

Sex Establishment

Licensing Policy

Revised

February 2011

1. Introduction

1.1 This document sets out Wigan Council's draft policy (the 'Policy') regarding the regulation of sex establishments and the procedure relating to applications for sex establishment licences.

1.2 This document relates to applications for sex establishment licences covering:

- sex shops
- sex cinemas
- sexual entertainment venues

as set out in the Local Government (Miscellaneous Provisions) Act 1982, as amended by the Policing and Crime Act 2009.

1.3 The Council adopted Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 on the 18th October 1982. The amendment under Section 27 of the Policing and Crime Act 2009 was adopted by the Council on the 3rd November 2010, such schedule coming into force on 1st January 2011.

1.4 The Council is mindful of possible concerns of the local community and that there can be conflict between applicants and objectors. The Policy will guide the Council when considering applications for licences in balancing the conflicting needs of commercial interests, patrons, employees, residents and communities.

1.5 The procedure sets out:

- the process the Council will follow in considering and determining an application for a sex establishment licence; and
- the process for making an application.

2. Definitions

- **The Act**

This refers to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended by the Policing and Crime Act 2009).

- **The Policy**

This refers to Wigan's sex establishment licensing policy.

- **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.

- **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 grant 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; the views of the planning authority.

- **The Council**

This means Wigan Council.

- **Display of nudity**

This means in the case of a woman: exposure of her nipples, pubic area, genitals or anus; and in the case of men: exposure of his pubic area, genitals or anus.

- **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. Note that licences are not required for the sale, supply or demonstration of birth control items.

- **The Organiser**

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

- **Permitted Hours**

These are the hours of activity and operation that have been authorised under a sex establishment licence.

- **Sex Article**

A sex article is anything for use in connection with or for stimulating or encouraging sexual activity or acts of force or restraint which are associated with sexual activity.

- **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 sex articles or other things intended for use in connection with or for stimulating or encouraging sexual activity or acts of force or restraint which are associated with sexual activity.

- **Sex Cinema**

A sex cinema is any premises, vessel, vehicle or stall used to a significant degree for the exhibition of moving pictures, however 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 genital organs or urinary excretory functions.

- **Sexual Entertainment Venue**

A sexual entertainment venue is any premises where any live performance or any live display of nudity is of such a nature, regardless of financial gain, it must reasonably be assumed to have been provided solely or mainly for the purpose of sexually stimulating any member of the audience.

- **Relevant Entertainment**

Relevant entertainment is "any live performance or live display of nudity which is of such nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purposes of sexually stimulating any member of

an audience (whether by verbal or other means).” An audience can consist of just one person (eg, where the entertainment takes place in private booths).

Wigan Council considers that the definition of relevant entertainment applies, although not exclusively, to the following forms of entertainment:

- Lap dancing
 - Pole dancing
 - Table dancing
 - Strip shows
 - Peep shows
 - Live sex shows
- **Premises that are not sexual entertainment venues**
Paragraph 2A(3) of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 sets out those premises that are not sexual entertainment venues. These are:
 - Sex shops and sex cinemas
 - Premises which provide relevant entertainment on an infrequent basis. These are defined as premises where –
 - a) no relevant entertainment has been provided on more than 11 occasions within a 12 month period.
 - b) no such occasion has begun within a period of one month beginning with the end of the previous occasion; and
 - c) no such occasion has lasted longer than 24 hours.
 - Other premises or types of performances or displays exempted by an order of the Secretary of State.

3. General Policy

Principles to be applied

3.1 Specific mandatory grounds for refusal of a licence are set out in the Act.

3.2 A licence cannot be granted:

- a) To anyone under 18 years of age
- b) To someone who has held a licence that was revoked in the last 12 months (from the date of revocation)
- c) To someone who has been refused a new or renewal of licence within the last 12 months (from the date of making the application)
- d) To an individual who is not resident in the United Kingdom or has not been resident for six months prior to making an application
- e) To a company not incorporated in the United Kingdom.

The Council has determined that the following principles will apply.

- 3.3 The Council has not set a limit on the number of sex establishments that it thinks is appropriate for any relevant locality. The Council will treat each application for the grant, refusal, renewal, transfer or variation of a licence on its merits on a case by case basis.

Other considerations

General

- 3.4 Relevant entertainment provided at the premises must not be visible to people outside the premises or passers by.
- 3.5 The Council shall have regard to all relevant considerations, including any representations received and comments made by:
- Ward Councillors
 - Police
 - Fire Authority
 - Planning Authority
 - Pollution
 - Licensing Authority
 - Interested Parties (local residents/businesses)
 - Any representations made by the applicant
- 3.6 The Council may refuse a licence if:
- a) the applicant is unsuitable to hold a licence because they have 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 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;
 - c) 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;
 - d) the grant or renewal of licence would be inappropriate having regard to:
 - i) the character of the relevant locality;
 - ii) the use to which any premises in the vicinity are put; or
 - iii) the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.

Disability Access

- 3.7 It is the policy of the Council that there should be access and facilities for disabled people at sex establishments. Licensees are therefore encouraged to provide such facilities so as to enable the admission of disabled people and are reminded of the duties imposed by the Disability Discrimination Act 1995, as amended by the Equality Act 2010.

Character of the Area

- 3.8 The Council shall not normally grant a licence to operate as a sex establishment if the character of the surrounding area to the proposed licensed premises is such that granting a licence is considered inappropriate.
- 3.9 The Council, when considering whether or not the character of the surrounding area is appropriate, may have regard to the following factors:
- The proximity of residential premises, including any sheltered housing and accommodation of vulnerable people;
 - The proximity of educational establishments to the premises;
 - The proximity of places of worship to the premises;
 - Access routes to and from schools, play areas, nurseries, children's centres or similar premises;
 - The proximity to shopping centres;
 - The proximity to community facilities/halls and public buildings such as swimming pools, leisure centres, public parks, youth centres/clubs (this list is not exhaustive);
 - The potential impact of the licensed activity on crime and disorder and public nuisance;
 - the nature and concerns of any objections received from residents or establishments;
 - any evidence of complaints about noise and/or disturbance caused by the premises;
 - any current planning considerations;
 - the proximity of other sex establishments;
 - whether there is planned regeneration of the area.

Suitability of the Applicant

- 3.10 The Council will also have regard to the suitability and fitness of an applicant to hold a licence. In determining suitability, the Council will normally take into account:
- previous knowledge and experience of the applicant;
 - any evidence of the operation of any existing/previous licence held by the applicant, including any licence held in any other local authority area;
 - 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;
 - any other relevant reason.

- 3.11 The above factors 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.
- 3.12 All applications for new licences for sex establishments, as described in the Act shall be referred to the Regulation Committee of the Council for decision.

Renewal Applications

- 3.13 Where a licence was in existence before the introduction of this Policy, this Policy will become a consideration when the licence is due for renewal.
- 3.14 When considering a renewal application the Council may take into account the criteria set out at paragraphs 3.9 and 3.10 above and:
- The type of activity to which the application relates;
 - The duration of the proposed licence;
 - The days and hours of operation of the activity;
 - The layout and condition of the premises;
 - The use to which other premises in the vicinity are put;
 - the levels of crime and disorder in the area;
 - past demonstrable adverse impact from the activity
 - whether appropriate measures have been agreed and put into effect by the applicant to mitigate any adverse impacts.
- 3.15 It should be noted that the Council in applying its decision-making discretion may consider it appropriate to refuse the renewal of the licence even where there has been no change in the character of the relevant locality or in the use to which any premises in the locality are put.
- 3.16 If a renewal application is not opposed, it shall be approved under authority delegated to relevant officer(s). All contested applications for renewal, as described in the Act shall be referred to the Regulation Committee for decision.

Variation Applications

- 3.17 Where an application is made to vary any terms and conditions of an existing licence, whether on renewal or not, the Council will take into account the criteria as set out in paragraphs 3.9, 3.10 and 3.11 above.

4. The Application Process

Making an Application

- 4.1 An application should be made in writing to:

The Licensing Section,
Wigan Council,
Town Hall,
Library Street,
Wigan,
WN1 1YN

Telephone: 01942 404627. Fax 01942 827298.

- 4.2 Applications can be made online via the Council's website at www.gov.uk/apply-for-a-licence/sex-shop-and-cinema-licence/wigan/apply-1
- 4.3 Applicants for a licence must complete the application form and submit to the Licensing Office together with:
- two sets of floor plans, 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;
 - two sets of plans showing the existing and front elevation of the premises depicting all signage;
 - two sets of plans (scale 1:500) showing the sex establishment in relation to other premises within 100 metres;
 - two sets of plans (scale 1:50) showing the layout of the sex establishment;
 - the correct fee as set by the Council.
- 4.4 Note: The above requirements regarding the submission of plans do not apply to renewal applications unless there has been a material change in the layout, structure or appearance of the premises.
- 4.5 As part of the application process, applicants are required to post an A4 notice at the proposed site for 28 days, from the date the application is lodged with the Council, setting out the application details. A specimen notice is available from the Licensing Office. The notice must be posted in a prominent position for the whole of that time and be easily read by passers-by.
- 4.6 Applicants are also required to place a public notice in a local newspaper giving details of the application. A specimen notice is available from the Licensing Office. The newspaper notice should appear in the publication within 7 days of the application being lodged.
- 4.7 Officers from the Licensing Authority and the Fire Authority will inspect the premises to ensure that the required technical standards and licence conditions are being complied with. If works are required to bring the building up to standard, the applicant will be notified. Licences will not be issued until all required works are satisfactorily completed.
- 4.8 As part of the process the Licensing Authority will also consult the Noise Pollution Section of the Council. If there is the possibility of noise nuisance, for example, from amplified music, an inspection may be carried out and noise insulation work recommended.
- 4.9 Comments on applications will also be sought from local Ward Councillors, the Police, the Fire Authority and the Planning Authority (including Building Control) and any other relevant person as deemed appropriate by the Council.

- 4.10 Applicants are warned that any person who, in connection with an application for the grant, renewal or transfer of a licence, makes a statement which he / she knows to be false in any material respect, or which he / she does not believe to be true, is guilty of an offence and liable to summary conviction to a fine not exceeding £20,000.
- 4.11 The Council will not determine an application for the grant of a licence unless the applicant allows 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.
- 4.12 Any licence approved does not constitute any approval under any other Acts. The applicant must ensure that all necessary consents and approvals are obtained prior to operation.

Renewal of Licence

- 4.13 An application to renew the licence must be made prior to the expiry of the existing licence.
- 4.14 The Council will not determine an application for the renewal of a licence unless the applicant allows 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.
- 4.15 Where, before the expiry of a licence, an application has been made for its renewal, it shall remain in force even though the expiry date has passed, until the withdrawal of the application or its determination by the Council.

Variation of Licence

- 4.16 The application form, together with relevant plans and the fee should be sent to the Licensing Office. Please note that applications for variation of licence are also subject to the site and newspaper notice requirements set out in paragraphs 4.4 and 4.5 above.
- 4.17 Variation applications relate only to proposed changes to such matters as the hours and area of the premises covered by the licence. Any changes in licensee must be the subject of a transfer application.
- 4.18 All variation applications for sex establishment licences will be referred to the Regulation Committee for decision. Applicants must not operate any revised or varied arrangements until such an application has been approved and any revised or varied licence has been issued.

Transfer of Licence

- 4.19 The Council will not determine an application for the transfer of a licence unless the applicant allows 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.

4.20 Where, before the date of expiry of a licence, an application has been made to transfer, it shall be deemed in force with any necessary modifications until the withdrawal of the application or its determination, notwithstanding that the expiry date has passed or that the person to whom the licence is to be transferred is carrying on the business of the sex establishment.

Representations on an Application

- 4.21 Any person wishing to object to an application must submit a written representation within the specified 28 day consultation period, setting out the grounds of objection.
- 4.22 The Council will balance the interests of the applicant with those of the local community in reaching a decision on a licence application. Valid representations must be made within 28 days of the application being submitted. Representations made before the application is submitted can be taken into account. The Council also has discretion to consider representations made after the 28 day consultation period although this will be assessed on a case by case basis.
- 4.23 Unless the person making a representation consents, their name and address shall not be revealed to the applicant.
- 4.24 However, the grounds of any objection must be provided to the applicant prior to the determination of the application. The report to the Regulation Committee may have full details of the objections, including any actions/undertakings proposed by the applicant to address matters raised.
- 4.25 Additionally, the applicant and any persons who made representations and who wish to attend the hearing will have the opportunity to address the Regulation Committee before the application is determined.
- 4.26 The Council shall give an opportunity of appearing before and of being heard by the Regulation Committee of the Council:
- a) before refusing to grant a licence, to the applicant;
 - b) before refusing to renew a licence, to the holder; and
 - c) before refusing to transfer a licence, to the holder and to the person to whom he desires that it shall be transferred.
- 4.27 Where the Council refuse to grant, renew or transfer a licence, it shall, if required to do so by the applicant or the holder of the licence, give him a statement in writing of the reasons for its decision within 7 days of his request.

Duration of Licence

- 4.28 Sex establishment licences will normally expire on an annual basis, but may be issued for a shorter period if deemed appropriate.