

# **WARRINGTON BOROUGH COUNCIL SEX ESTABLISHMENT POLICY**

## **1 INTRODUCTION**

### **1.1 The Purpose of the Policy**

1.1.1 The purpose of the policy is to:-

- provide further clarity and information to interested parties, relevant authorities and applicants on how any application will be determined;
- promote consistency and transparency;
- help the authority to discharge its duty in relation to the Act.

1.1.2 The Authority will be mindful of the legislation, associated guidance and relevant case law when making its determination. Each application will be judged on its relative merits.

### **1.2 The Legislation**

1.2.1 The Local Government (Miscellaneous Provisions) Act 1982, as amended by Section 27 of the Policing and Crime Act 2009, introduced a licensing regime to control sex establishments. Warrington Borough Council has adopted Schedule 3 of the Act. This means that the Council can control and regulate the operation of certain kinds of sex establishment within its Borough. No sex establishment 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.

1.2.2 We do not take a moral stand in adopting 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 industry. It is our role as a Licensing Authority to administer the licensing regime in accordance with the law.

1.2.3 The 1982 Act and the 2009 Act can be viewed at [www.opsi.gov.uk](http://www.opsi.gov.uk).

1.2.4 The Council adopted these provisions on 5<sup>th</sup> September 2011 and they took legal effect on 1<sup>st</sup> November 2011.

1.2.5 No sex establishment or 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.

1.2.6 Under Section 17 of the Crime and Disorder Act 1998, Local Authorities must have regard to the likely effect of the exercise of their functions on, and do all that they can to prevent, crime and disorder in their area.

1.2.7 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 Disability Discrimination Act 1995 and any other relevant associated legislation.

## **2 APPLICANTS**

2.1 Individuals, limited companies and firms may apply for licences.

## **3 DURATION OF LICENCES**

3.1 Licences are generally issued on an annual basis but can be issued for a shorter term if deemed appropriate.

## **4 IMPACT**

4.1 In considering applications for the grant of new licences or variation of conditions, the Council will assess the likelihood of any adverse impact that such a grant would cause, particularly on local residents. The Council will take the following into consideration: -

- type of activity;
- duration of proposed licence;
- proposed hours of operation;
- layout and condition of the premises;
- the use to which premises in the vicinity are put;
- the character of the locality in which the premises are situated.

4.2 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 licensed activity on:-

- crime and disorder within the vicinity of the premises;
- cumulative impact of sex establishments licensed within the area of the application. This will also take into account the hours of operation for the venue;
- consideration of the character of the locality in which the premises is situated ie residential or industrial.

4.3 In considering all applications for renewal of a sexual establishment the Council will take into account: -

- levels of recorded crime and disorder in the area, or relating to the premise;
- past demonstrable adverse impact from the activity;
- whether appropriate measures have been agreed and put into effect by the applicant to mitigate any adverse impacts.

## **5. TYPES OF LICENCE**

### **5.1 Sexual Entertainment Venues**

5.1.1 Licences for sexual entertainment venues are required for “any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer”.

5.1.2 “Relevant entertainment” is defined in Schedule 3 (as amended by Section 27 of the Policing and Crime Act 2009) as “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, eg in a private booth.

5.1.3 In deciding whether entertainment is “relevant entertainment” we will judge each case on its merits, but it will generally apply to:

- (1) lap dancing;
- (2) pole dancing;
- (3) table dancing;
- (4) strip shows;
- (5) peep shows;
- (6) live sex shows.

5.1.4 Adult entertainment not classed as “relevant entertainment” may still require licensing under the Licensing Act 2003.

### **5.2 Sex Shops**

5.2.1 Licences for sex shops are required where 18R films are being sold, or where there is a “significant degree” of “sex articles”.

5.2.2 The phrase “sex articles” is defined in the 1982 Act, but the phrase “a significant degree” is not. When considering whether or not a business is selling a significant degree of sex articles and needs a licence, we will consider:

- (1) the ratio of sex articles to other aspects of the business
- (2) the absolute quantity of sales
- (3) the character of the remainder of the business
- (4) the nature of the displays in the business

- (5) turnover
- (6) other factors which appear to be materially relevant.

### **5.3 Sex Cinema**

- 5.3.1 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, or primarily deal with or relate to, or are intended to simulate or encourage:-
    - (1) sexual activity; or
    - (2) acts of force or restraint which are associated with sexual activity; or
  - (b) are concerned primarily with the portrayal of, or primarily deal with, genital organs or urinary or excretory functions, but does not include a dwelling house to which the public is not admitted.

## **6 LOCATION**

- 6.1 We recognise that different parts of our Borough have different characteristics.
- 6.2 In reaching its decision the Council will be mindful of the likely effect of the operation on the characteristics of the area. The following will be taken into account as a minimum:-
- (a) proximity to residential areas, places of worship, leisure centres, schools, pre schools and elderly residential homes;
  - (b) proximity to areas with high levels of recorded crime;
  - (c) cumulative effect of existing related licensed activities in the vicinity.
- 6.3 Whilst each application will be judged on its relative merits there shall be a presumption against approval of any application in residential areas and areas detailed in 6.2 (a) or where a cumulative impact of this type of premise can be demonstrated.
- 6.4 Applications in all areas will be assessed having regard to any:-
- consultation responses, together with responses from local residents;
  - the numbers and types of existing venues, together with the mix of premises within the area and any circumstances from 6.2;
  - whether the application is consistent with the Council's Sustainable Community Strategy;
  - whether the establishment is appropriate for the area;
  - views of the local residents.
- 6.5 Due regard will be given to relevant case law when determining the suitability of the area.

6.6 There are some specific grounds for refusing Sex Establishment Licences set out in paragraph 12 of Schedule 3 to the 1982 Act. These include where the applicant is unsuitable to hold a licence, due to their age, domiciliary status or previous relevant criminal convictions or mental capacity.

6.7 We can also refuse applications for new or renewed licences where:

- (1) the number of sex establishments in the relevant locality at the time the application is made is equal to or exceeds the number which we consider appropriate for that locality;
- (2) the grant or renewal of the licence would be inappropriate, having regard to
  - (a) the character of the relevant locality, or
  - (b) the use to which any premises in the vicinity are put, or
  - (c) to the layout, character or condition of the premises.

## **7. RENEWAL OF A LICENCE**

7.1 Where an application is made to renew a licence without modification the Council will have regard to how well the establishment has been run over the licensed period, in particular the attitude of the operators, any substantiated complaints and any enforcement action.

7.2 The Council will also have specific regard to:-

- levels of recorded crime and disorder in area;
- evidence of past demonstrable adverse impacts from the activity on the safety and amenity of local residents;
- whether appropriate measures have been agreed and put into effect by the applicant to mitigate any adverse impacts.

7.3 Where an application is made to vary a licence with modifications, then the Council will take into account the criteria in paragraphs 6.2 and 7.2.

## **8. FITNESS OF APPLICANT**

8.1 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 in most cases take into account:-

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

8.2 Whilst every application will be considered on its merits the Council will be unlikely to grant an application from any person, or for the benefit of any person, with unspent criminal convictions.

## **9. PROPOSED OPERATION AND MANAGEMENT POLICIES**

9.1 All licensees must operate within the conditions of their licence.

9.2 In terms of management of licensed premises, the Council strongly encourages licensees to: -

- work with statutory agencies such as the Police, and the Council in order to create and maintain a safe environment, both within the licensed premises and in the environs around them;
- develop crime prevention strategies in consultation with the Police and the Council;
- ensure compliance with any relevant legislation;

9.3 The Council requires that all relevant staff be appropriately trained in areas such as health and safety, first aid, and fire precautions.

9.4 The Council will expect that a proof of age policy ie Challenge 21 will be operated within the premises and all staff will be trained and revision training given at regular intervals.

## **10. CONSULTATION/OBJECTIONS**

10.1 Unlike some other licensing regimes (such as for alcohol, entertainment, or gambling), a wide range of people can raise objections regarding sex establishment licences. The Police are a statutory consultee for all applications.

10.2 Objectors should have something to say which is relevant to consideration of the statutory grounds for refusal that is set out in the 1982 Act.

10.3 The Licensing Authority will take the following approach to deciding applications:

- (a) each case will be decided upon its merits. This Authority will not apply a rigid rule to its decision making;
- (b) objectors can include residents'/tenants' associations, community associations, and trade associations. Councillors and MPs may also raise objections. Elected Councillors may represent interested parties, providing they do not also sit on the Licensing Committee determining the application in question;
- (c) we will give clear reasons for our decisions.

- 10.4 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 our officers and not on the basis of any political judgement. Where objections are rejected, the objector will be given a written reason. A report will be made to the Regulatory Committee determining the application (if appropriate), indicating the general grounds of the representation and the reason it was rejected.
- 10.5 A vexatious 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.
- 10.6 Valid objections will be considered by the full Licensing Committee or a Sub Committee of the Licensing Committee. Applicants and objectors will be given equal opportunity to state their case in accordance with our protocol.
- 10.7 Objections should ideally:
- be made in writing (preferably in duplicate, unless submitted electronically);
  - be in black ink on single sides of A4 paper;
  - indicate the name and address of the person or organisation making the representation;
  - indicate the premises to which the objection relates;
  - indicate the proximity of the premises to the person making the objection.
  - clearly set out the reasons for making the objections.
- 10.8 The Council wishes to promote early consultation on potential applications and early discussions with relevant bodies and interested parties.
- 10.9 The applicant is required to give public notice by publishing an advertisement in a local newspaper, the circulation of which should include the area in which the premise is situated. A notice must also be displayed on or near the premises for 21 days from the date of the application.
- 10.10 The Council will consult relevant bodies such as the Fire Authority and Chief Constable and it will have due regard to objections received from members of the public in response to the advertisement of the application. Relevant Ward Councillors will be notified in writing of all applications. Any Parish Council operating within the area will also be notified. The Town Centre Manager will be notified of any applications within the Town Centre

## **11. OTHER POLICIES**

- 11.1 The Council may identify and apply other requirements from time to time, subject to consultation and proper notice.

## **12 HEARINGS**

- 12.1 In considering any application for the grant, renewal or transfer of a licence the Council is obliged to have regard to any observations submitted by the Chief Officer of Police and any objections received from members of the public, within the 28 days consultation period, in response to public advertisement of the application.
- 12.2 The Council does not have the right to have regard to the morality of sex establishments, therefore objections received on moral grounds will not be considered as relevant.
- 12.3 All applications for grant and those applications for renewal, and transfer, with objections received will be considered by the Licensing Committee/Licensing Sub Committee at a hearing, which will be held in public.
- 12.4 Objectors who have submitted written objections will be allowed to address the committee.
- the submitted relevant objection must have been received by the Licensing Section within the 28 days consultation period.
  - the objector must confine comments to those points that are relevant to consideration of the grounds of refusal and which have been notified in writing to the applicant.
- 12.5 The applicant will be asked to outline to the committee their application and respond to any written or verbal objections.

## **13. DECISION**

- 13.1 The Council, after due consideration, may decide to:
- grant a licence on such terms and conditions as subject to such restrictions as it may specify. Conditions may be imposed for example to control
    - (a) the external appearance of the premises;
    - (b) the visibility of the interior of the establishment to passers by;
    - (c) any change of sex shop to a sex cinema;
    - (d) displays and advertisements on or in such establishments;
    - (e) CCTV provision;
    - (f) the employment of suitable management and staff.
- 13.2 A set of 'Standard Conditions' has been agreed by the Council that will be imposed as a matter of practice on all sex establishment licences unless the



applicant specifically applies and the Council agrees to delete or amend any or all of them. List of standard conditions - see Appendix 1.

- **Mandatory refusal** - under the provisions within the Act the Council must refuse a licence for the following reasons:-
  - (a) to a person under the age of 18; or
  - (b) to a person who is disqualified by virtue of the revocation of a previous licence in the area within the preceding 12 months; or
  - (c) to a person who has not been resident in the UK for the preceding six months; or
  - (d) to a corporate body which is not in the UK; or
  - (e) to a person who has been refused an application for a licence for the premises within the preceding 12 months, unless the refusal has been reversed on appeal.
  
- **Discretionary refusal** – the Council may refuse to grant 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 and 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 a licence if he made the application himself;
  - (c) that the number of sex establishments in the relevant locality at the time the application is made is equal to or exceeds the number which the authority considers is appropriate for that locality (the number may be nil);
  - (d) that the grant of the licence would be inappropriate, having regard to:-
    - (i) the character of the locality where the premises are situated;
    - (ii) the use to which any premises in the vicinity are put;
    - (iii) the layout, character or condition of the premises in respect of which the application is made.

13.3 The decision will be communicated at the hearing and via written confirmation within 7 days.

## **14. APPEALS**

14.1 An applicant for the grant of a licence whose application is refused has the right of appeal to the Magistrates' Court within 21 days. However, if the refusal is on the grounds set out in paragraph 13.2 - Discretionary Refusal Section c or d above then no right of appeal is available under this legislation. A person whose application is refused due to these reasons may attempt to invoke a judicial review of the Council's use of its discretion in coming to a decision.

14.2 Those making representation, objecting to or supporting an application, have no right of appeal under the legislation.

## **15 ENFORCEMENT**

15.1 Once licensed, it is essential that premises are maintained and operated to fully comply with the terms of the licence and the requirement under the Act. The Council will make arrangements to monitor the premises.

15.2 The Council will work with all relevant statutory bodies to establish protocols to ensure an efficient deployment of all personnel engaged in enforcement. The Council will target problem and high risk premises, whilst ensuring that all such premises meet the required standards. Appropriate action will be taken by the Council to ensure full compliance of the law.

## **CONTACT DETAILS**

Licensing Section,  
Public Protection Services  
Environment and Regeneration Department,  
New Town House,  
Buttermarket Street,  
Warrington  
WA1 2NH  
Telephone 01925 442119/2072  
Email [cex-licensing@warrington.gov.uk](mailto:cex-licensing@warrington.gov.uk)

## **APPENDIX 1**

### **STANDARD CONDITIONS RELATING TO SEX SHOPS**

- 1.** Premises licensed as a sex shop under the provisions of Schedule 3 of the Local Government (Miscellaneous Provisions) Act, 1982, shall be used only for the purpose of a sex shop as defined in paragraph 4 of the said Schedule 3 and shall not be used, wholly or in part, for any other purpose during the period the premises are licensed as a sex shop.
- 2.** The premises may not be open for business other than within the hours specified in the licence and, irrespective of those hours, shall not open for trade on Christmas Day, Good Friday.
- 3.** Over each entrance to the premises, in a position approved by the Council, the Licensee shall affix and maintain in a permanent form a notice stating that the premises are licensed as a sex shop under the provisions of the Local Government (Miscellaneous Provisions) Act, 1982. Such a notice shall also carry the full name of the Licensee and the number of the licence, and if the Licensee is a private or public company the notice shall also carry the address of the registered or principal office and the full name of the secretary of the company. The lettering on such a notice shall be three inches tall and at least ¼" thick and shall be in white on a dark background.
- 4.** At each entrance there shall be prominently displayed, so as to be visible at all times to persons approaching the premises, a notice prohibiting entry to all persons under 18 years of age. Such a notice shall be in letters at least two inches high and ¼" thick and shall be in dark letters on a light background.
- 5.** The Licensee of every premises licensed as a sex shop shall ensure that all persons employed on the premises are aware of the age restrictions on clients and that they exclude or remove from the premises any person attempting to evade the restriction.
- 6.** The Licensee shall ensure that any advertising material outside, near to, or within the premises shall comply with the Obscene Displays Act.
- 7.** The licensed premises shall be so arranged by screening or obscuring windows, doors and other openings so that the interior of the licensed premises and the displays or articles sold at the premises shall not be visible to persons outside the building.
- 8.** The Licensee shall not allow at any time gaming and amusement machines, whether for prizes or not, to be used on the premises.

- 9.** No moving picture or display or recorded sound of any description, or however provided, shall be permitted on the licensed premises, except for a period of not more than one minute, for the sole purpose of demonstrating to a prospective purchase or hirer of the article in question. The Licensee shall not make any charge or permit any charge to be made for such a display as mentioned in this condition.
- 10.** All refuse produced on the premises and materials, goods or articles discarded for any reason shall be securely stored within the premises and delivered in sealed containers to the refuse collection service.
- 11.** The Licensee shall make such provision for the reception of goods and articles for sale, hire or display on the premises so that they are received directly into the premises and not subject to storage for any period of time on any pavement, footpath, forecourt or yard.
- 12.** The Licensee shall ensure that CCTV is installed and maintained to the satisfaction of Cheshire Constabulary, and that any images are;

  - (a) retained for a period of at least 31 days and
  - (b) made available on request to a police officer or authorised officer of the Council.

## **STANDARD CONDITIONS FOR SEXUAL ENTERTAINMENT VENUES**

1. The Licensee must remain in personal control of the premises at all times or nominate, in writing, an individual over the age of 18 with the authority to direct activities within the Premises.
2. Any individual employed on the Premises to conduct a security activity (within the meaning of section paragraph 2(1)(a) of schedule 2 to the Private Security Industry Act 2001) must be licensed by the Security Industry Authority.
3. The Licensee must ensure that a suitable number of trained staff is employed to supervise the interior of the Premises (“floor supervisors”) whilst performances are being given under this licence.
4. No children under the age of 18 shall be admitted to the premises. Customers who appear to be under the age of 21 must be asked to provide photographic proof of their age. The Licensee must provide prominent notices at each entrance to the Premises to this effect.
5. Performers shall be aged not less than 18 years. The Licensee must maintain adequate records of the names, addresses and dates of birth of performers including adequate identity checks.
6. The Licensee shall ensure that neither they nor any person promoting or providing entertainment on the Premises (or any person acting on behalf of any such person) shall display advertisements promoting the entertainment or the Premises in any unlawful manner.
  - (a) Where the Council have given notice in writing to the Licensee objecting to an advertisement on the grounds that, if displayed, it would offend against good taste or decency or be likely to encourage or incite crime or to lead to disorder or to be offensive to public feeling, that advertisement shall not be displayed.
  - (b) The Licensee shall not permit the display outside of the Premises of photographs or other images which indicate or suggest that striptease or similar entertainment takes place on the Premises, which may cause offence.
  - (c) The Licensee shall ensure to the Council’s satisfaction (including, where required, necessary planning or building control consents) that the interior of the Premises is not visible from the outside of the Premises, and that the exterior is maintained to a satisfactory level of decorum. At no point may dancers be visible from outside of the Premises.
7. If the Applicant or Council have specified a maximum occupancy on the licence. This occupancy should be considered on the grounds of public safety, public nuisance or crime and disorder. The Licensee shall ensure that this maximum occupancy shall not be exceeded whilst sexual entertainment takes place.

8. Performers shall only perform on the stage area, to seated customers or in such other areas of the licensed premises as may be agreed in writing with the Council.
9. The Licensee is to implement a policy to ensure the safety of the Performers when they leave the premises after a period of work.
10. Performers must remain clothed in public areas and all other areas except while performing in areas specified by the Council as where sexual entertainment may be provided.
11. Performers must dress fully at the end of each performance.
12. Performers may not accept any telephone number, email address, address or contact information from any customer, except in the form of a business card which must be surrendered to the Licensee or their representative before leaving the premises.
13. Performers must never be alone in the company of a Customer except in an area open to the public within the premises.
14. The Licensee is to ensure a sufficient number of floor supervisors are employed inside the premises whilst sexual entertainment is provided to supervise the Performers and Customers.
15. Performers must not perform a nude table dance unless in a supervised area or within five metres of a floor supervisor.
16. Performers are never to be in the company of a customer except in an area open to the public within the premises (excluding the toilets).
17. The Licensee must ensure that during the performance of a table dance:
  - (1) customers must be seated in an upright position against the back of the booth or seat with their hands by their sides before a dancer can start a table dance;
  - (2) customers must remain seated during the entire performance of the dance;
  - (3) for the purpose of restraint only, Performers may only touch a customer above the customer's chest with their hands only;
  - (4) Performers must not sit or straddle the customer;
  - (5) Performers must not place their feet on the seats.
18. The Licensee must ensure that during performances to which this Licence relates:
  - (1) Performers may not perform any act that clearly simulates any sexual act;
  - (2) Performers may not intentionally touch a customer any time during the performance unless absolutely accidentally or due to a third party;

- (3) Performers may not use inappropriate, suggestive or sexually graphic language at any time;
  - (4) Performers must never intentionally touch the genitals or breasts of another dancer or to knowingly permit another dancer to intentionally touch their genitals or breasts;
  - (5) Performers must not engage in communications that could be deemed as acts of prostitution or solicitation, even if the Performer has no intention of carrying out the act;
  - (6) Performers only perform nude or semi-nude dancing (of any description) within the area specified by the Council.
19. The Licensee must ensure that during performances to which the Licence relates:
- (1) Customers may not dance at any time except in areas specifically designated by the Council as being separate from areas for sexual entertainment.
  - (2) Customers must remain appropriately clothed at all times.
20. The Licensee shall ensure that CCTV is installed and maintained to the satisfaction of Cheshire Constabulary, and that any images are;
- (a) retained for a period of at least 31 days and
  - (b) made available on request to a police officer or authorised officer of the Council.
21. The Licensee shall provide in a timely fashion copies of any documents reasonably required by an authorised officer of the Council in relation to compliance with this Licence.

Appendix 2 Legal Notice.

**WARRINGTON BOROUGH COUNCIL**

**SCHEDULE 3 LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982**

**NOTICE IS HEREBY GIVEN** that in accordance with Section 2 of the Local Government (Miscellaneous Provisions) Act 1982 (“the 1982 Act”), Warrington Borough Council at its meeting of 5<sup>th</sup> September 2011 resolved that the provisions of Schedule 3 of the 1982 Act, as amended by Section 27 of the Policing and Crime Act 2009, be adopted and shall apply within the Borough of Warrington (“the Borough”) with effect from 1<sup>st</sup> November 2011.

The effect of the resolution will be to extend the existing controls on sex establishments under Schedule 3 of the 1982 Act by providing the Council with additional powers to regulate ‘sexual entertainment venues’. The resolution will come into force within the Borough on 1<sup>st</sup> November 2011, to be known as the ‘first appointed day’, which marks the start of a twelve month transitional period. During this period any premises licensed under the Licensing Act 2003, providing frequent entertainment involving live performances involving nudity intended to be sexually stimulating, will need to make application and obtain a licence to do so under the Act. Premises which then do not hold such a licence must otherwise cease providing such entertainments.

Dated

T Date

Solicitor to the Council, Assistant Chief Executives Unit, Quattro Building,  
New Town House, Buttermarket Street, Warrington WA1 2NH