

Licensing of Sex Establishments – Procedure and Policy

RECOMMENDATION

- 1.1 Resolve to adopt the procedure for considering applications at Appendix 2.
- 1.2 Resolve to adopt the policy for determining applications at Appendix 3.
- 1.3 Refer the Policy to Full Council for approval.

SUPPORTING INFORMATION

- 2.1 Following the recent decision of Licensing Sub Committee B to approve the grant of a sex establishment licence, Officers were asked to devise a policy to control the number of sex establishments within the city of Derby.
- 2.2 This report sets out the relevant issues that need to be considered and proposes a procedure and policy that the Council could adopt when dealing with sex establishment applications. The proposed procedure is contained at Appendix 2. The proposed policy is contained at Appendix 3.
- 2.3 Members are reminded that the Sub-Committee sits as a quasi-judicial body and as such must give the applicant a fair hearing, take into account relevant considerations and determine each application on its merits.
- 2.4 The licensing of sex establishments is governed by Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982.
- 2.5 As a result of the adoption of the Schedule, it is illegal to operate a sex establishment within the city of Derby without a licence or waiver in respect of the premises. A *sex establishment* is defined as a sex shop or a sex cinema:
 - a *sex shop* means any premises, vehicle, vessel or stall used for a business which consists to a significant degree of selling, hiring, exchanging, lending, displaying or demonstrating sex articles; or other things intended for use in connection with, or for the purpose of stimulating or encouraging sexual activity; or acts of force or restraint which are associated with sexual activity.
 - a *sex cinema* means any premises, vehicle, vessel or stall used to a significant degree for the exhibition of moving pictures, by whatever means produced, which are concerned primarily with the portrayal of, or primarily deal with or relate to, or are intended to stimulate or encourage sexual

activity; or acts of force or restraint which are associated with sexual activity; or are concerned primarily with the portrayal of or primarily deal with or relate to, genital organs or urinary or excretory functions.

- 2.6 A waiver may be granted under paragraph 7 of Schedule 3 to the Act if the Council regards it unreasonable or inappropriate to require a licence.
- 2.7 Paragraph 10 of Schedule 3 to the Act sets out the manner in which an application must be made for a licence.
- 2.8 The Council has already adopted standard conditions which are attached to sex establishment licences granted by the Council. These are included for information at Appendix 4.
- 2.9 There are grounds for refusing an application on the basis that:
- the applicant is unsuitable to hold a licence by reason of having been convicted of an offence or for any other reason
 - the business would be managed by or carried on for the benefit of a person who has been refused a licence
 - the number of sex establishments in the relevant locality at the time the application is made exceeds or is equal to the number which the authority considers is appropriate for that locality
 - it would be inappropriate having regard to the character of the relevant locality; the use to which any premises in the vicinity are put; or the layout, character or condition of the premises in respect of which the application is made.
- 2.10 Appropriate checks of the applicant will help identify relevant criminal convictions and any other relevant information.
- 2.11 The number of sex establishments which the Council considers appropriate could be nil.
- 2.12 Case law advises Council's against making the whole of their administrative area the relevant locality.

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Background papers:	None
List of appendices:	Appendix 1 – Implications Appendix 2 – Procedure for Considering Sex Establishment Applications Appendix 3 – Policy for Determining Sex Establishment Applications Appendix 4 – Standard Conditions for Sex Establishment Licences Appendix 5 – Plan of Inner Ring Road

IMPLICATIONS

Financial

- 1.1 None directly arising from this report.

Legal

- 2.1 As outlined in the 'Supporting Information' section of this report.
- 2.2 Any sex establishment licences currently in place will be subject to the new policy at their next renewal.

Personnel

- 3.1 None directly arising from this report.

Equalities impact

- 4.1 The proposed policy and procedures outlined in this report promote the principles of openness, fairness and equality to all interested parties.

Corporate themes and priorities for change

- 5.1 The adoption of the proposed procedure and policy for considering and determining applications for sex establishment licences contributes to the Council's objectives to make Derby a city of **shops, commercial and leisure activities** and **integrated cost effective services**.
- 5.2 The adoption of the proposed procedure and policy for considering and determining applications for sex establishment licences furthers the Council's priorities of **improving management of the City and district centres** and **improving customer service**.

PROCEDURE FOR CONSIDERING SEX ESTABLISHMENT APPLICATIONS

1. It is not necessary to afford objectors a hearing, although the Council has the discretion to do so.
2. The discretion will be exercised sparingly having regard to the risk of unfairness to the applicant.
3. The discretion will only be exercised if the Council is satisfied that:
 - (a) Only those objectors whose written objections have been received before the end of the 28 day objection period are heard.
 - (b) Those objectors will be confined to putting forward only those points which are relevant to consideration of the grounds of refusal **and** which have been notified to the applicant in advance of the meeting.
 - (c) If the objectors are heard at the same hearing as the applicant, the applicant will be given the opportunity to hear what the objectors say.
 - (d) If the objectors are heard at the same hearing as the applicant, the Chair will ensure that the proceedings are conducted as a hearing of the applicant's case for grant, renewal or transfer of the licence and not as an adversarial contest between the applicant and the objectors.
4. The discretion to afford the objectors a hearing will be exercised by the Assistant Director of Environmental Health and Trading Standards in consultation with the Chair.
5. Objectors will not be afforded the opportunity to be heard at the same hearing as the applicant without the consent of the applicant and in any event, this course will rarely be adopted. In the event that consent is not given by the applicant, there will be two hearings. At the first hearing the Committee will hear the objectors and at the second hearing the Committee will hear the applicant.
6. Prior to any hearing, the Council will give notice to the applicant of the general terms of the objections.
7. The Council will not reveal an objectors name and address to the applicant without the consent of the objector.
8. At the hearing to determine an application for grant or renewal of a sex establishment licence, at which the objectors are not present, the procedure will be as follows:
 - Officer to present the report and outline the general terms of the objections

- Applicant (or his representative) afforded the opportunity to ask the Officer questions
- Members afforded the opportunity to ask the Officer questions
- Applicant (or his representative) to present the application and respond to the objections raised
- Officer afforded the opportunity to ask the Applicant questions
- Members afforded the opportunity to ask the Applicant questions
- Officer invited to sum up
- Applicant (or his representative) invited to sum up
- Members retire to make their decision
- The meeting is reconvened and the decision of the Committee is announced.

9. At the hearing to determine an application for grant or renewal of a sex establishment licence, at which the objectors are present, the procedure will be as follows:

- Officer to present the report and outline the general terms of the application
- Objectors afforded the opportunity to ask the Officer questions
- Applicant (or his representative) afforded the opportunity to ask the Officer questions
- Members afforded the opportunity to ask the Officer questions
- Objectors asked to outline the general terms of their objection
- Officer afforded the opportunity to ask the Objector questions
- Applicant (or his representative) afforded the opportunity to ask the Objector questions
- Members afforded the opportunity to ask the Objector questions
- Applicant (or his representative) to present the application and respond to the objections raised
- Officer afforded the opportunity to ask the Applicant questions
- Objectors afforded the opportunity to ask the Applicant questions
- Members afforded the opportunity to ask the Applicant questions

- Officer invited to sum up
- Objectors invited to sum up
- Applicant (or his representative) invited to sum up
- Members retire to make their decision
- The meeting is reconvened and the decision of the Committee is announced.

10. Where the Council refuse to grant, renew or transfer a licence, it will, if required to do so by the applicant or holder of the licence, give him a statement of the reasons for the decision in writing within 7 days of the request.

POLICY FOR DETERMINING SEX ESTABLISHMENT APPLICATIONS

1. In determining whether the applicant is suitable to hold a licence, the Council will take into account relevant criminal convictions and any other relevant information.
2. A maximum of two sex shops will be licensed in the city centre (the city centre is defined as the area inside the inner ring road, identified in the plan attached at Appendix 5). This is the number of sex establishments that the Council considers appropriate for the city centre locality having regard to the compact size and nature of the city centre.
3. A sex establishment licence will only be granted outside the city centre in exceptional circumstances. This is because business premises outside the city centre are generally located in close proximity to residential accommodation and/or community facilities such as schools, places of worship and community centres.
4. The 'relevant locality' will be determined on the basis of each application.
5. There will be a presumption against granting a sex establishment licence when the premises are in close proximity to:
 - schools, nurseries & children's centres
 - places of worship.
6. A sex establishment licence will not be granted in a predominantly residential area.
7. Premises to be licensed must be capable of meeting the Council's standard conditions for sex establishment licences.

APPENDIX 4

STANDARD CONDITIONS FOR SEX ESTABLISHMENT LICENCES

Definitions

1. In these Regulations the following expressions shall have the following meanings:-
 - (i) "Sex establishment" "sex cinema" "sex shop" and "sex article" shall have the meanings ascribed to them in the Third Schedule of the Local Government (Miscellaneous Provisions) Act 1982.
 - (ii) "Premises" means a building or part of a building including any other form of structure whether permanent or temporary and any forecourt yard or place of storage used in connection with a building or part of a building which is the subject of a licence for a sex establishment granted under the said Third Schedule.
 - (iii) "Approval of the Council" or "Consent of the Council" means the approval or consent of the Council in writing under the hand of the Director of Corporate Services.
 - (iv) "Approved" means approved by the Council in writing.
 - (v) "The Council" means Derby City Council.
 - (vi) "Film" shall have the meaning ascribed to it in the Films Act 1960.

General

2. In the event of a conflict between these Regulations and any special conditions contained in a licence relating to a sex establishment the special conditions shall prevail.
3. The grant of a licence for a sex establishment shall not be deemed to convey any approval or consent which may be required under any enactment by law order or regulation other than the Third Schedule of the Local Government (Miscellaneous Provisions) Act 1982).
4. The marginal notes inserted in these Regulations are inserted for the purposes of convenience only and shall not effect in any way the meaning or construction thereof.

Times of
Opening

5. Except with the previous consent of the Council the premises shall not be open to the public before 9.00 am and shall not be kept open after 11.00 pm.
6. Except with the previous consent of the Council the premises shall not be open on Sundays, Christmas Day or Good Friday.

Conduct and
Management of
Sex
Establishments

7. Where the licensee is a body corporate or an unincorporated body any change of director, company secretary or other person responsible for the management of the body is to be notified in writing to the Council within 14 days of such change and such written details as the Council may require in respect of any new director, secretary or manager are to be furnished within 14 days of a request in writing from the Council.
8. The licensee or some responsible person, being 18 years of age or over, nominated by the licensee in writing shall be in attendance at the premises at all such times as the premises are open to the public. Prior to such nomination or within five working days thereafter the licensee shall supply details (including a photograph) of the person involved to the Council who may serve notice on the licensee that such nomination shall not be made or shall be revoked.
9. The name of the person responsible for the management of the sex establishment be he the licensee or a manager approved in writing by the Council shall be prominently displayed within the premises throughout the period during which he is responsible for the conduct of the premises.
10. The licensee shall maintain a daily register in which he shall record the name and address of any person who is to be responsible for managing the premises in his absence and the names and addresses of those employed in the premises. The register is to be completed each day within thirty minutes of the premises opening for business and is to be open for inspection by the Police and by authorised officers of the Council.
11. The licensee shall retain control over all portions of the premises and shall not let, license or part with possession of any part of the premises.
12. The licensee shall maintain good order in the premises.
13. No person under the age of 18 shall be admitted to the premises or employed in the business of the establishment.

14. The Licensee shall ensure that the public are not admitted to any part or parts of the premises other than those which have been approved by the Council.
15. No part of the premises shall be used by prostitutes (male or female) for the purposes of solicitation or of otherwise exercising their calling.
16. The licensee shall ensure that no employee or other shall seek to obtain custom for the sex establishment by means of personal solicitation outside or in the vicinity of the premises.
17. The licensee shall comply with all statutory provisions and any regulations made thereunder.
18. The licensee shall ensure that during the hours the premises are open for business every employee wears a badge of a type to be approved by the Council indicating his name and that he is an employee.

User

19. A sex shop shall be conducted primarily for the purpose of the sale of goods by retail.
20. No change or use of any portion of the premises from that approved by the Council shall be made until the consent of the Council has been obtained thereto.
21. No change from a sex cinema to a sex shop or from a sex shop to a sex cinema shall be effected without the consent of the Council.
22. Neither sex articles nor other things intended for use in connection with, or for the purpose of stimulating or encouraging sexual activity or acts of force or restraint which are associated with sexual activity shall be sold, hired, exchanged or loaned in a Sex Cinema.

Goods
available in Sex
Establishments

23. All sex articles and other things displayed within the premises shall be clearly marked to show to persons who are inside the premises the respective prices being charged.
24. All printed matter offered for sale, hire, exchange or loan shall be available for inspection prior to purchase and a notice to this effect is to be prominently displayed within the premises.
25. No film or video film shall be exhibited, sold or supplied unless it has been passed by the British Board of Film Censors and bears a certificate to that effect.

External
Appearance

26. No display advertisement or any matter or writing shall be exhibited so as to be visible from outside the premises except:-
- (i) Any notice required to be displayed by law, by these Regulations or by any condition of a licence granted by the Council.
 - (ii) Such display advertisement matter or writing as shall have been approved by the Council.
27. The windows and openings of the premises shall be of a material or covered with a material which will render the interior of the premises invisible to passers by.

State Condition
and Layout of
Premises

28. The premises shall be maintained in good repair and condition.
29. Lighting in all parts of the premises as approved by the Council shall be in operation continuously during the whole of the time that the premises are open to the public.
30. The number, size and position of all doors and openings provided for the purposes of the ingress and egress of the public shall be approved by the Council and shall comply with the following requirements:-
- (i) All such doors or openings approved by the Council shall be clearly indicated with notices bearing the words "Exit" or "Fire Exit" in 5" (125 mm) white block letters on a green background sited above the doors or openings.
 - (ii) Doors and openings other than exits which lead to parts of the premises to which the public are not permitted to have access shall have notices placed over them marked "private".
 - (iii) No access shall be permitted through the premises to any other premises adjoining or adjacent except in the case of emergency.
31. External doors must be closed at all times other than when persons are entering or leaving the premises. The external doors to the premises shall be fitted with a device to provide for their automatic closure and such devices shall be maintained in good working order.
32. The licensee shall make provision in the means of access both to and within the premises who are disabled.
33. No fastenings of any description shall be fitted upon any

booths or cubicles set aside for the display of films.

34. Alterations or additions either internal or external and whether permanent or temporary to the structure, lighting or layout shall not be made except with the prior approval of the Council.
35. All parts of the premises shall be kept in a clean and wholesome condition to the satisfaction of the Council.
36. The licensee shall take all reasonable precautions for the safety of the public and employees.
37. The licensee shall comply with any fire precaution and safety measures that may be required for him by the Council.
38. The premises shall be provided with fire appliances suitable to the fire risks of the premises and such fire appliances shall be maintained in proper working order and shall be available for instant use.

Safety

APPENDIX 5

PLAN OF INNER RING ROAD

