

Draft

Statement of Policy in respect of Sex Establishments

Under the Local Government
(Miscellaneous Provisions) Act 1982
as amended by
Policing and Crime Act 2009

Licensing Section
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1. This policy:

- Sets out the council's approach for the benefit of operators
- Guides and reassures the public and other public authorities
- Ensures transparency
- Ensures consistency
- Guides and focuses the Environment & Safety Committee when making determinations under this legislation.

Introduction

2. The Hastings Sex Establishments Policy sets out Hastings Borough Council's approach to the regulation of sex establishments and the procedure relating to applications for sex establishment licensing. The limit on the number of sex establishments in the borough are indicated in brackets below:

3. This Policy applies to:

- sexual entertainment venues (1)
- sex shops (None)
- sex cinemas (None)

as set out in the Local Government (Miscellaneous Provisions) Act 1982. The 1982 Act was adopted by the Council on 24th November 1982 and the amendment by the 2009 Policing and Crime Act was adopted on 6th December 2010.

4. The Council does not take any moral stand in adopting this policy. The Council recognises that Parliament has made it lawful to operate Sex Establishments, and that such businesses are a legitimate part of the retail and leisure industries. It is this Council's role as the Licensing Authority to administer the licensing regime in accordance with the law.

5. This Policy may be reviewed from time to time as the Council thinks fit and in line with any significant changes to legislation.

Consultation on this Policy

6. The Council is mindful of the possible concerns of the local community and that there may be conflict between the wishes of applicants for licenses and those who object to such applications. This Policy will therefore guide the Council when considering applications for sex establishment licenses in balancing the needs of residents, communities, commercial interests, patrons and employees. The Council has consulted with stakeholders on the formulation of its policy on sex establishments.

7. Consultation on a first draft of this Policy took place between 12th September 2014 and 2nd January 2015 with a range of partners. On this occasion the following were formally invited to engage in the consultation process:

All Members

Sussex Police

East Sussex Fire and Rescue

Love Hastings (BID)

Hastings Borough Council's Planning Policy Department

Existing sex establishments in the borough (1 in total)

8. An online consultation is also available via Hastings Borough Council's website, this was publicised on our website.

9. The consultation has asked respondents to consider an initial proposal of:

- 1 sex entertainment venue
- Nil sex shops
- Nil sex cinema

10. The Council recognises that Sex Establishment Licensing is controversial and stimulates very emotive arguments. However, the Council does not have the right to, and will not, have regard to the morality of sex establishments. Its approval or disapproval of sex establishments is not a matter that can be considered. Consequently, objections on the grounds that sex establishments should not be allowed on moral grounds will not be considered regarding sex establishment applications and will be rejected.

11. Definitions

“**the Act**” refers to the Local Government (Miscellaneous Provisions) Act 1982 as amended by the Policing and Crime Act 2009

“**the Council**” means Hastings Borough Council

“**the Policy**” refers to the Sex Establishments Policy for Hastings Borough Council

“**relevant locality**” means the locality in which the premises, vehicle, vessel or stall are situated. For the purposes of this policy, each ward has been determined to be a locality. In individual cases, if it is necessary to decide the precise boundaries of the locality, this will be done on the facts of the individual case

“**character of the relevant locality**” means the character or characteristics of the locality in which the premises, vehicle, vessel or stall are situated. In determining the character of the area, the Council will consider the primary use premises in the locality are put to, any additional uses of premises in that locality, and any purposes that may require persons to use that locality, for example transport hubs

“**the premises**” means the premises, vehicle, vessel or stall that are the subject of the sex establishment licence or of the application for a sex establishment licence

“sex establishment” refers namely to ‘sex cinemas’, ‘sex shops’ and ‘sexual entertainment venues’ (defined below)

“**sex cinema**” means any premises, vehicle, vessel or stall used to a significant degree for the exhibition of moving pictures related to, or intended to stimulate or encourage, sexual activity, acts of force or restraint associated with sexual activity, or concerned primarily with the portrayal of or primarily deal with, or relate to, genital organs or excretory or urinary functions, but does not include a dwelling house to which the public is not admitted

“**sex shop**” means any premises, vehicle, vessel or stall used for a business consisting 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.

“**sex articles**” include written or visual material such as sex magazines or books, or visual or audio recordings concerned with the portrayal of, or primarily deal with or relate to, or are intended to stimulate or encourage, sexual activity or acts of force and restraint associated with sexual activity, or which are concerned primarily with the portrayal of, or primarily deal with or relate to, genital organs or urinary or excretory functions

“**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

“**relevant entertainment**” means any live performance or 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 an audience (whether by verbal or other means). An audience can consist of just one person (e.g. where the entertainment takes place in private booths). For the purposes of this Policy this includes lap dancing, pole dancing, table dancing, strip shows, peep shows, live sex shows “**display of nudity**” means, in the

case of a woman, exposure of her nipples, pubic area, genitals or anus; and in the case of a man, exposure of his pubic area, genitals or anus

“the organiser” means any person involved in the organisation or management of relevant entertainment

“significant degree” in the context of sex shops, shall be considered by the Council on a case by case basis. In considering significant degree, the Council will consider, amongst other things:

- the amount of shelf space devoted to relevant articles
- the annual turnover in relation to relevant articles and other things
- the way the business is marketed and advertised and
- the primary intention of the majority of customers in visiting the shop

“permitted hours” are the hours of activity and operation that have been authorised by the Council under the sex establishment licence

Famously Hastings

12. Hastings has a diverse resident population of approximately 92,000. This number increases significantly in the summer months with an influx of tourists, visitors and foreign students. The town also has a student population since the University of Brighton opened its Hastings campus in 2003.
13. The town has a rich architectural heritage which spans St. Leonards and the Old Town, is home to the largest beach-launched fishing fleet in Europe and the remains of the first castle in England to be built by William the Conqueror. The new Jerwood Art Gallery houses a collection of 20th and 21st century British Art and is sited in the old town area.,
14. Throughout the year, Hastings also has one of the busiest and liveliest events programmes in the county including the Jack in the Green May Day celebrations, Pirate Day, Old Town Carnival Week, the Seafood and Wine Festival, Coastal Currents Arts Festival and the International Piano Concerto competition. These events draw further visitors to the town.
15. Economic regeneration initiatives have distinctly improved the look and feel of the town in many areas. With an increased emphasis on the evening economy, a number of new restaurants, cafes, markets and outdoor events have developed.
16. Hastings is a borough of diversity and contrasts, with some of the most deprived wards sitting alongside more affluent areas of the town. The Council has a strong commitment to working with partners to narrow the gap between the most deprived communities and the rest of the town.

Section 17, Crime and Disorder Act 1998

17. Section 17 of the Crime and Disorder Act 1998, as amended by the Police and Justice Act 2006, requires responsible authorities to consider crime and disorder (including anti-social behaviour and other behaviour adversely affecting the local environment); and the misuse of drugs, alcohol and other substances in the exercise of all their duties, activities and decision-making. This means that in

all policies, strategies and service delivery there is a need to consider the likely impact on crime and disorder.

Equality Act 2010

18. Under the Equality Act 2010, people are not allowed to discriminate, harass or victimise anyone because of the following 'protected characteristics':

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race
- Religion and belief
- Sex
- Sexual orientation

19. The Equality Act includes a Public Sector Equality Duty. This says we must show 'due regard' to:

- eliminating discrimination, harassment and victimisation
- advancing equality of opportunity
- fostering good relations between people who share a protected characteristic
- fostering good relations between people who have a protected characteristic and those who don't

Principles to be applied when considering applications

20. Specific mandatory grounds for refusing an application are laid out in the Act, namely:

- I. that the applicant is aged under 18
- II. that the applicant is for the time being disqualified from holding a sex establishment licence
- III. that the applicant is not a body corporate, and is not resident or has not been resident in a European Economic Area state for six months immediately preceding the date of the application
- IV. that the applicant is a body corporate which is not incorporated in a European Economic Area state
- V. that the applicant has in the period preceding the 12 months of the date of the application 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.

21. In each of the circumstances above, the Council is required to refuse the application.

22. The Act also specifies discretionary grounds on which an application may be refused, namely:
- I. the applicant is unsuitable to hold a licence by reason of having been convicted of an offence or for any other reason
 - II. if the licence were to be granted, 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 of such a licence if he made the application himself
 - III. the number of sex establishments, or sex establishments of a particular kind, in the relevant locality at the time the application is made is equal to or exceeds the number which the authority consider is appropriate for that locality
 - IV. the grant would be inappropriate, having regard to the:
 - character of the relevant locality;
 - use to which any premises in the vicinity are put;
 - layout, character or condition of the premises,
 - vehicle, vessel or stall in respect of which the application is made.
23. In each of the circumstances above, the Council may refuse the application.

Limit on Appropriate Number of Sex Establishments

24. The numbers limit set for each category of Sex Establishment is listed at paragraph 3. This number has been set taking into account the proximity of all areas of the borough to the premises types described at paragraph 13. Maps together with a key showing the location of these premises types are annexed to this Policy at Appendix A.
25. Each application will be considered on its merits. The Council wishes to ensure existing premises are well run and this is only possible by judging applications on their merits and not by granting a blanket exemption.
26. In addition, the character of a locality may change with time, making the existing location of a sex establishment inappropriate.

Character of Locality and Use to which Nearby Premises Are Put.

27. The Council has discretion to refuse applications where the grant would be inappropriate having regard to the character of the relevant locality and the use to which any premises in the vicinity are put. In general, the Council will treat the ward in which the premises is situated as the relevant locality, although a different view may be taken following representations in individual cases, e.g. where the premises is close to a ward boundary. As for “vicinity”, this will be determined in the circumstances of each case, although as a general guideline a radius of 250 metres will be taken. In exercising its discretion on these grounds, the Council will take into account the following:

- schools or other facilities frequented by children such as playgrounds and playgroups
- cultural facilities such as museums, theatres and cinemas
- facilities frequented primarily by women such as well woman clinics
- places of worship
- public leisure facilities such as leisure centres, parks and open spaces
- community buildings such as community centres, libraries and drop in centres
- places used by vulnerable persons such as hostels and other adult social care facilities
- residential premises
- hospitals and other medical facilities
- other sex establishments

Suitability of Applicant – All Applications

28. New applicants will be required to obtain a Disclosure and Barring (DBS) check (previously CRB), renewable every three years and may be required to attend for an interview with Council officers to enable a decision to be reached on their suitability to hold a sex establishment licence. Details of applicants' private addresses and other sensitive information will not be published in public Committee documents.
29. Applicants will be expected to demonstrate that they have a good understanding of the conditions applicable to any licence granted to them through management competencies, presence and enforcement of rules internally.
30. Applicants for sexual entertainment will be expected to demonstrate that they will act in the best interest and welfare of their performers. Relevant consideration will be given to policies, facilities, protection for performers and physical and psychological welfare.
31. Applicants will be expected to demonstrate that they have a transparent charging system so users of the premises are completely clear as to the charges applicable for services and products inside the premises.

Other Considerations

32. In all cases, other factors the Council will consider when determining applications are:
- proximity to sensitive premises
 - the nature of any logo for the sex establishment
 - the nature of any external images or advertisements at the sex establishment
 - whether advertising inside the sex establishment can be viewed from outside
 - whether the name of the sex establishment clearly indicates the nature of the activities that take place there

- whether the times the sex establishment is open, coincide with the times relevant nearby premises are used
- queuing arrangements for persons wishing to gain admission to the sex establishment
- whether planning consent exists for the proposed use
- whether there are any planned developments in the area that may render the locality unsuitable for a sex establishment
- any comments received from persons about the grant of the licence whether the applicant has had any enforcement action taken against them by the Police, the Council or other bodies such as Her Majesty's Inspectorate of Revenue and Customs
- whether the applicant is able to comply with the standard conditions applicable to all sex establishments and any special conditions the Council may consider appropriate to apply to that particular sex establishment licence
- accessibility to the premises for disabled persons

Existing Premises

33. For the purposes of this section, existing premises are premises already licensed as sex establishments as described in paragraph 13 of this policy. For existing premises, the Council will also consider whether there have been relevant complaints about the premises, whether the licence holder has complied with the conditions of their sex establishment licence and any licence granted to them under the Liquor Licensing Act 2003, and the general management history of the premises. This would include such factors as whether noise nuisance has been caused, whether there have been problems with dispersing customers from the premises, whether there has been touting for business outside the sex establishment and the way in which staff working at the premises are managed. In determining whether a complaint is "relevant", the Council will consider:

- how recently the complaint was made
- whether the complaint was justified, for example whether it was vexatious
- whether the complaint related to a complaint that had already been made and was still undergoing investigation
- the licence holder's willingness to resolve the complaint
- whether the complaint was substantiated
- whether the complaint was resolved
- whether the management of the premises has changed since the complaint was made

34. The Council may take other factors not listed into account when considering applications for sex establishment licences. No policy can anticipate every possible scenario, and other criteria may be used in judging whether the premises should be granted a licence depending on the individual circumstances.

Planning

35. All applicants should consider whether they meet relevant planning requirements before proceeding with an application for a sex establishment licence. Persons seeking a sex establishment licence are advised to contact the Planning Service for guidance on 01424 451066 or by visiting our website www.hastings.gov.uk

Advertisement of Applications

36. The Local Government (Miscellaneous Provisions) Act 1982 provides for statutory consultation to be carried out by the applicant for a licence, including a newspaper advertisement and the placing of notice of the application at the premises.
37. For newspaper advertisements, the advertisement must be placed in the:
- Hastings Observer (Johnsons Press)
38. The notice of application to be displayed at the premises must be at least A4 size and contain as a minimum the following information:
- the applicant's name and address
 - the date of the application
 - the category of licence being applied for, e.g. sex shop, sexual entertainment venue, sex cinema
 - the proposed hours during which the premises will be used as a sex establishment
 - the application type, e.g. grant, renewal, transfer, variation
 - the date of the application
 - the last date for receipt of objections
39. The notice must be printed on a white background in black type, using a minimum font size of 12pt Arial . It must be displayed in a position where it can be clearly seen by passers-by in the street at all times and must remain displayed until the last date for receipt of objections has passed.
40. Additionally, the Council will carry out extra statutory consultation on applications by:
- displaying details of the application on its website
 - informing the local ward councillors for the premises and the ward councillors of adjoining wards, whether those wards are
 - in Hastings or an adjoining borough
 - consulting with neighbouring Councils where the premises
 - are located close to a borough boundary.

41. Commenting on Applications

42. Comments on an application for a sex establishment licence must be made to the Council within 28 days of the date of the application.
43. Comments may be provided in written form or electronically. Comments may not be made on moral grounds and must relate to one or more of the grounds set out in the Local Government (Miscellaneous Provisions) Act 1982 as described in the section entitled "Principles to be Applied When Considering Applications".
44. Those making comments on applications should state whether they consent to any of their details being disclosed to the applicant, and, if so, what details they consent to sharing, such as street name only. Details shall not be provided to the applicant for the licence of any person or organisation without consent.

Standard Conditions

45. The Council has passed regulations adopting certain standard conditions that will act as default conditions to be applied to sex establishment licences in its district. The conditions shall apply in all cases unless the Licensing Panel specifically excludes them or substitutes them with different conditions. These conditions may change from time to time and therefore applicants are advised to contact the Council to ensure they are familiar with the conditions in force at the time.
46. Where it is reasonable and necessary to do so, the Licensing Panel may impose additional conditions on a sex establishment licence or alter or omit some of the standard conditions from the sex establishment licence.

Hearings.

47. All applications (grant, renewal, transfer or variation) that have attracted objections for sex establishment licences shall be considered by a Environment and Safety Committee. The Council shall determine applications for sex establishment licences in accordance with its Hearings Procedure for Sex Establishment Licences.
48. Licensing Panel decisions may not always be announced at the end of the hearing. In such cases, the Panel's decision and the reasons for it will be notified to the parties within 7 days of the date of the hearing.
49. Where the Licensing Panel refuses to grant an application, they shall provide their reasons for doing so in writing to the applicant within 7 days of the date of the hearing.

50. Those who have made comments on an application shall be invited to attend any hearing and state their case to the Environment and Safety Committee but will only be permitted to speak on matters relevant to their written representation to the Council.

Duration of Licence

51. A sex establishment licence shall normally be granted for a period of one year, but may be issued for a shorter term if the Council deems it appropriate in the circumstances.

Appeals

52. There are no rights of appeal for persons who have objected to the grant of a sex establishment licence nor for other statutory authorities.

53. There is a right of appeal for applicants/licence holders in the following circumstances:

- refusal to grant a new sex establishment licence
- refusal to renew an existing sex establishment licence
- refusal to transfer an existing sex establishment licence
- refusal to vary an existing sex establishment licence
- imposition of conditions on a sex establishment licence
- revocation of a sex establishment licence

54. However, an appeal may not be lodged where the Council's decision has been made on the basis that:

I. the number of sex establishments, or sex establishments of a particular kind, in the relevant locality at the time the application is made is equal to or exceeds the number which the authority consider is appropriate for that locality

II. the grant is inappropriate, having regard:

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

55. Any appeal to the Magistrates' Court must be made within 21 days from the date on which the person is notified of the decision or became aware of the condition. Where the Licensing Panel have given an oral decisions with reasons at the end of a hearing, the time limit for lodging an appeal will start on that date.

56. Where an appeal is lodged, the sex establishment licence remains in force until such time that the appeal is determined or abandoned. Where an appeal is

lodged against conditions applied to a sex establishment licence, the conditions are deemed not to come into force until the determination or abandonment of the appeal.

57. There is a further and final right of appeal from the Magistrates Court to the Crown Court. This may be brought by the applicant/licence holder or the Council. The Council are not obliged to give effect to any order of the Magistrates Court until the time limit for the bringing of an appeal to the Crown Court has expired and, if such an appeal is brought, until the abandonment or determination of the appeal.

58. If an applicant or other party is aggrieved by a decision made by the Council that cannot be appealed, the only course of remedy is to seek a judicial review of the Council's decision in the High Court. This would have to be on the basis that the Council had made an error of law, had acted perversely, had failed to take a material consideration into account, or had taken immaterial considerations into account when making its decision.

Revocation

59. The Council may revoke a sex establishment licence at any time on any of the grounds for refusing an application, excluding those relating to the character of the premises and locality or the number of sex establishments in a locality.

60. The Council may be prompted to revoke a sex establishment licence by the complaint of a third party, including a ward councillor, or may do so unilaterally on its own behalf.

61. However, the Council will not take steps to revoke a sex establishment licence without giving details of its reasons for considering revocation to the licence holder at least 28 days before holding any hearing to consider the revocation of the licence.

62. The applicant shall in all cases be afforded the opportunity to appear before the Licensing Panel making the decision. Where the Council decides to revoke the sex establishment licence, it shall give the reasons for its decision to the licence holder in writing within 28 days of making its decision.

Burlesque

63. This Policy may apply to some forms of burlesque performances. A decision on whether or not the entertainment provided is relevant entertainment for the purposes of the Act shall depend on the content of the entertainment and not the name it is given. Therefore, any decision as to whether entertainment is relevant entertainment will be made on a case by case basis.

Premises 'Infrequently Used' for Sexual Entertainment

64. Premises providing sexual entertainment on not more than eleven occasions in a twelve month period, greater than one month apart and lasting for not more than 24 hours are exempt from the need to be licensed as sex establishments under the Local Government (Miscellaneous Provisions) Act 1982. These premises shall continue to be regulated under the Licensing Act 2003.
65. Venues licensed under the Local Government (Miscellaneous Provisions) Act 1982 as sex establishments shall be treated as such even where they are used infrequently, unless the licence holder returns their sex establishment licence to the Council together with a request that the sex establishment licence be cancelled. If the sex establishment licence is surrendered for any reason, any future application to license the same premises shall be treated by the Council as a new application.

Further Information

66. Information on sex establishment licensing, including guidance on making an application and making a complaint can be found on the Council's website at www.hastings.gov.uk. Persons wishing to make an application or make a complaint about a sex establishment may also contact the Council on 01424 451042 or visit our website www.hastings.gov.uk.