POLICY DOCUMENT

SEX
ESTABLISHMENT

SEX SHOPS
SEXUAL ENTERTAINMENT VENUES
SEX CINEMAS

Updated December 2016
Next Review Date 2021
1. **INTRODUCTION**

1.1 Sex establishment premises are regulated by Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982, as amended by section 27 of the Policing and Crime Act 2009.

1.2 The Council adopted the provisions relating to sex shops and sex cinemas on 14 May 1991, and adopted the new provisions relating to sexual entertainment venues (section 27) on 8 June 2010. The Council has delegated its statutory functions in full to its Licensing Board.

1.3 The 1982 Act, 2009 Act, can be viewed at www.opsi.gov.uk. The Home Office guidance on Sexual Entertainment Venues can be viewed on our website www.bournemouth.gov.uk

1.4 The Council appointed 28 September 2010 as the date on which the provisions relating to sexual entertainment venues came into effect (the ‘First Appointed Day’).

1.5 These Policy Guidelines have been produced to assist persons applying for a sex establishment licence, and also to assist those who may wish to oppose such applications. They set out the Council’s procedure for determining applications, and for the enforcement of sex establishment licences, but shall not limit in any way the Council’s powers under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, as amended.

1.6 Consultation on this Policy was carried out with:
   - Local residents;
   - existing holders of sex establishment licences in the Borough;
   - the statutory responsible authorities under the Licensing Act 2003;
   (A full list of all persons and bodies consulted is available on request).

1.7 This Policy will be reviewed at least every 5 years.

2. **REASONS FOR ADOPTING THE AMENDED PROVISIONS ON SEXUAL ENTERTAINMENT VENUES**

2.1 The Council has adopted the amended provisions of Schedule 3 to regulate the number of sexual entertainment venues in Bournemouth and address any local concerns about this kind of entertainment. Section 27 enables the Council to consider a wide range of community interests in determining whether to grant a licence and to manage more effectively those premises that are licensed.

2.2 The Council expects the manager, owner or other person who is responsible for the organisation or management of the sexual entertainment, or the premises, to manage and regulate the operation of such entertainment and venues properly. In addition, the Council will identify those individuals who can be held responsible should illegal activities take place.
2.3 The Council does not take a moral stand in adopting this policy; it recognises that Parliament has made it lawful to operate a sex establishment, and that such businesses are a legitimate part of the retail and leisure industries. The Council will, as a licensing authority, administer the licensing regime in accordance with the law.

2.4 The Council requires applicants for licences to complete a detailed application form. This is designed to promote transparency in these organisations and to ensure that they promote legitimate businesses. A full application also ensures that the local community is fully aware of the precise nature of the licence being sought. Private details including addresses and contact details of individuals will not be publically disclosed nor publicised in reports. Such details will be available to members of the Licensing Board and relevant officers.

3. **OTHER RELEVANT LEGISLATION**

3.1 Apart from the legal requirements of the 1982 Act (as amended) the Council will take into account its duties under other legislation.

3.2 In accordance with section 17 of the Crime and Disorder Act 1998, the Council is under a duty to exercise its functions with due regard to the likely effect on, and the need to do all it reasonably can to prevent, crime and disorder in the Borough.

3.3 The Regulators’ Compliance Code (set out under the Legislative and Regulatory Reform Act 2006) requires the Council not to impede economic progress by its regulations, and particularly to consider their impact on small businesses.

3.4 The Provision of Services Regulations 2009 require the Council to ensure that its requirements are –

- non-discriminatory;
- justified by an overriding reason relating to the public interest;
- proportionate to the public interest objective;
- clear and unambiguous;
- objective;
- made public in advance;
- transparent and accessible.

3.5 The Human Rights Act 1998 - The European Convention on Human Rights makes it unlawful for a public authority to act in a way that is incompatible with a Convention Right. The Council will take particular notice of the following relevant provisions of the European Convention on Human Rights –

- Article 6 – that in determination of civil rights and obligations everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law;
- Article 8 – that everyone has the right to respect for his home and private life;
- Article 1 of the First Protocol – that every person is entitled to the peaceful enjoyment of his or her possessions, including, for example, a licence.
3.6 In accordance with paragraph 4.21 of the Home Office guidance on Sexual Entertainment Venues, the Council will respect the need for its decisions to be necessary and proportionate for the prevention of disorder or crime, for the protection of health and morals, for the Protection of the rights and freedoms of others, and, in the case of Article 1 of the First Protocol, that its decisions can be justified in the general interest.

3.7 The Equality Act 2010 brings together over 116 separate pieces of legislation into one single Act. Combined, they make up a new Act that provides a legal framework to protect the rights of individuals and advance equality of opportunity for all.

The Act simplifies, strengthens and harmonises the current legislation to provide Britain with a new discrimination law which protects individuals from unfair treatment and promotes a fair and more equal society.

The nine main pieces of legislation that have merged are:

- the Equal Pay Act 1970
- the Sex Discrimination Act 1975
- the Race Relations Act 1976
- the Disability Discrimination Act 1995
- the Employment Equality (Religion or Belief) Regulations 2003
- the Employment Equality (Sexual Orientation) Regulations 2003
- the Employment Equality (Age) Regulations 2006
- the Equality Act 2006, Part 2
- the Equality Act (Sexual Orientation) Regulations 2007

4. DEFINITIONS

4.1 Sex establishment premises fall into one of three categories:
- sexual entertainment venues;
- sex shops;
- sex cinemas.

4.2 A sexual entertainment venue is defined in Paragraph 2A of Schedule 3 (as inserted by section 27) as ‘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 reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of an audience (whether by verbal or other means)’. An audience can consist of just one person, e.g. in a private booth.

4.3 The category ‘sexual entertainment venues’ includes the following forms of entertainment as they are commonly understood:
- lap dancing;
- pole dancing;
- table dancing;
- strip shows
- peep shows;
- live sex shows;

This entertainment is defined as 'relevant entertainment'.

4.4 This list is not exhaustive, and the Council will consider the content of the entertainment to be provided at any premises when deciding whether a licence is required.

4.5 Premises which provide relevant entertainment on an infrequent basis are not required to be licensed as a sexual entertainment venue by the Council. These exempted premises are defined as premises where –
- no relevant entertainment has been provided on more than 11 occasions within a 12 month period;
- no such occasion has begun within a period of one month beginning with the end of the previous occasions;
- no such occasion has lasted longer than 24 hours;

Such premises will continue to be regulated under the Licensing Act 2003, in so far as they are providing regulated entertainment under that Act. The Council will carefully monitor the use of the exemptions, and take firm action should there be evidence of abuse of them.

4.6 Licences for sex shops are required where the business consists to a significant degree of selling, displaying etc sex articles. 'Sex articles' are defined in the 1982 Act and include the sale of BBFC classified R18 films. The phrase 'a significant degree' is not defined, but in determining whether a business needs a licence, the Council will consider the ratio of sex articles to other aspects of the business, the absolute quantity of sales, the character of the remainder of the business, the nature of the displays, turnover, and any other factors it considers material.

4.7 Licences for sex cinemas are required where the business consists to a significant degree for the exhibition of moving pictures, which are concerned primarily with the portrayal of or 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 relate to, genital organs or urinary or excretory functions.

5. APPLICATION PROCESS AND MAKING REPRESENTATIONS

5.1 Applicants for sex establishment licenses must give public notice of the application by publishing an advertisement in a local newspaper no later than 7 days after the date the application is made. A notice must also be displayed on or near the premises in a place where members of the public can conveniently read it for a period of 21 days beginning with the date the application is made.

5.2 Where an application is made other than by means of a relevant electronic facility, the applicant must send a copy to Dorset Police within 7 days of the application being made.
5.3 Where an application is made by means of a relevant electronic facility, the Council shall send a copy of the application to Dorset Police, no later than 7 days after the date the application is received.

5.4 Objectors can include individual residents, and/or residents’ associations, community and/or trade associations. Councillors may also raise objections on their own behalf or can represent objectors. If the Councillor is also a member of the Licensing Board, and either objects on his/her own behalf or represents an objector, he/she will not be allowed to determine the application.

5.5 Persons wishing to object to the application must submit a written representation (this can be by means of an electronic facility) of the general terms of the objection not later than 28 days after the date of the application.

5.6 Persons objecting should have regard to the statutory grounds for refusal, as set out in paragraph 6. The Council does not have the right to, and will not, consider any morality issues relating to sex establishments. Consequently, objections stating that sex establishments should not be allowed on moral grounds will not be considered. Nor will objections that are frivolous or vexatious be considered. Where objections are rejected, the objector will be given a written reason.

5.7 Decisions on whether objections are on moral grounds, frivolous or vexatious will be made objectively by officers of the Council.

5.8 The names and address of objectors will not be disclosed to applicants or published in public reports in accordance with the Local Government (Miscellaneous Provisions) Act 1982. Such details will be made available to members of the Licensing Board. Objectors will be invited to speak at the hearing, where their identity will be known to the applicant. Alternatively, they may choose to elect a spokesperson to speak on their behalf, such as their local ward Councillor.

5.9 Objections should:
- be made in writing (preferably in duplicate, unless submitted electronically);
- be in black ink on single sides of A4 paper;
- indicate the name and address of the person or organisation making the representation;
- indicate the premises to which the objection relates;
- indicate the proximity of the premises to the person making the objection. A sketch map or plan may be helpful to show this;
- clearly set out the reasons for making the objection.

6. **GROUNDS FOR REFUSING AN APPLICATION**

6.1 There are 4 types of application available to the applicant:
- New
- Renewal
- Transfer
- Variation
6.2 There are a number of mandatory grounds for refusing applications and these are set out in paragraph 12 (1) of Schedule 3. A licence must not be granted:

- to a person under the age of 18;
- to a person who is for the time being disqualified due to the person having had a previous licence revoked in the area of the appropriate authority within the last 12 months;
- to a person, other than a body corporate, who is not resident in an EEA State or was not so resident throughout the period of six months immediately preceding the date when the application was made; or
- to a body corporate which is not incorporated in an EEA State; or
- 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, vehicle, vessel or stall in respect of which the application is made, unless the refusal has been reversed on appeal.

6.3 The only discretionary grounds upon which the Council may refuse an application are that the applicant for a new, renewal or transfer of a licence is unsuitable to hold a licence by reason of having been convicted of an offence or for any other reason;

- that if the licence were 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;

- for new or renewal applications only, 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 Council considers is appropriate for that locality (Paragraph 12 (3)(c) of Schedule 3);

- for new or renewal applications only, that the grant 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 (Paragraph 12 (3)(d) of Schedule 3).

6.4 The Council will have regard to the following Policy Guidelines in granting or refusing applications, but each case will be considered on its individual merits at the time that the application is determined.

6.5 The Council recognises that questions about the character of a locality and/or the use of a premises in the vicinity (when considering whether the grant or refusal of a licence would be inappropriate with reference to paragraph 12 (3)(d) of Schedule 3), must be decided on the facts and merits of the individual application at the time the application is determined.
6.6 The holder of a Licence may at any time apply for a variation of the terms, conditions or restrictions imposed on the licence. The Council may make the variation specified in the application, or make any such variations as it thinks fit, or refuse the variation application.

7. **POLICY GUIDELINES**

7.1 **LIMITING THE NUMBER OF SEX ESTABLISHMENTS IN PRE-DEFINED LOCALITIES**

7.1.1 The Council has decided to use its powers under Paragraph 12(3)(c) of Schedule 3 to define several ‘relevant localities’, and to establish how many sex establishments, or sex establishments of a particular kind, it considers appropriate in each such relevant locality. The Council will determine each application in the context of the limit that it has set.

7.1.2 There are currently 2 licensed sex shops in Holdenhurst Road, north of Bournemouth Station, and the Council considers that Holdenhurst Road from the junction with Northcote Road to the Richmond Park Road/Curzon Road junction is an appropriate location for no more than 2 sex establishments, being sex shops only.

7.1.3 There is currently 1 licensed sex shop in The Triangle. The exact details of this area are set out in the map and street listing at Appendix 1. The Council considers this area to be an appropriate location for no more than 1 sex establishment. This locality has become a more family orientated area, and the Council does not consider this area to be appropriate for the location of any sexual entertainment venue.

7.1.4 The Council has given consideration to the appropriateness of the area shown on the attached plan (Appendix 2) for the location of sexual entertainment venues. The area concerned is defined as:

- the north side of Old Christchurch Road from its junction with Yelverton Road to the west side of Lorne Park Road, and;
- the south side of Old Christchurch Road from its junction with Yelverton Road to the north side of Glen Fern Road;

There are currently 3 sexual entertainment venues in this locality. The Council considers that the appropriate number of such venues is no more than 3. The Council does not consider this area to be an appropriate locality for any sex shop.

7.1.5 The Council does not consider any other area within the Borough an appropriate location for any sex establishment.

7.2 **THE CHARACTER OF THE RELEVANT LOCALITY**

7.2.1 The Council acknowledges that the character of a locality is not something that remains static, but which can alter at any time or over a period of time. Its decision on an application will be based on its assessment of the character of a locality at the time an application is determined. The Council’s general view is that ‘locality’ is where the premises that are the subject of the application are situated, including, but not beyond, their immediate vicinity.
7.2.2 As a general rule, a locality whose character falls predominantly into one or more of the following categories will generally be considered inappropriate for the grant or renewal of a sex establishment licence:

- family and child oriented leisure or shopping areas, including the Pier Approach and seafront;
- predominantly family residential areas, with or without retail, fast food etc outlets serving the local population;

7.2.3 In considering applications for the grant of a new licence, the Council will also take account of the potential impact of the licensed activity on crime and disorder; and where there is already one or more sex establishment premises in the locality, the cumulative impact of an additional licensed sex establishment premises.

7.3 THE USE OF PREMISES IN THE VICINITY

7.3.1 The Council will generally consider it inappropriate to grant or renew a sex establishment licence if there has been a material change in the area since the grant of the licence where the proposed sex establishment is near to –

- community facilities or public buildings, including but not limited to, leisure centres, public parks and play areas, youth centres, children’s centres, sheltered housing;
- schools, nurseries and similar premises; and access routes to and from the same;
- family shopping areas;
- places of worship;
- family residential areas;

As may be relevant in any particular application, the Council will have regard to the licensee’s or proposed licensee’s operating hours or other operational requirements.

7.4 LAYOUT, CHARACTER AND CONDITION

7.4.1 With regard to an application for the grant or renewal of a licence, the Council will also take into account the layout, character or condition of the premises, vehicle, vessel or store in respect of which the application is made.

7.4.2 The Council will, in considering applications for renewal, take into account past demonstrable adverse impact from the activity; and whether appropriate measures have been agreed and properly implemented by the applicant to mitigate any adverse impacts.

8. LICENCE TERMS AND CONDITIONS

8.1 In granting an application, the Council may attach such specific conditions as it considers appropriate, in accordance with paragraph 8 of schedule 3, and standard terms and conditions in accordance with paragraph 13.

8.2 The Council has standard conditions for sex shops and sexual entertainment venues, and these are set out in Appendix 3.
9. **ENFORCEMENT**

9.1 In its consideration of the regulatory functions of local authorities, the Council will keep itself informed of developments in the work of the Better Regulation Executive and other central government bodies.

9.2 Although the Council recognises that sex establishments are not generally a source of crime or disorder within Bournemouth, routine inspections of premises will be carried out without notice. Where complaints are received, an inspection will be made, again without notice, to check compliance with the relevant legislation.