

LICENSING COMMITTEE (NON-LICENSING ACT 2003 FUNCTIONS)	Agenda Item 6 Brighton & Hove City Council
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Subject:	Sex Establishment Licensing Policy Progress Report		
Date of Meeting:	24 June 2010		
Report of:	Director of Environment		
Contact Officer:	Name:	Jean Cranford	Tel: 29-2550
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Wards Affected:	All		

FOR GENERAL RELEASE

1. SUMMARY AND POLICY CONTEXT:

- 1.1 On 5 February and 26 November 2009, the committee were apprised of the Policing and Crime Bill relating to sex establishments including lap dancing clubs.
- 1.2 There is an existing policy on sex establishments, sex shops and sex cinemas which includes standard conditions. That policy has been reviewed and extended to cover the new category of sex entertainment venue which is of course, lap dancing.

2. RECOMMENDATIONS:

- 2.1 That the committee asks officers to bring the results of the consultation and the Sex Establishment Licensing Policy to the licensing committee in November 2010.
- 2.2 That members offer any political steerage during this period.
- 2.3 That Full Council is recommended to pass a resolution specifying that amendments made by Section 27 of the Policing and Crime Act 2009 to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 shall apply to Brighton & Hove on a specified day at least one month after the day on which the resolution is made.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

- 3.1 Brighton & Hove City Council adopted Schedule 3 to the 1982 Act (Licensing of Sex Shops and Sex Cinemas). A further resolution is necessary before the provisions introduced by Section 27 of the Policing and Crime Act (Licensing of Premises as Sex Entertainment Venues) is adopted.

- 3.2 A very early draft of sex establishment licensing policy, reviewed and renewed to cover the new category of sex entertainment venue was circulated to the Licensing Strategy Group and Licensing Councillors.
- 3.3 It is likely that it will take quite a long time to come into effect because the Policing and Crime Act 2009 requires orders to be made to set first, second and third appointed days. Officers believe these probably still need commencement orders but are estimating that between May and November 2010 the council will consider adoption, between May 2010 and May 2011, we would be accepting applications and in May 2011 the Act would take effect.
- 3.4 The proposed policy and standard conditions are unchanged except numbers have been tightened by setting maximum appropriate numbers in St. James's Street (2), the station (2) and Hove (1) with nil elsewhere recognising existing arrangements and setting a standard of not normally granting more than 2 in a street. Officers have also deleted the opening times from the standard conditions as experience indicates that these serve no useful purpose and were an unnecessary obstacle to business.
- 3.5 Sex Entertainment Venues (lap dancing) – Officers suggest that committee don't take the absolute zero option (to allow our existing 3 to continue) but the policy is phrased as tightly as possible, restricting the appropriate number to three for the commercial Brighton adult leisure centre (city centre).
- 3.6 Some emerging issues include how this will affect LGBT premises and the need for an equalities impact assessment, what to do about "burlesque" which is currently fashionable and an enquiry from Lumina Leisure (the really big night clubs) about whether the new legislation catches scantily dressed podium dancers.

4. CONSULTATION

- 4.1 Early consultation was undertaken with the Licensing Strategy Group and Licensing Councillors. Brighton & Hove City Council has a new consultation portal which will be used as part of this consultation process.
- 4.2 The consultation period runs for 12 weeks starting from 15 June 2010.

5. FINANCIAL & OTHER IMPLICATIONS:

5.1 Financial Implications:

Licensing fees set at a level that officers reasonably expect will cover the cost of service provision. This will include administration and enforcement of the regime. The current sex establishment licensing fee is to be set by report elsewhere on agenda. Finance officers creating a trading account for our current sex shops consider that it is: a) justified, b) set too high and should remain static until expenditure meets income. The new sex encounter establishment licence would be part of the same regime as sex shops and it is recommended that the same fee is charged for sex shops and sex encounter establishments. There are currently 4 sex shops licensed by the council and there are 3 licensed premises that provide relevant entertainment.

Finance Officer Consulted: Karen Brookshaw

Date: 03.06.10

Legal Implications:

- 5.2 European Convention on Human Rights requires peaceful enjoyment of one's possessions and that includes licences etc and retrospective criminalization of acts, may have the same effect as protecting/grandfathering existing operators.

Lawyer Consulted: Rebecca Sidell

Date: 03.06.10

Equalities Implications:

- 5.3 New powers would allow communities more influence on location of lap dancing clubs

Sustainability Implications:

- 5.4 None.

Crime & Disorder Implications:

- 5.5 New powers would give local authorities scope to reject applications for lap dancing clubs

Risk and Opportunity Management Implications:

- 5.6 None.

Corporate / Citywide Implications:

- 5.7 Effectiveness of regulation will need monitoring. Proliferation of lap dancing clubs can affect the character of an area and concern local people.

SUPPORTING DOCUMENTATION

Appendices:

Appendix A – Draft Sex Establishment Licensing Policy

Documents In Members' Rooms:

None

Background Documents:

None

2010 Sex Establishment Policy

Introduction

The Council has a duty to promote gender equality, consider crime and disorder and ensure fair and rational determination of applications.

BRIGHTON & HOVE CITY COUNCIL POLICY FOR GRANT, RENEWAL OR TRANSFER OF LICENCES FOR SEX ESTABLISHMENTS, including sex shops, sex cinemas and sex entertainment venues (SEVs)

These are mandatory grounds for refusal.

1.1 A licence will not be granted:-

- (a) to a person under the age of 18, or
- (b) to a person who is for the time being disqualified or
- (c) to a person, other than a body corporate, who is not resident in the United Kingdom or was not so resident throughout the period of six months immediately preceding the date when the application was made, or
- (d) to a body corporate which is not incorporated in the United Kingdom, or
- (e) to a person who has, within a period of twelve 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.

These are obligatory grounds of refusal.

These are discretionary grounds for refusal. They would only be over-ridden in exceptional circumstances.

2.1 A licence will not normally be transferred in the following circumstances:-

- (a) the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason, or
- (b) that if the licence were to be 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 transfer of such a licence if he made the application himself.

2.2 A licence will not normally be granted or renewed in the following circumstances.

- (a) that the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason.
- (b) that if the licence were to be granted or renewed 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 or renewal of such a licence if he made the application himself.

The authority may determine the number of sex establishments applicable to a locality at any particular time.

3.0 **Sex shops and sex cinemas**

3.1 The Council will take into account:-

- proximity to schools and places of worship;
- proximity to community facilities and public buildings;
- cumulative adverse affects of existing sex establishments in the vicinity;
- proximity to areas with high levels of recorded crime;
- the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made, including where the sex establishment is part of a business, whether there is a separate street entrance to the sex establishment.

In order to discourage a proliferation of sex establishments and to ensure a concentration of sex establishments does not change the character of a neighbourhood to its detriment, licences will not normally be granted:

- (a) in a shopping centre or parade with an existing licensed sex establishment,
- (b) in an area of historic importance, or

(c) in any street with two or more licensed sex establishments.

3.2 A new licence will not normally be granted in the relevant locality at a time the application is made is equal to or exceeds the number the authority considers appropriate for the locality.

Locality	Appropriate number
St. James Street shopping parades	2
Brighton Station shopping parades	2
Hove shopping parades	1
All other residential, shopping, commercial, industrial land	Nil

3.3 Renewals

Licences will normally be renewed unless circumstances have changed. The following matters would be taken into account:-

- (a) levels of recorded crime and disorder linked to the licensed premises;
- (b) evidence of a demonstrable impact on neighbours' safety or amenity;
- (c) effectiveness of appropriate measures, such as conditions, to mitigate adverse impacts.

3.4 Licences will normally only be granted in predominantly commercial streets, without prejudice to considering individual applications on their merits and to the generality of paragraphs 3.0 and 3.3 above.

3.5 A sexual entertainment venue is defined as a premises where live performance or live display of nudity (pubic area, genitals, anus or women's nipples) takes place, directly or indirectly for the financial gain or the organiser (i.e. a person who is responsible for organisation of management of the entertainment or the premises), provided or permitted to be provided by or on behalf of organiser, such a nature that, ignoring financial gain, must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience (verbally or otherwise).

3.6 Applications for occasional events with restricted admissions are excepted or exempted from this general policy. This will allow the relevant committee or sub-committee to consider such applications on their individual merits, if objections are received.

3.7 Applications for mail order/internet sales only are excepted or exempted from this general policy, allowing the relevant committee or sub-committee to consider such applications on their individual merits.

3.8 Standard Conditions

All licences granted shall be subject to the Council's standard conditions.

4.0 Sex Entertainment Venues (SEVs)

This policy will apply to all applications for SEVs and will only be overridden in exceptional circumstances.

4.1 Licences for SEVs will not be granted within family residential areas, family leisure areas or retail areas where commercial occupiers argue plausibly that SEVs would lower the retail attraction of the area.

- Main shopping streets
- Areas with strong faith communities
- Educational areas
- Areas earmarked for regeneration
- Areas where VisitBrighton and tourism members and officers advise there should be no SEVs
- Areas with history of social difficulties
- Areas with high levels of recorded crime.

4.2 Licences for SEVs will not be granted within sightlines of:

- Schools, youth facilities and colleges
- Public buildings and community facilities

4.3 Except in exceptional circumstances, a new licence for a SEV will not be granted in the relevant locality at the time of the application is made is equal to or exceeds the number which the authority considers appropriate for the locality, as follows:

Locality	Appropriate number
Brighton Leisure Centre	3
Hove Commercial Centre	Nil
All other areas within the City	Nil

4.4 Guidelines

- Preference is given to adult, night time leisure areas, arterial routes with high road traffic but little retail and low footfall.
- Character changes may make formerly suitable areas cease to be so.
- Whether Burlesque is considered SEV is a matter of fact and degree, use of waiver may be considered in appropriate circumstances.
- Dual regulation with the Licensing Act 2003 (licensable activities) will be avoided. Relevant entertainment will not also be considered regulated entertainment.
- Exceptional circumstances might include where an operator can identify an un-catered for market that is not unlawful.

4.5 Policy and tacit authorisation

All applications must be properly determined tacit authorisations further to EU Services Directive will not apply.

BRIGHTON & HOVE COUNCIL

STANDARD LICENCE CONDITIONS MADE BY REGULATION FOR SEX SHOPS AND SEX CINEMAS

In these conditions reference to the Licensing Authority means the Brighton & Hove Council, and reference to Premises includes Vehicles, Vessels or Stalls.

1. The terms, conditions and restrictions attaching to the licence shall not be varied except by the Licensing Authority after written notice has been given to the Police and the Fire Authority.
2. All due precautions for the safety of the public and employees shall be taken and except with the approval of the Licensing Authority in writing, the Licensee shall retain control over all portions of the premises to which the licence applies.
3. Good order and decent behaviours shall be maintained in the licensed premises during the hours they are open to the public and the premises shall be conducted decently, soberly and in an orderly manner.
4. The Licensee or some responsible adult nominated by him in writing, and whose nomination has been approved in writing by the Council, shall be in charge of and present in the premises at all times when the public are on the premises. The person in charge shall not be engaged in any duties which will prevent him from exercising general

supervision. Nominations in writing, submitted to the Council for approval, shall include a photograph of the person to be nominated.

5. All parts of the premises to which the public are admitted and all passages, courts, corridors and stairways to which the public have access and which lead to the outside of the premises must, in the absence of adequate daylight, be illuminated by the general lighting when the public are present. Where artificial lighting is supplied for stairs, ramps, or passages external to the premises and is operated by a switch adjacent to an exit door, it need not be in continuous operation but it shall be maintained readily available for use. The general lighting shall be provided by electricity.
6. The Licensee shall comply with any reasonable fire preventative and safety measures that may be required of him by the East Sussex Fire & Rescue Authority or Licensing Authority.
7. All parts of the licensed premises shall be open to free ingress and inspection by:
 - (i) Duly authorised officers of the Licensing Authority;
 - (ii) Police Officers;
 - (iii) Officers of the Fire Authority.
8. The Licence, or a copy thereof, shall be exhibited on the premises and shall be available for inspection by any of the persons mentioned in condition 7 above.
9. Noise such as to cause persons in the neighbourhood to be unreasonably disturbed shall not be permitted to emanate from the premises.
10. The licensee shall at all times ensure that persons entering or leaving the licensed premises conduct themselves in an orderly manner and do not in any way cause annoyance to residents and persons passing by.
11. The Licensee shall take all reasonable steps to ensure that persons entering or leaving the licensed premises and using adjacent car parks and highways do not conduct themselves in a manner so as to cause annoyance to residents and persons passing by.
12. The days and times the licensed premises are open to the public and a notice indicating those premises are open or closed may be displayed upon the door leading from the street or a public place into those premises and in letters and figures not exceeding 15 mm in height and 5 mm in thickness but on no other part of the premises. The door to which this paragraph applies shall be fitted with an effective self-closing

device and remain closed at all times other than when a person is passing through it.

13. The provisions of the Indecent Displays (Control) Act 1981 shall be complied with at all times, and the warning notice defined in Section 6 of the Act of 1981 shall not be displayed on the door leading from a street or public place into the licensed premises but instead shall be displayed on a door or screen located behind or beyond it.
14. Nothing shall be permitted to be on view or visible to members of the general public from the licensed premises which would in any way indicate that the premises are a sex establishment, or that the goods, merchandise or services available therein are those defined in Schedule 3 to the above Act of 1982 as “Sex Shop”, “Sex Article”, or “Sex Cinema” and the terms of this condition shall apply to any land premises giving access to the licensed premises and shall refer to the name or title of the premises, any advertisement or notice visible outside the premises and to any sound broadcast which can be heard outside the premises.
15. Neither the Licensee nor any employee or other person shall seek to obtain custom for the Sex Shop by means of personal solicitation outside or in the vicinity of the premises.
16. No amusement or gaming machines of any kind, whether for prizes or otherwise, shall be kept or used upon the licensed premises at any time.
17. No person who is apparently under the age of eighteen years, or who is known to any person connected with the licensee’s business and present on the licensed premises to be under that age, shall be admitted to or allowed to remain on those premises.
18. The Licensing Authority reserve the power after the grant or renewal or transfer of this licence at any time to dispense with or modify or relax any of these terms, conditions and restrictions, and to make such additional terms, conditions and restrictions as they may deem requisite to meet the circumstances of any particular case.
19. The Licence may be revoked by the Licensing Authority if at any time the holder is convicted of any offence of using the licensed premises, or other premises for which a similar licence has been granted, other than in accordance with the terms, conditions or restrictions of the licence or is convicted of any offence under any enactment defined in paragraph 1 of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982.

Prescribed standard conditions made by regulations for SEVs

1. No persons under 18 will be admitted to the premises. The premises will operate a 'Challenge 25' scheme, whereby anyone who appears to be aged 25 or younger is asked for photographic ID to prove their age. The only ID that will be accepted are passports, a driving licence with a photograph or Portman Group proof of age cards bearing the 'PASS' mark hologram. The above list of acceptable proof of age items may be extended to other forms of ID on the future with advance written agreement of the Police without the need to review the actual licence. The Challenge 25 rule and the stipulated forms of acceptable age identification will be clearly stated both on the premises website and on all membership applications, booking forms, customer contractual documents and promotional literature etc. In addition the licensee will provide a photographic identification system for all entrants to the premises. Recordings to be provided to the police at the request.
2. No under 18's events will be hosted anywhere on the premises at any time.
3. Whilst striptease entertainment is taking place, no customer under 18 shall be on the premises and clear notices shall be displayed at the entrance to the premises in a prominent position so that it can easily be read by persons entering the premises in the following terms:

NO PERSONS UNDER 18 TO BE ADMITTED
ENTERTAINMENT WITHIN THESE PREMISES INVOLVES
A FORM OF NUDITY
IF YOU ARE LIKELY TO BE OFFENDED, PLEASE DO NOT ENTER

4. No intoxicating liquor shall be supplied for consumption off the premises
5. The only form of relevant entertainment which is approved and may be provided at the premises is striptease entertainment in the form of tableside and pole dancing by club dancers only.
6. The approved striptease entertainment shall be given only by the performers and entertainers and no audience and no audience participation shall be permitted
7. There shall be no physical contact between the customer and the dancer, with the exception of shaking hands with a customer and/or leading a customer by the hand from a seated area to a booth for a private dance. In addition and with the exception of the above, there shall be no deliberate physical contact between the customer and the dancer, either immediately before, during or after a dance.
8. Dancers shall only perform on the stage area or at a tableside to seated customers. All booths will have adequate lighting to ensure the safety of the dancer and to ensure that both the member / guest / audience and the performer are adhering to the Club rules at all times. A SIA licensed door supervisor will have a full and unrestricted view of any dancer performing in a booth at all times.
9. There shall be no physical contact between dancers whilst performing

10. Dancers may never give out personal information, including telephone numbers, email addresses or other contact details to audience members. Dancers may never accept any telephone number, addresses, business card or any other information from any customer.
11. The private booths will be designed in such a way that there can be no curtain or other visual barrier that can be pulled across the entrance, this concealing activities inside the booth area. The booths will be designed in such a way that the door supervisors / security staff can see into the booths to ensure the safety of the dancers performing inside and to ensure that the club rules are being strictly adhered to at all times.
12. All dancers / performers will be aged over 18 years of age and legally entitled to work in the UK before they perform at the Club. Copies of all dancers files will be made available to the Police Licensing for inspection upon request.
13. The licence holder shall ensure no dancers are trafficked, exploited or controlled for another's gain.
14. Where possible all dancers will be escorted from the premises at the end of each evening to their transport (eg taxis) to ensure their personal safety and security
15. Members and their guests may not at any time take photographs, film, video or mobile phone photographs or footage of performers.
16. The Licensee will ensure that there is no display outside the premises of photographs or other images that indicate or suggest that striptease or similar entertainment takes place on the premises.
17. Any promotional website for the premises must comply with A.S.A regulations and will not display photographs or other images of topless or nude performers, or show photographs or other images that may reasonably be construed as offensive. The website will include a clear requirement stating the challenge 25 proof of age.
18. Promotional literature. Any promotional literature circulated outside of the premises will not display photographs or other images of topless or nude performers, or show photographs or other images or words that may reasonably be construed as offensive. All promotional literature will include clear statements as to the requirements for challenge 25 proof of age.

All Sex Establishments

Hearing Procedures

New applications will be determined by Licensing Panel (Licensing Act 2003) (Licensing sub-committee). The usual hearing procedures for Licensing Panel will apply, accommodating provisions for objectors set out in paragraphs 9 of Schedule 3 to Local Government (Miscellaneous Provisions) Act 1982 concerning the objectors' names and addresses. Notice of hearing should be sent to all parties prior to hearing.

Applicant and objectors will have an opportunity to be heard.

A notice of hearing will be sent to all parties.

Renewal applications will normally be granted unless circumstances have changed. The Director of Environment is delegated authority to determine renewal applications.

Where there is any possibility that an application may be refused, the applicant must be given the opportunity to be heard by the Licensing Panel.

Any reasons for refusal will be notified orally as soon as possible and in a written statement within 7 days.

