

Notice of Meeting

LICENSING AND REGULATORY COMMITTEE

Wednesday, 17 July 2019 - 6:00 pm
Council Chamber, Town Hall, Barking

Members: Cllr Moin Quadri (Chair); Cllr Lee Waker (Deputy Chair) ; Cllr Laila M. Butt, Cllr Peter Chand, Cllr Kashif Haroon, Cllr Donna Lumsden, Cllr Olawale Martins, Cllr Adegboyega Oluwole, Cllr Glenda Paddle and Cllr Foyzur Rahman

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AGENDA

1. Apologies for Absence

2. Declaration of Members' Interests

In accordance with the Council's Constitution, Members are asked to declare any interest they may have in any matter which is to be considered at this meeting.

3. Minutes - To confirm as correct the minutes of the meeting held on 1 May 2019 (Pages 3 - 5)

4. Sub-Committees - To receive the minutes of the Licensing Sub-Committee meeting held on 10 June 2019 (Page 7)

5. Public Consultation on the adoption of the amended provisions and Draft Sex Establishments Policy 2019 (Pages 9 - 35)

6. **Appeals and Applications (Page 37)**
7. **Any other public items which the Chair decides are urgent**
8. **To consider whether it would be appropriate to pass a resolution to exclude the public and press from the remainder of the meeting due to the nature of the business to be transacted.**

Private Business

The public and press have a legal right to attend Council meetings such as the Licensing and Regulatory Board, except where business is confidential or certain other sensitive information is to be discussed. The list below shows why items are in the private part of the agenda, with reference to the relevant legislation (the relevant paragraph of Part 1 of Schedule 12A of the Local Government Act 1972 as amended). ***There are no such items at the time of preparing this agenda.***

9. **Any other confidential or exempt items which the Chair decides are urgent**



Our Vision for Barking and Dagenham

ONE BOROUGH; ONE COMMUNITY; NO-ONE LEFT BEHIND

Our Priorities

A New Kind of Council

- Build a well-run organisation
- Ensure relentlessly reliable services
- Develop place-based partnerships

Empowering People

- Enable greater independence whilst protecting the most vulnerable
- Strengthen our services for all
- Intervene earlier

Inclusive Growth

- Develop our aspirational and affordable housing offer
- Shape great places and strong communities through regeneration
- Encourage enterprise and enable employment

Citizenship and Participation

- Harness culture and increase opportunity
- Encourage civic pride and social responsibility
- Strengthen partnerships, participation and a place-based approach

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MINUTES OF LICENSING AND REGULATORY COMMITTEE

Wednesday, 1 May 2019
(7:00 - 7:35 pm)

Present: Cllr Moin Quadri (Chair), Cllr Lee Waker (Deputy Chair), Cllr Toni Bankole, Cllr Peter Chand, Cllr Kashif Haroon, Cllr Mohammed Khan, Cllr Giasuddin Miah, Cllr Adegboyega Oluwole and Cllr Glenda Paddle

Apologies: Cllr Amardeep Singh Jamu

7. Declaration of Members' Interests

There were no declarations of interest.

8. Minutes - 6 February 2019

The minutes of the meeting held on 6 February 2019 were confirmed as correct.

9. Sub-Committees Minutes - 27 March and 10 April 2019

The minutes of the Licensing Sub-Committee meetings held on 27 March and 10 April 2019 were confirmed as correct.

10. Draft Statement of Gambling Licensing Policy 2019 - 2022 Consultation

The Council's Service Manager, Public Protection (SMPP) presented a report on the Council's Draft Statement of Gambling Policy 2019 which asked for members' observations on four key changes officers were proposing to the Policy. The SMPP summarised the changes proposed as follows:

- Two of the proposed changes related to controls over category B2 machines (fixed betting terminals). Since the last policy was adopted, the Government had announced that the maximum stake permissible in category B2 would reduce from £100 to £2, and these machines could only be located within betting shops and would be restricted to a maximum number of four per shop. Officers were therefore proposing that the policy recognise this and also that a statement be added to explain that a reassessment of the risks posed by gaming machines was likely to be appropriate for future reviews of the policy when the full implications of the changes would become clear.
- The third change proposed that a statement be added to the policy to recommend that the applicants for each category of gambling premises licence seek the views of staff working in the premises in undertaking their local business risk assessments, in recognition of the fact that staff working in gambling premises often have significant insight into the local area where they work; and
- The final change related to premises plans submitted as part of the licensing application process based on the Gambling Commission publishing guidance recommending that a higher level of detail be shown on premises plans, in order to help ensure appropriate supervision of

premises.

The SMPP stated that the revised draft Policy would go out to public consultation for six weeks between May and June 2019. Following the consultation, all responses would be considered and appropriate amendments to the Policy made. The final proposed version of the Policy would require the approval of both the Cabinet and Assembly.

In response to questions from Members, the Council's Senior Licensing Officer stated that:

- Betting shops were regulated by the Gambling Commission (a national organisation). It was very unlikely that gambling premises licence holders would breach the new rules around B2 machines as they would risk losing their operating licence, and if they were a chain business, this could be very detrimental. He predicted that up to 25 percent of gambling premises could close as a result of these changes and therefore, Members could potentially see this in some of the Borough's wards.
- It was not for the Local Authority to check if licence holders were monitoring particular users. The Gambling Commission had social responsibility requirements which are reflected in operating systems in shops. They could, for example, offer self-exclusion to customers who wished to stop gambling.
- The purpose of the Gambling Act 2005 was to facilitate gambling in a way which was consistent with the three licensing objectives stipulated in the Act. The reason the Government had announced that the maximum stake permissible in category B2 would reduce from £100 to £2 was because there was evidence that the maximum permissible stake of £100 was causing people harm.
- With regards to anti-social behaviour, the Police and Local Authority engaged with premises licence holders and asked them to take appropriate action to minimise it. It was not common for gambling premises licences to be reviewed as generally, licence holders tended to be very cautious around any negative publicity and were keen to work with local authorities and the police to resolve any issues;
- Although the changes to the Policy being proposed were relatively minor, the Council had a legal duty to consult with the public. The experience so far with consultations in this Service had been that there was little engagement from the public and most responses to the consultation were from the trade.
- There were no direct financial implications on the Council of the changes proposed as any costs associated with them would be met from existing Council resources.
- The Gambling Commission dealt very effectively with the issue of money laundering. Premises were required to report suspicions of money laundering themselves and non-compliance with their duties in that respect would result in serious repercussions. Premises across the country had been prosecuted for non-compliance and the highest known fine was approximately £7 million.
- The Council was not able to stop particular individuals from gambling. The aim of the Gambling Act was to facilitate gambling. There were many avenues a person could take to gamble, such as buying scratch cards,

online gambling, gambling abroad and increasingly, gambling on mobile phones; and

- The Council had never received a complaint from a member of the public that they were not able to access gambling services due to barriers around translation. Issues around translation to aid access were for gambling premises to consider.

The SSPP stated, in response to questions, that:

- Officers did make changes to policies based on comments received in consultations if they were appropriate. The current policy reflected comments received from the trade when a review of the Policy was undertaken in 2017;
- The consultation would be carried out online and notification of it would be sent to all gambling premises in the Borough, the trade association and all councillors. The Council's Policy and Participation Service would oversee the consultation; and
- The intention was that the consultation would be in English; however, he would check with the Policy and Participation Service what the Council's policy was around other translation to other languages.

Members thanked the officers for the report.

11. Licensing Applications and Appeals - Update

The Committee noted the report.

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MINUTES OF LICENSING SUB-COMMITTEE

Monday, 10 June 2019
(7:00 - 7:20 pm)

Present: Cllr Moin Quadri (Chair), Cllr Peter Chand and Cllr Adegboyega Oluwole

1. Declaration of Members' Interests

There were no declarations of interest.

2. Resolution to Exclude the Press and Public

The Sub-Committee agreed to pass a resolution to exclude the press and public from the remainder of the meeting due to the nature of the business on the agenda.

3. Application for a Personal Licence

The Licensing Officer presented a report to the Sub-Committee regarding an application for a personal licence which had been objected to by the Metropolitan Police.

The applicant and the Police both presented their cases.

In considering its decision, the Licensing Sub-Committee had regard to the Guidance issued under Section 182 of the Licensing Act 2003, relevant legislation, the contents of the agenda papers, and all matters stated during the hearing.

The Sub-Committee **resolved not to grant the application** based on the licencing objectives of the prevention of crime and disorder and public safety.

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LICENSING AND REGULATORY COMMITTEE

17 July 2019

Title: Public Consultation on the adoption of the amended provisions and Draft Sex Establishments Policy 2019	
Report of the Director of Law and Governance	
Open Report	For information
Wards Affected: None	Key Decision: No
Report Author: Theo Lamptey, Service Manager, Public Protection	Contact Details: Tel: 020 8227 5655 E-mail: theo.lamptey@lbbd.gov.uk
Accountable Director: Andy Opie, Operational Director for Enforcement and Community Safety	
Accountable Strategic Leadership Director: Fiona Taylor, Director of Law and Governance	
<p>Summary</p> <p>The Council currently acts as local licensing authority for sex establishments under the Local Government (Miscellaneous Provisions) Act 1982 as amended by the Greater London Council (General Powers) Act 1986. The licensing regime deals with sex shops, sex cinemas and sex encounter establishments.</p> <p>Adoptive provisions established under Section 27 of the Policing and Crime Act 2009 further extended the scope of the Act to also include sex entertainment venues. To date, these provisions have not been adopted locally. Enquiries to the Authority concerning the establishment of such venues have been few in recent years; however, it is considered prudent in the light of the continued regeneration of the borough, to now adopt these provisions so as to ensure that any future approaches for licensing may receive full and proper consideration and enable such premises to be properly regulated.</p> <p>The decision to adopt the amended provisions is required, by law, to be subject to public consultation.</p>	
<p>Recommendation(s)</p> <p>The Licensing and Regulatory Committee is recommended to</p> <ul style="list-style-type: none"> (i) Provide observations on the revised draft Policy, at Appendix A; (ii) Note that the draft Policy will be subject to consultation before being presented to Cabinet and Assembly for adoption. 	
<p>Reason(s)</p> <p>The Terms of Reference for the Licensing and Regulatory Committee include the monitoring and reviewing of the discharge of the Council's functions as a Licensing Authority. The Committee's observations on the revised draft policy will form part of the</p>	

wider feedback obtained via a public consultation on the draft policy. The issues arising from the consultation will be reported to the Cabinet and Assembly, who will be asked to adopt the final version of the policy.

1. Introduction and background

- 1.1 Part II and Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 established a national regime for the licensing of sex establishments, under adoptive provisions covering:
 - Sex shops; and
 - Sex cinemas.
- 1.2 This Authority adopted the provisions of the Act on 27 October 1982.
- 1.3 The scope of the Act was broadened in those areas of Greater London where the Act applied, through adoptive provisions contained in the Greater London Council (General Powers) Act 1986. This added an additional category of 'sex encounter establishments'.
- 1.4 In 2008, this Council first adopted a Sex Establishments Licensing Policy together with standard conditions applicable to all categories of licensed sex establishment. Local licensing authorities may establish a policy relating to the licensing of sex establishments, as long as this does not prevent any individual application from being considered on its merits at the time the application is made.
- 1.5 Section 27 of the Policing and Crime Act 2009 set out to extend the effects of the 1986 amendments nationally; remove 'loopholes' in the licensing of sex establishments that existed by way of the alcohol and entertainment licensing regime established under the Licensing Act 2003; and, further extend the scope of the Act. A new category of 'sexual entertainment venues' replaced 'sex encounter establishments' within the scope of Schedule 3. Local licensing authorities that adopt these provisions are able to additionally regulate lap dancing and similar venues.
- 1.6 This Authority has not adopted the provisions of Section 27 to date. Enquiries to this Authority around sex establishments in recent years have been few; however, it is considered prudent, in the light of the ongoing regeneration of the borough to ensure that the Council is able to make use of all the regulatory powers available to it and be able to afford proper protections to local residents; responsible business operators; and premises users.
- 1.7 In order to pursue the adoption of the Section 27 provisions, the Council must firstly conduct public consultation on the matter.
- 1.8 It is considered important that in the event that the Council should decide to adopt the Section 27 provisions, the Council's sex establishment policy is updated and revised.

1.9 A copy of the revised draft policy is provided as **Appendix A**. A brief outline of the draft policy is given in this report. Some of the more important issues are dealt with in greater detail.

2. **Proposals and options**

Section 27 of the Policing and Crime Act 2009

2.1 Section 27 of the Policing and Crime Act 2009, where adopted, introduces a new category of 'sexual entertainment venue' into the sex establishments licensing regime.

2.2 Under this legislation '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' is defined as any live performance or live display of nudity which is of such a nature that, ignoring financial gain, it must be reasonably be assumed to be provided solely or principally for purpose of sexually stimulating any member of the audience whether by verbal or other means.

2.3 A range of exemptions apply. The adoption of Section 27 also enables 'sex entertainment venues' to be brought under the remit of the Council's established licensing policy.

3. **A sex establishments licensing policy**

3.1 The Local Government (Miscellaneous Provisions) Act 1982 enables a local licensing authority to

- Grant, transfer and renew a licence to any applicant, on such terms, conditions and restrictions as may be so specified;
- Determine the number of sex establishments that are considered appropriate in a relevant locality (and that number may be nil);
- Determine where the grant or renewal of a licence would be inappropriate having regard to:
 - The character of the locality;
 - The use to which any premises in the locality are put; and
 - The layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.
- Prescribe standard conditions;
- Revoke licences; and
- Carry out enforcement actions.

4. **A Draft Barking and Dagenham Sex Establishment Licensing Policy**

4.1 A copy of the draft policy document is attached at **Appendix A** to this report.

4.2 The draft policy comprises of five main sections, with further information provided in the appendix, as follows:

- **Section One – Introduction**

This sets out the Councils Vision and Priorities.

- **Section Two - Purpose and Scope of the Policy;**

The aim of the policy is:

- To reinforce to elected members on the Licensing and Regulatory Committee, the powers available to the Council as licensing authority
- To inform licence applicants how this Council will make licensing decisions and how licensed premises are likely to be able to operate within its area
- To set out how this Council intends to support responsible operators and take effective actions against irresponsible operators
- To inform residents, business and licensed premises users, the protections afforded to the local community within the Act and by this Council
- To support licensing decisions that may be challenged in a court of law

The scope of the policy applies to all categories of sex establishment.

- **Section Three – Procedure and Principles;**

This section explains the processes around licence applications; public consultation; objections; and public hearings.

- **Section Four – Licensing Decisions and Conditions**

This section deals with the decision-making process. It sets out the reasons for refusal, as established by statute, and details the range of matters that this Authority will take into account when determining licence applications. In particular:

- Numbers of premises that are appropriate for a locality

Section 12(3)(c) of Schedule 3 of the Act establishes that one reason for refusal of a licence is 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 consider is appropriate for that locality’. The appropriate number may be set at nil.

‘Locality’ is not defined within the Act. For the purpose of this draft policy, ‘locality’ has been interpreted as being the ward in which the premises that is subject of the application is situated, although a different view may be taken following representations raised in individual cases (for example, where a premises subject of an application borders another ward).

While the policy acknowledges that every application for a licence is required by law to be considered upon its own merits, it proposes for the purpose of consultation, that having had regard to the considerations set out in the policy document that no ‘locality’ within the borough is identified as being appropriate for sex establishments. The appropriate number for each locality (or ward) is thereby initially set as nil.

- The character of the locality and the use to which any premises in the vicinity are put

Section 12(3)(d) of Schedule 3 of the Act establishes that a reason for refusal is that ‘the grant or renewal of the licence would be inappropriate for that locality, having regard:

- To the character of the 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.

- **Section Five – Enforcement.**

The Policy will use the Council’s Enforcement Policy, which sets out the principles for effective enforcement of this licensing regime.

4.3 For the purposes of consultation, the draft policy takes the position that there should be a general policy presumption against permitting further licensed sex related activities either adjacent to or in the vicinity of premises in the following defined categories, irrespective of location:

- Schools and other facilities used primarily by children and young persons, including playgroups and playgrounds;
- Facilities used primarily by vulnerable adults and adult social care facilities;
- Facilities used primarily by women;
- Places of worship;
- Hospitals and medical facilities;
- Community facilities or public buildings;
- Community leisure facilities and open spaces;
- Cultural facilities, including cinemas, theatres and galleries;
- Residential accommodation; and
- Another licensed sex establishment.

5. Consultation

5.1 The public consultation will take place over 12 weeks. It is intended to comprise of:

- Direct notifications sent to:
 - Interested partner services;
 - Local licence holders and trade representative groups;
 - Representatives of local resident and known local interest groups;
 - Ward councillors; and
 - Neighbouring licensing authorities.
- An online questionnaire made available on the Council’s web site, together with a copy of the policy and supporting information; and
- Awareness raising through use of:
 - Social media;
 - Flyers distributed at key points in the borough; and
 - An article in the Council’s e-newsletter.

- 5.2 All responses will be reviewed and reported back to Cabinet and the Assembly together with the final version of the policy.

6. Timetable for progression

- 6.1 Any decision to adopt the provisions of Section 27 of the Policing and Crime Act 2009 must be taken by the Assembly.
- 6.2 The public consultation started on 24 June, running to 16 August 2019 and is on the Council new resident's engagement forum via the link below:
<https://oneboroughvoice.lbbd.gov.uk/>
- 6.3 Following review of consultation responses and any necessary update of the draft policy, a final decision on adoption may be taken in October 2019 with a view to having the licensing process up and operable for the next financial year.

7. Legal Implications

Implications completed by Dr Paul Feild, Senior Corporate Governance Lawyer

- 7.1 As outlined in the body of this report the 2009 Act inserted a new category of "sex establishment" called a "sexual entertainment venue" into Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 bringing the licensing of lap dancing and pole dancing clubs and other similar venues under the regime set out in the Local Government (Miscellaneous Provisions) 1982 Act, which is currently used to regulate establishments such as sex shops and sex cinemas
- 7.2 The report explained the need for the Council to prepare for such applications as may be made by having a Policy. By having a comprehensive policy which has been open to proper consultation the Council as a licensing authority is enabled to set clear operating criteria in terms of what will be permissible and what will not with emphasis against such establishments being within the vicinity of other identified premises such as for example, but not limited to schools and other facilities used primarily by children and young persons, furthermore it will enable standard conditions to be understood by all.
- 7.3 As mentioned in the body of this report as a licensing body and local authority the Council is subject to the Public Sector Equality duty and this must inform the policy and licensing of the activities. Furthermore, such arrangements must be open to review for effectiveness over time.
- 7.4 After the Consultation response has been considered, the final policy will need to be approved by the Assembly

8. Financial Implications

Implications completed by Katherine Heffernan, Finance Group Manager

- 8.1 This report seeks approval to regulate licensing decisions and ensures an adopted policy will ensure consistency in licensing practices and processes.

8.2 There are no direct financial implications arising from the implementation of this draft policy.

Public Background Papers Used in the Preparation of the Report: None

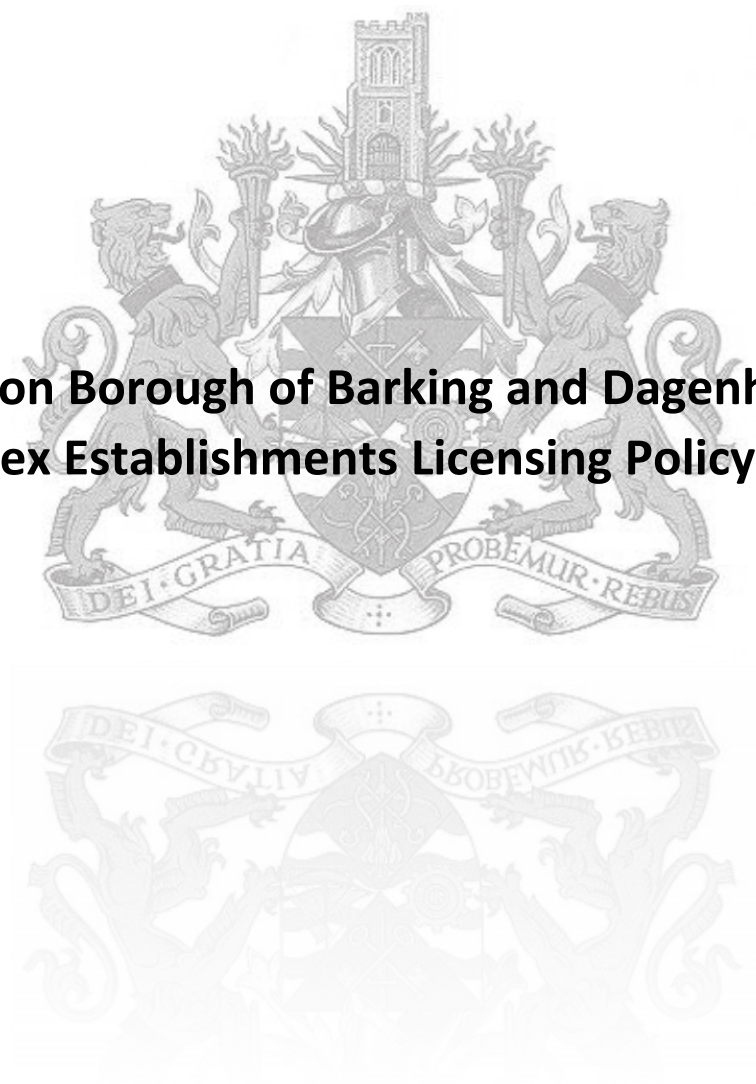
List of appendices:

- Appendix A – Draft Sex Establishment Policy

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**London Government (Miscellaneous Provisions) Act 1982
as amended by the Policing and Crime Act 2009**

**London Borough of Barking and Dagenham
Sex Establishments Licensing Policy**



Legal Notes

The provision to adopt local authority licensing of sex establishments, defined as sex shops and sex cinemas, was created under Part II of the Local Government (Miscellaneous Provisions) Act 1982¹ (the Act) and the basis of such licensing regimes prescribed in Schedule 3 to the Act.

On 27 October 1982 this Council passed a resolution under Section 2 of the Act adopting Schedule 3 within the London Borough of Barking and Dagenham.

Section 27 of the Policing and Crime Act 2009² amended the definition of sex establishment in the 1982 Act to include sex entertainment venues.

This Council's first Sex Establishments Licensing Policy was produced in 2008. This revision has been prepared to reflect the inclusion of sex entertainment venues within the licensing regime.

This policy has been compiled with regard to the Act, secondary legislation and the Home Office Guidance, "Sex Entertainment Venues", issued to local licensing authorities in England and Wales.

Nothing in this policy is intended to prevent any individual application from being considered on its individual merits at the time the application is made.

¹ <http://www.legislation.gov.uk/ukpga/1982/30/part/II>

² <http://www.legislation.gov.uk/ukpga/2009/26/contents>

Executive Summary

This policy is divided into five sections.

Section 1 - provides demographic information about the borough and sets out this Council's vision and priorities.

Section 2 - sets out the purpose of the policy and describes the categories of premises and the licences covered by the Act.

The function of the policy is to describe the Council's role as licensing authority and inform prospective applicants how their applications will be considered. The policy deals with the grant, renewal, variation and transfer of licences in respect of sex shops, sex cinemas and sex entertainment venues.

Section 3 - deals with procedure and matters of general principle.

The grant or otherwise of sex establishment licences will be determined by sub-committee of the Council's Licensing Regulatory Board at a public hearing where applicants and objections will be heard. No licence will be granted for a period greater than one year.

Section 4 – sets out how licence applications will be determined.

Every application for a licence will be subject to detailed consideration of all relevant issues. Mandatory grounds for the refusal of a licence are provided by the Act but this Council also adopts a presumption against the grant of a licence in a number of specified circumstances. Whilst any application will be considered on its merits, the Council has determined that the appropriate number of sex establishments within any locality in the borough is nil.

Section 5 - explains this Council's approach to regulation and enforcement.

The Council seeks to ensure that all of its enforcement activities are undertaken in a clear, fair, consistent and transparent manner. We support responsible business operators and take effective actions against irresponsible operators. We aim to ensure that all licensed premises are well managed, providing a safe environment for staff, clientele and the local community.

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Section 1 – Introduction

Vision and priorities

1. Our vision for the borough is “One Borough; One Community; No-one left behind”.
2. The Council’s Corporate Plan sets out how we will deliver this vision by working across four themes:
 - A new kind of council
 - Build a well-run organisation
 - Ensure relentlessly reliable services
 - Develop place-based partnerships
 - Empowering people
 - Enable greater independence and protect the most vulnerable
 - Strengthen our services for all
 - Intervene earlier
 - Inclusive growth
 - Develop our aspirational and affordable housing offer
 - Shape great places and strong communities through regeneration
 - Encourage enterprise and enable employment
 - Citizenship and participation
 - Harness culture and increase opportunity
 - Encourage civic pride and social responsibility
 - Strengthen partnerships, participation and a place-based approach

Section 2 – Purpose and Scope of this Policy

The purpose of the policy

3. The purpose of this policy is –
 - To set out the powers and responsibilities of the Council as licensing authority
 - To inform sex establishment licence applicants how the Council will make licensing decisions
 - To set out how this Council intends to support responsible operators and take effective actions against irresponsible operators
 - To inform local residents, business and licensed premises users, about the protections afforded to the local community

The scope of the policy

4. Under the Local Government (Miscellaneous Provisions) Act 1982 as amended by s27 of the Policing and Crime Act 2009 the Council is responsible for determining sex establishment licences within its area.
5. This policy is concerned with the grant, renewal, variation, and transfer of sex establishment licences.
6. Licensable sex establishments fall into one of three categories:
 - sex shops
 - sex cinemas
 - sex entertainment venues

Definitions

7. Sex shops may sell, hire, exchange, lend, display or demonstrate sex articles or other things that are 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.
8. Sex cinemas may show films that are primarily for the portrayal of sexual activity or acts of force or restraint which are associated with sexual activity with the intention of sexually stimulating customers.
9. Sex entertainment venues may provide sexual entertainment (e.g. lap dancing, peep show, live sex show, strip show, etc.) to a live audience for the financial gain of the organiser or the entertainer.

Premises Providing Occasional Striptease

10. The Licensing Act 2003 allows for limited, occasional striptease and/or similar performances to be given under a premises licence authorising alcohol on sales without the need for a sex entertainment venue licence.
11. Any person providing striptease or similar performances under a licence issued under the Licensing Act 2003 will have appropriate conditions attached to that licence.

Section 3 – Procedure and Principles

12. This policy should be read in conjunction with the Council's statutory Statement of Licensing Policy³ made under the Licensing Act 2003. In cases where a premise may

³ <https://www.lbbd.gov.uk/sites/default/files/attachments/Licensing-Act-2003-Policy-2017-22.pdf>

be licensed under, and regulated by, both Acts, the licensing objectives under the 2003 Act will apply, namely:

- The prevention of crime and disorder
- Public safety
- The prevention of public nuisance
- The protection of children from harm

13. Notwithstanding any presumptions indicated below, nothing in this Policy is intended to undermine the right of any individual to make an application in accordance with the 1982 Act and to have that application considered on its individual merits.

14. The Council may make exceptions to its policy where it is appropriate to do so and will give reasons for any such exception.

The Licensing and Regulatory Board

15. The Council's Licensing and Regulatory Board will form Licensing sub-committees to perform all functions relating to licensing.

16. The Council will annually appoint 10 members to sit on the Licensing and Regulatory Board. From this overall membership, any 3 members may sit as a licensing sub-committee to determine applications. Only councillors who have received relevant licensing training will take part in decisions on licensing matters.

17. Members of the Licensing and Regulatory Board will not take part in any licensing decisions concerning premises in which they have an interest. A member of the Licensing and Regulatory Board may not hear an application that is in their own ward, but they may observe the meeting as a member of the public.

18. All decisions in respect of applications for sex establishment licences will be made by the Licensing Sub-Committee, although Licensing Officers may determine that an objection received is frivolous or vexatious and may not refer it for the sub-committee's consideration.

European Convention on Human Rights

19. When determining any licence application, the Sub-Committee will have regard to relevant Convention rights, including:

- Article 1, Protocol 1 concerning a person's entitlement to the peaceful enjoyment of his/her property.
- Article 6 concerning the right to a fair and public hearing

- Article 8 concerning the right to respect for private and family life
- Article 10 concerning the right to freedom of expression

Equality Duty

20. In taking licensing decisions, the Sub-Committee will also be mindful of the Council's public sector equality duty under the Equality Act 2010⁴.
21. Decisions will be taken with due regard to the need to:
- Eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act
 - Advance equality of opportunity between people who share a protected characteristic and those who do not
 - Foster good relations between people who share a protected characteristic and those who do not

Applications for licences The Council may grant to any applicant, and from time to time renew, a licence for the use of any premises, vehicle, vessel, or stall specified for a sex establishment, on such terms and conditions and subject to such restrictions as may be specified. Any application for the grant, renewal or transfer of a sex establishments licence must be made either in writing or electronically, on the form provided by the Council. The application form must be fully completed, signed and dated by the applicant or their representative, and submitted together with the appropriate fee and all other required documentation to the Council's Licensing Team. No application will be deemed complete or be processed until all information requested is received in full.

25. Applicants for a sex establishment licence 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.
26. Where the application relates to premises, a notice must also be displayed on or near the premises in a place where it can be conveniently read by members of the public. The notice must be displayed for a period of 21 days beginning the date the applications is made.
27. A notice of the application will also be placed on the Council's website.
28. Any person may object to the grant or renewal of a sex establishment licence.

⁴ <http://www.legislation.gov.uk/ukpga/2010/15/contents>

Guidance on the licensing process

29. This policy document does not intend to set out the steps of the licensing process. Detailed information on the licensing process is provided in the Council's separate ['Guidance Note for Applicants and Objectors under the Local Government \(Miscellaneous Provisions\) Act 1982'](#).

Public hearing of applications

35. All applications for the grant, renewal or transfer of sex establishment licences will be determined by a sub-committee of the Licensing Regulatory Board at a public hearing if the application is opposed.

All applicants will be required to appear before the sub-committee when their application is heard.

31. Whilst the Act does not make provision for objectors to be heard in person, the Council is under a duty to consider any objections made within 28 days of the application and has deemed that registered objectors will be given the opportunity to appear before and be heard at the licence determination hearing. The Council reserves the right to hear late objections provided that the applicant is given the opportunity to respond to them.

32. Where the Council refuses the grant, renewal or transfer of a licence, a written statement of the reasons for the decision will be provided to the applicant or holder of the licence, if required, within 7 days.

Duration of licence

33. Unless previously cancelled or revoked, any licence issued shall remain in force for one year or for such shorter period specified in the licence.

Waivers

34. Although the Council is permitted to waive the requirement for a licence in any case where it considers that to require a licence would be unreasonable or inappropriate, the Council does not consider it would be appropriate to waive the requirement to hold a sex establishment licence in respect of sex shops and sex cinemas, except in the most exceptional circumstances.

35. The Council does not consider it would ever be appropriate to waive the requirement to hold a sex establishment licence in respect of sexual entertainment venues.

Section 4 – Licensing Decisions and Conditions

Statutory reasons for refusal of licences

36. Mandatory grounds for refusal are set out in Section 12 of Schedule 3 to the 1982 Act. Any refusal of an application must be in reference to one or more of the stated grounds.
37. A licence may not be granted to —
- (a) a person under the age of 18; or
 - (b) a person who has had a previous licence revoked; or
 - (c) a person who is not resident in the United Kingdom or was not so resident throughout the period of six months immediately preceding the date of the application; or
 - (d) a body corporate which is not incorporated in the United Kingdom; or
 - (e) a person who has, within a period of 12 months immediately preceding the date of the application, been refused the grant or renewal of a licence for the premises in respect of which the application is made, unless the refusal has been reversed on appeal.
38. An application for the grant or renewal of a licence may also 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) were the licence 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 in the relevant locality at the time the application is made is equal to or exceeds the number the Council considers to be appropriate for that locality;
 - (d) the grant or renewal of the licence would be inappropriate, having regard to
 - (i) the character of the relevant locality; or
 - (ii) the use to which any premises in the vicinity are put; or
 - (iii) the layout, character or condition of the premises in respect of which the application is made.
39. Similarly, an application for the transfer of a licence may be refused on either or both of grounds (a) and (b) above.

Appropriate numbers of licensed sex establishments

40. The Council is permitted under s12(4) to determine that the appropriate number of sex establishments in any relevant locality is nil.
41. Barking and Dagenham is highly residential and has a young and growing population. No area of the borough has a recent association with the provision of sexual entertainment. In that context the Council considers it inappropriate to allow the introduction of sex entertainment venues in any locality because of the impact that they and their customers may have on the locality.
42. Accordingly, the appropriate number of licensed sex establishments of any category in any area of the borough is determined to be nil.
43. The Council will continue to consider applications and to consider each application upon its own individual merits, but it is expected that this policy will be strictly applied and licences will therefore only be granted in exceptional circumstances. The ability of an applicant to demonstrate that they are of good character and could provide a high standard of management will not alone constitute exceptional circumstances.

Assessment of 'relevant locality'

44. In general, this Council will treat the ward in which the premises that is subject of the application is situated as the relevant locality, although a different view may be taken following representations raised in individual cases (for example, where a premises subject of an application borders another ward).

Presumptions against the grant of licences in specified circumstances

45. This Council takes the position that there should be a policy presumption against permitting licensed sex establishments either adjacent to or in the vicinity of premises in the following categories, regardless of location:
 - Schools and other facilities used primarily by children and young persons, including playgroups and playgrounds
 - Facilities used primarily by vulnerable adults and adult social care facilities
 - Facilities used primarily by women
 - Places of worship
 - Hospitals and medical facilities
 - Community facilities or public buildings
 - Community leisure facilities and open spaces

- Cultural facilities, including cinemas, theatres and galleries
- Residential accommodation
- Another licensed sex establishment

46. The meaning of “in the vicinity” will be determined on the circumstances of each case, however for the purposes of general guidance a radius of 250 metres will be considered.

Other considerations

47. In all cases, there are further issues that this Council considers to be relevant and will take into account when determining applications for sex establishment licences, namely:

- The position of the premises in respect of popular access routes to the categories of premises identified above
- The nature of any logo for the sex establishment
- The nature of any external images, advertisements or displays
- Whether advertising positioned inside the sex establishment could be viewed from outside of the premises
- Whether the name of the sex establishment clearly indicates the nature of the activities that would take place upon the premises
- The operating hours of the premises and their relationship to the operating hours of nearby premises
- The scheme of management
- Proposed front of house controls and security arrangements, both external and internal
- Queueing arrangements for customers wishing to gain admission
- Age verification procedures to prevent admission of under-age persons
- The layout and condition of the premises
- Arrangements for ensuring the safety of customers, staff and performers on the premises
- Whether planning consent has been obtained for the proposed use
- Whether there are any planned developments in the area that may render the locality unsuitable for a sex establishment
- The potential for local crime and disorder and/or anti-social behavior that may arise from the operation of the premises
- Whether the applicant has had any relevant enforcement action taken against them by the Police or any other regulatory body
- Whether the applicant can comply with the relevant standard conditions for the category of sex establishment

- Accessibility to the premises for disabled persons

Licence conditions

48. Where the Council decides to grant a licence it will do so subject to standard conditions. It may also impose specific conditions and/or restrictions applicable to an individual licence.
49. This Council has prescribed standard conditions applicable to all sex establishments and additional standard conditions applicable accordingly if the premises is a sex shop, a sex cinema or a sex entertainment venue
50. The relevant standard licence conditions will be attached to every licence granted, renewed or transferred by the Council unless expressly excluded.
51. The standard licence conditions are detailed in full in the separate document “Sex Establishments – Standard Licensing Conditions”⁵.

Protection of Children and Young People

52. No person under the age of 18 years may be admitted to any sex establishment while the premises is in use under its licence. No person under the age of 18 years may be employed at any sex establishment.
53. To ensure that no child or young person is exposed to any licensable activity, it is important that a rigorous age verification scheme is established. This Council promotes the principles of ‘Challenge 25’.
54. Anyone who appears to be under 25 years of age will be asked for ID and admission will be refused to any person appearing under 25 years of age who cannot provide valid ID establishing they are over 18. Notices to this effect must be displayed in a clear and prominent position at the premises. Valid ID would comprise a photo driving licence, passport or other approved photographic ID bearing the PASS hologram.
55. No licensable activity or related material may be visible from the street and passersby may not be subject to touting.

⁵ <https://www.lbbd.gov.uk/sex-establishment-licence>

Sexual Exploitation

56. To help prevent the exploitation of any person at any time, no dancer or performer employed at a sex entertainment venue may be under 18 years of age; and no performer or dancer may be permitted to perform under the influence of alcohol or drugs. The licence holder will be required to undertake reasonable checks to ensure that all dancers or performers are eligible to work in the UK and obtain a certified photocopy of the passport of each performer together with their personal details.
57. Performers and dancers must be subject to a Code of Conduct and allied disciplinary procedure for failure to comply with the Code (which must not include monetary fines).
58. A Customers' Code of Conduct must also be devised, together with a means of ensuring that it is communicated to all customers on or soon after entering the premise. Repeated or serious failure to comply should result in the ejection, and potentially barring, of the customer from the premises.
59. Performers and dancers must be provided with adequate changing and sanitary accommodation, and there must be an appropriate welfare policy.

Prevention of Crime and Disorder and / or Anti-Social Behaviour

60. The Council will seek to ensure that no licensed premises contributes to levels of local crime and disorder or anti-social behavior.
61. Accordingly, the Council will expect high standards of management at all times.
62. The Council will expect the premises management to maintain a good working relationship with the police and the Licensing Team.
63. The Council will require all licensed premises to have good CCTV coverage. All sex entertainment venues must have adequate door supervision (registered with the Security Industry Authority) and good internal security and monitoring arrangements.

Variation of licences

64. The holder of a sex establishment licence may apply at any time to the Council for a variation of any term, condition or restriction.

65. Where such application is made the Council may
- Make the variation specified in the application; or
 - Make such variations as it thinks fit (including variations other than those specified in the application); or
 - Refuse the application.

Revocation of licences

66. The Council may, after giving the holder of a licence an opportunity of appearing before and being heard by them, at any time revoke the licence on any of the grounds specified above for the refusal of a licence.
67. Where a licence is revoked, the Council will provide a statement in writing of the reasons for the decision within 7 days of the revocation.
68. Where a licence is revoked, its holder shall be disqualified from holding or obtaining a licence in the borough for a period of 12 months from the date of revocation.

Cancellation of licence

69. In the event of the death of the holder of a licence, that licence shall be deemed to have been granted to his personal representatives and shall, unless previously revoked, remain in force until the end of the period of 3 months beginning with the death. The licence shall then expire, unless extended by the Council upon application by the representatives.
70. The Council may extend the licence upon application, if it is satisfied that the extension is necessary for the purpose of winding up the deceased's estate and that no other circumstances make it undesirable.
71. The Council may, at the written request of the holder of a licence, cancel the licence.

Appeals

72. Where this Council 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 for the reasons given below, in which case the only means of challenge is by way of judicial review.
- 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 consider is appropriate for that locality;

- That the grant or renewal of the licence would be inappropriate, having regard to
 - the character of the relevant locality; or
 - the use to which any premises in the vicinity are put; or
 - the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made

Section Five – Enforcement

73. The Council’s enforcement services aim to safeguard the local community and environment and provide a level playing field on which businesses can trade fairly.
74. Council officers are subject to the provisions of the Regulators’ Code⁶, which is designed to ensure effective and efficient public protection services. Specifically, the Council is committed to accord with the principles of good enforcement practice by carrying out its regulatory functions in a fair, open, transparent, and consistent manner.
75. Our resources will be ‘intelligence led’ and directed to where they are needed most. Responsible business operators, with proven operating history, can expect a light touch enforcement approach, enabling resources to be directed to supporting new operators and dealing with irresponsible and illegal operations.
76. The 1982 Act empowers both police constables and authorised Council officers to take enforcement actions.
77. Licensed premises may be subject to ‘during performance’ or ‘during operation’ visits conducted on a risk-assessed basis, having regard to the premises previous operating history and regulator confidence in management.
78. Where it is necessary to take enforcement action officers will:
- be clear about the issue(s) that have made enforcement action necessary
 - for action short of licence revocation and/or prosecution, provide a clear explanation as to what remedial action is necessary and a reasonable timescale for completion
 - advise the licensee of any right of appeal
79. The Council and partner agencies recognise the interests of both citizens and businesses and will work together to assist licence holders to comply with the law and the licensing objectives.

⁶ <https://www.gov.uk/government/publications/regulators-code>

80. The Council has set clear standards of service and performance that the public and businesses can expect. We have an Enforcement Policy, which sets out our principles for effective enforcement.

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LICENSING AND REGULATORY COMMITTEE

17 July 2019

Title: Licensing Applications and Appeals - Update	
Report of the Director of Law and Governance	
Open Report	For Information
Wards Affected: None	Key Decision: No
Report Author: Theo Lamptey, Service Manager, Public Protection	Contact Details: Tel: 020 8227 5655 E-mail: theo.lamptey@lbbd.gov.uk
Accountable Director: Andy Opie, Operational Director for Enforcement and Community Safety	
Accountable Strategic Director: Fiona Taylor, Director of Law and Governance	
<p>Summary</p> <p>The report provides an update on licensing matters dealt with by the Licensing Team since the last Licensing and Regulatory Committee meeting held in May 2019.</p> <p>Activities undertaken since the last meeting include the following:</p> <ul style="list-style-type: none"> • Temporary Event Notices (TENs) processed - 26 • Personal Licence - 20 • Premises Licence/ Transfer/ Vary Designated Premises Supervisors (DPS) - 10 • Special Treatment Licence Applications – 10 • Gambling Licence – 2 • Animal Licence - 0 • Other Applications received and processed - 2 • Review Hearing - 1 • Appeals – 0 	
<p>Recommendation(s)</p> <p>The Licensing and Regulatory Committee is asked to note the report.</p>	

Public Background Papers Used in the Preparation of the Report: None

List of appendices: None

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