

ISLE OF WIGHT COUNCIL

SEX ESTABLISHMENT LICENSING POLICY

1 Document Information

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3 INTRODUCTION

- 3.1 This policy will become effective on 1 January 2011.
- 3.2 This document sets out the Isle of Wight Council's policy ("the Policy") regarding the regulation of sex establishments and the procedure relating to applications for sex establishment licences.
- 3.3 This document relates to applications for Sex Establishment Licences covering:
- 3.3.1 sex shops
 - 3.3.2 sex cinemas
 - 3.3.3 sexual entertainment venues
- As defined by the Local Government (Miscellaneous Provisions) Act 1982, as amended by the Policing and Crime Act 2009. This includes lap dancing establishments.
- 3.4 The council adopted Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 and the amendment under Section 27 of the Policing and Crime Act 2009 on the 2 June 2010.
- 3.5 The council is mindful of possible concerns within the local community with regard to applications for sex establishment licences and that there can be conflict between applicants and objectors. The Policy will assist the council when considering applications for licences in balancing the conflicting needs of commercial interests, patrons, employees, residents and communities. It will inform applicants and objectors of the parameters under which the council will make licence decisions as well as ensuring consistent decisions.
- 3.6 The procedure sets out:
- 3.6.1 the process for making various applications;
 - 3.6.2 the process the council will follow in considering and determining an application for a Sex Establishment Licence.
- 3.7 This Policy will be reviewed every three years. All legislative amendments will be made automatically; all other changes will be subjected to a twenty eight day consultation period. Any representations will be determined by the Licensing and General Purposes Committee and if none are received, the Policy will automatically be updated.

4 DEFINITIONS

4.1 The Act

This refers to the Local Government (Miscellaneous Provisions) Act 1982 (as amended by the Policing and Crime Act 2009).

4.2 The Policy

This refers to Isle of Wight Council's Sex Establishment Licensing Policy.

4.3 Relevant Locality

This is the locality where premises are situated or where the vehicle, vessel or stall is going to be used. The locality and the area that this covers is a matter for the local authority to decide. This council has determined that relevant locality will be determined on a case by case basis for the purpose of decision making.

4.4 Considerations the Council will take into account include but are not limited to the following

4.4.1 proximity to educational establishments/youth activity venues,

4.4.2 proximity to places of worship,

4.4.3 any relevant planning issues at the time of the application,

4.4.4 adverse effect the premises may have on crime and disorder

4.5 Character of the Relevant Locality

The character or characteristics of the locality where the premises are situated will be instrumental in determining whether or not the granting of a licence will be appropriate. This council has not defined what type of area would or would not be acceptable in terms of character. The council will consider the character of the area on a case by case basis and will take into account such factors as the uses and users of the area, how the area is perceived, the vision/plan for the area and the views of the planning authority.

4.6 The Council

This means the Isle of Wight Council.

4.7 The Police

This means the Hampshire Constabulary.

4.8 The Licensing Section

This means the Isle of Wight Council's Licensing Section as defined in section 5.1.1 of this policy.

4.9 Display of Nudity

In the case of a woman: exposure of her nipples, pubic area, genitals or anus.

In the case of men: exposure of his pubic area, genitals or anus.

4.10 The Licensed Premises

This is the premises, vessel, vehicle or stall which is subject to a sex establishment licence. The premises will be in possession of all appropriate consents and permissions to operate.

4.11 The Organiser

This is any person who is responsible for the organisation or management of the relevant entertainment or the premises.

4.12 Permitted Hours

These are the hours of activity and operation that have been authorised under a Sex Establishment Licence.

4.13 Sexual Entertainment Venue

"A 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.

4.14 Relevant Entertainment

Relevant Entertainment means:

- a. any live performance; or
- b. any live display of nudity

which is of such a nature that, regardless of financial gain, it must reasonably be assumed to be provided solely or primarily for the purpose of sexually stimulating any member of the audience whether by verbal or other means. An audience can consist of one, or more person(s).

4.15 Sex Article

A sex article is

- a. anything made or adapted or intended for use in connection with, or for the purpose of stimulating or encouraging:

- i. sexual activity; or
 - ii. acts of force or restraint which are associated with sexual activity; and
- b. to any article containing or embodying matter to be read or looked at or anything intended to be used, either alone or as one of a set, for the reproduction or manufacture of any such article; and
- c. to any recording of visual or audible representation, which
 - i. is concerned primarily with the portrayal of, or primarily deals with or relates to, or is intended to stimulate or encourage, sexual activity or acts of force or restraint which are associated with sexual activity; or
 - ii. is concerned primarily with the portrayal of, or primarily deals with or relates to, genital organs, or urinary or excretory functions.

4.16 Sex Shop

A sex shop is any premises, vehicle, vessel or stall used for a business which consists to a significant degree of selling, hiring, exchanging, lending, displaying or demonstrating:

- a. sex articles; or
- b. other things intended for use in connection with, or for the purpose of stimulating or encouraging:
 - i. sexual activity; or
 - ii. acts of force or restraint which are associated with sexual activity.

No premises shall be treated as a sex shop by reason only of their use for the exhibition of moving pictures by whatever means produced.

4.17 Sex Cinema

A sex cinema is 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 of, or primarily deal with or relate to, or are intended to stimulate or encourage
 - i. sexual activity; or
 - ii. acts of force or restraint which are associated with sexual activity; or
- b. are concerned primarily with the portrayal of, or primarily deal with or relate to, genital organs or urinary or excretory functions,

but does not include a dwelling-house to which the public is not admitted.

5 APPLICATION PROCESS

5.1 New Application

- 5.1.1 An application should be made in writing to: The Licensing Section, Isle of Wight Council, Jubilee Stores, The Quay, Newport, Isle of Wight PO30 2EH. Telephone 01983 823159 fax 01983 823158. Email Licensing@iow.gov.uk.
- 5.1.2 Applications may also be made electronically via the council's website at www.iwight.com/licensing .
- 5.1.3 Each applicant must supply their full name and address, any alternative names used by that person together with their date of birth. Full contact details including where possible an email address.
- 5.1.4 Applicants for a licence must complete the application form and submit to the licensing section together with:
- 5.1.4.1 floor plan(s), drawn to scale and showing all means of entry and exit, any parts used in common with any other building and indicating how the premises lie in relation to the street;
 - 5.1.4.2 plan(s) showing the existing and front elevation of the premises depicting all signage;
 - 5.1.4.3 plan(s) (scale 1:100) showing the sex establishment in relation to other premises within 100 metres;
 - 5.1.4.4 plan(s) (scale 1:100) showing the layout of the sex establishment; the correct fee as set by the council.
- 5.1.5 As part of the application process, applicants are required to post an A4 notice at the proposed site for twenty eight days, from the first working day after the date the application is lodged with the local authority, setting out the application details. The notice must be posted in a prominent position for the whole of that time and be easily read by passers-by.
- 5.1.6 Applicants are also required to place a public notice in a local newspaper giving details of the application. The newspaper notice should appear in the publication within seven days of the application being lodged.

5.2 Application to Renew

- 5.2.1 Where a licence was in existence, an application to renew the licence shall be made no later than two calendar months before the expiry date.
- 5.2.2 The application form, together with relevant plans and the fee should be sent to the Licensing Section. Please note that applications to renew licences are subject to the same consultation process (including the site and newspaper notice requirements) set out in paragraphs 5.1.4 and 5.1.5.

5.2.3 When considering a renewal application the council may take into account:

5.2.3.1 any perceived adverse impact arising from the operation of the premises;

5.2.3.2 whether appropriate measures have been agreed and put into effect by the applicant to mitigate any adverse impacts.

5.3 Application Variation

5.3.1 Variation applications relate only to proposed changes to such matters as the hours and area of the premises covered by the licence.

5.3.2 A completed application form, together with relevant plans and the fee should be sent to the Licensing Section. Please note that applications for variation of licence are also subject to the site and newspaper notice requirements set out in paragraphs 5.1.4 and 5.1.5.

5.4 Application to Transfer

5.4.1 A completed application form and the fee should be sent to the Licensing Section if the holder of the licence is to be changed.

6 FEES

6.1 The appropriate fees for applications can be found on the council's website. Application fees must be paid in full at the time of submission of the application.

6.2 Any refused or unsuccessful application would qualify for a refund of 25% of the application fee.

7 APPLICATION CONSULTATION

7.1 The consultation period will be for twenty eight days, starting from the first working day after the date a valid application is accepted by the Licensing Section.

7.2 Applicants are required to provide a copy of their application to the Police within seven days of the date the application being made to the Licensing Section.

7.3 All applications will be available to view online at the council's website for the duration of the twenty eight day consultation period.

7.4 The following organisations will be notified and will be able to provide representations to all applications:

7.4.1 Local elected member;

7.4.2 The relevant Parish or town council;

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- 7.4.3 Fire authority;
 - 7.4.4 Hampshire Constabulary;
 - 7.4.5 Planning authority;
 - 7.4.6 Environmental health;
 - 7.4.7 Children and young people's services;
 - 7.4.8 Licensing section.
- 7.5 The licensing section will consider representations received during the consultation period from the following:
- 7.5.1 Interested parties (local residents/businesses living within the vicinity of the proposed venue);
 - 7.5.2 Any representations made by the applicant;
 - 7.5.3 Residents or tenants associations;
 - 7.5.4 Community associations; and
 - 7.5.5 Appropriate trade association(s).
- 7.6 All representations must be received during the twenty eight day consultation period. Any representations received outside of this period will not normally be considered when determining an application
- 7.7 All objections must be made in writing (email is acceptable) and must include the following:
- 7.7.1 the name and address of the person or organisation making the objection;
 - 7.7.2 the premises to which the objection relates;
 - 7.7.3 the proximity of the premises to the person making the objection; a sketch map or plan may be helpful to show this;
 - 7.7.4 the reason and justification for making the objection.
- 7.8 The licensing section will not consider objections that are believed to be frivolous or vexatious, or which relate to moral grounds. Decisions on whether objections are frivolous or vexatious will be made objectively by licensing officers and not on the basis of any political judgement.
- 7.9 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.

- 7.10 During the consultation period for all applications, the applicant shall on request of any of the organisations detailed in 7.4.3 to 7.4.8 allow an authorised officer a reasonable opportunity to enter the proposed sex establishment to make such examination and enquiries as may be necessary to determine the suitability of the applicant and the premises.

8 DETERMINATION OF APPLICATIONS

- 8.1 If valid representations are received during the consultation period the application will be determined by the Licensing (Determinations) Sub-Committee at a hearing. The applicant and any persons who made representations may attend the hearing will have the opportunity to address the sub-committee during the hearing.
- 8.2 If there are no valid representations received, the application will be granted without the need for a hearing.
- 8.3 All applications will be determined within twenty working days following the twenty eight day consultation period.
- 8.4 The Act lists those people who are excluded from being able to hold a licence. A licence cannot be granted:
- 8.4.1 to a person under the age of 18;
 - 8.4.2 to a person who is for the time being disqualified due to the person having had a previous sex entertainment establishment licence revoked in the area of the appropriate authority within the last twelve months;
 - 8.4.3 to a person, other than a body corporate, who is not a resident in an EEA State or was not so resident throughout a period of six months immediately preceding the date when the application was made; or
 - 8.4.4 to a body corporate which is not incorporated in an EEA state; or
 - 8.4.5 to a person who has, within a period of 12 months immediately preceding the date when the application was made, been refused the grant or renewal of a licence for the premises, vessel or stall in respect of which the application is made, unless the refusal has been reversed on appeal.
- 8.5 There is no right of appeal if an application is refused on the grounds listed in 8.4.
- 8.6 The grounds on which an application for the grant, renewal or transfer of a licence may be refused are set out in the Act. The council may also refuse a licence if:
- 8.6.1 the applicant is unsuitable to hold a licence because they have been convicted of an offence or for any other reason;

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- 8.6.2 were the licence to be granted, renewed or transferred, the business to which it relates would be managed or carried on for the benefit of a person other than the applicant, who would have been refused a licence if they had applied themselves.
- 8.6.3 the number of sex establishments or sex establishments of a particular kind in the relevant locality at the time the application is determined is equal to or exceeds the number which the authority consider is appropriate for that locality;
- 8.6.4 the grant or renewal of licence would be inappropriate having regard to:
- 8.6.4.1 the character of the relevant locality;
 - 8.6.4.2 the use to which any premises in the vicinity are put; or
 - 8.6.4.3 the layout, character or condition of the premises, vehicle, vessel or tall in respect of which the application is made.
- 8.7 The applicant will be required to demonstrate that he is a suitable person to hold a licence. In determining suitability, the council will normally take into account:
- 8.7.1 previous knowledge and experience of the applicant;
 - 8.7.2 any evidence of the operation of any existing/previous licence held by the applicant, including any licence held in any other local authority area;
 - 8.7.3 any report about the applicant and management of the premises received from objectors or the police and any criminal convictions or cautions of the applicant;
 - 8.7.4 any other relevant reason.
- 8.8 The factors detailed in 8.6 above are not an exhaustive list of considerations but are merely indicative of the types of factors which may be considered in dealing with an application.
- 8.9 When determining an application the committee must have regard to all valid representations submitted during the twenty eight day consultation period.
- 8.10 The council also has discretion to consider representations made after the twenty eight day consultation period although this will be assessed on a case by case basis.
- 8.11 Where the council refuse to grant, renew or transfer a licence, it shall, provide in writing a statement of the reasons for its decision within seven days of the hearing.

- 8.12 The council has not set a limit on the number of sex establishments or sex establishments of a particular kind. Each application for the grant, refusal, renewal, transfer or variation of a licence will be determined by the council on its merits on a case by case basis.

9 CONDITIONS

- 9.1 When granting a Sex Establishment Licence the committee is permitted to attach conditions and restrictions on that licence, in the form of conditions specific to the individual licence under paragraph 8 of schedule 3 of the Act.
- 9.2 In addition the council may make regulations under paragraph 13 of schedule 3 of the Act, prescribing standard conditions applicable to all licenses for sex establishments, that is to say, terms, conditions and restrictions on or subject to which licenses under this Schedule are in general to be granted, renewed or transferred by them.

10 DURATION OF LICENCE

- 10.1 Sex establishment licences will normally be issued for one year, but may be issued for a shorter period if deemed appropriate by the Council.

11 RIGHT TO APPEAL A DECISION

- 11.1 Applicants can appeal against the refusal of a grant, renewal, variation or transfer application, or against the decision to revoke a licence. They can also appeal against conditions or restrictions imposed.

- 11.2 Please note that a decision cannot be appealed if the application was refused on the grounds that:

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

11.2.2 the grant of the licence would be inappropriate considering the character of the area, the nature of other premises in the area, or the premises themselves.

Applicants can only challenge the refusal by way of judicial review.

- 11.3 Appeals must be made to the local magistrates' court within twenty one days, starting from the date the applicant is notified of the council's decision. The notice will advise the address of the appropriate magistrate's court to which such an appeal should be submitted. It should be noted that a fee may be payable to the magistrates to lodge such an appeal.
- 11.4 The magistrates' court will determine the appeal application and the council must comply with their decision.