV)" shall have the same meaning as given in Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 as amended
- d) "Premises" – any vehicle, vessel or premises (which shall include any building or any part thereof) which is the subject of a licence, granted under Schedule 3 of the Act.
- e) "Special Conditions" – any term, conditions or restrictions contained or referred to in the schedule to a licence granted under Schedule 3 of the Act.

These conditions are imposed by the Council pursuant to its powers under paragraph 13(1) of Schedule 3 of the Act as terms, conditions and restrictions to which a licence is in general to be granted, renewed or transferred by the Council save and in so far as they do not conflict with the provisions of the Act itself.

These standard conditions will apply to all licences unless varied by the Licensing (Sub) Committee.

The granting of a licence for a Sex Establishment shall not be deemed to convey any approval or consent which may be required under any enactment by law order or regulation other than the Third Schedule of the Local Government (Miscellaneous Provisions) Act 1982 as amended.

In the event of a conflict between these Standard Conditions and any Special Conditions contained in a licence relating to a Sex Establishment, the Special Conditions shall prevail.

General

1. Premises shall only be used in accordance with the licence issued, including the plan, licensable hours and designated entertainment areas.
2. CCTV shall be provided in the form of a recordable system, capable of providing pictures of evidential quality in all lighting conditions particularly facial recognition. The following conditions shall apply:
 - a) CCTV cameras shall encompass all entrance and egress to the premises and all areas where the licensable activity occurs including dancing booths provided.
 - b) CCTV shall continually record whilst the premises are open to members of the public.
 - c) CCTV equipment shall be maintained in good working order and recordings kept in date order, numbered sequentially and kept for a period of 31 days and made available to police or licensing officers on request.
 - d) CCTV recording equipment, tapes or discs shall be kept in a secure environment under the control of the Licence Holder or other responsible named individual.
 - e) Appropriate signage representative in respect of the use of CCTV at the premises shall be displayed in conspicuous positions.

3. The Licensee shall inform the Council if they are convicted under the Obscene Publications Act 1959, the Protection of Children Act 1978, or the Customs and Excise Management Act 1979 or if an order of forfeiture is made under the Obscene Publications Act 1959 following the service of a summons on the Licensee. The Council will take into consideration any such, or similar, conviction or Order for possible revocation or non-renewal of the licence.
4. Any breach or failure to comply with the conditions attached to the licence may result in the revocation of the licence.

Conduct and Management of Sex Establishments

5. No person under the age of 18 years of age shall be admitted to or allowed on the premises whilst licensable activities are taking place. An age verification process will be applied.
6. No lewd or indecent conduct or conduct likely to cause a breach of the peace shall be permitted on the premises.
7. Door Supervisors, registered in accordance with the Security Industry Authority, shall be on duty at all times when licensable activities are taking place.
8. Performers shall be aged not less than 18 years.
9. Only the performers shall provide the entertainment, no audience participation shall be permitted.
10. The licensee or a nominated manager shall be present at the premises at all times whilst entertainment is taking place and shall be responsible for overseeing the activities of the performers.
11. A register shall be maintained and kept on the premises and be available for inspection at any time by police or officers of the licensing authority. This shall clearly record the identity of the licensee(s) on duty, the day, date, times of start and finish of duty, and the record shall be kept for a period of 12 months after the last entry in the register.
12. Any bodily contact between entertainers or performers or any movement that indicates sexual activity or simulated sex between entertainers is strictly forbidden.
13. Entertainers or performers not performing shall not be in a licensed area in a state of undress.
14. No performance shall involve the use of sex articles (as defined in the Local Government (Miscellaneous Provisions) Act 1982).

External Appearance

15. No advertising including explicit photographs or information likely to cause offence shall be permitted inside, outside or in the vicinity of the premises.

16. In premises that are not used wholly as a sexual entertainment venue, a clear notice shall be displayed at each entrance to the premises or to the licensed area in a prominent position stating "No persons under the age of 18 years will be permitted".
17. Under no circumstances must any entertainment be visible to members of the public from outside the premises.
18. Any person who can be observed from the outside of the premises must be properly and decently dressed. Scantily clad individuals shall not:
 - a) exhibit in the entranceway or in the areas surrounding the premises;
 - b) tout for business; or
 - c) distribute flyers.
19. The Licence Holder shall not display outside the premises, or on any advertising material, photographs or other images which indicate and suggest that striptease or similar dancing takes place on the premises and which may be offensive.

State Condition and Layout of the Premises

20. Dressing rooms will be provided for entertainers and access to these shall be restricted by management in accordance with approved arrangements before during and after the entertainment.
21. Save in the case of an emergency, no access shall be permitted through the Premises to any unlicensed Premises adjoining or adjacent.
22. Suitable controlled access to the premises shall be maintained. Any mechanical device will be maintained in good working order.
23. No fastenings of any description shall be fitted upon any booth or cubicle within the Sex Establishment. (This does not apply to toilet cubicles)
24. Alterations or additions either internal or external and whether permanent or temporary to the structure, lighting or layout of the Premises shall not be made except with the prior approval of the Council.