

APPENDIX A

LICHFIELD DISTRICT COUNCIL

PROPOSED POLICY FOR SEXUAL ENTERTAINMENT VENUES

1. Introduction

- 1.1 Lichfield District Council (“the Council”) is able to regulate and control sex establishments under the powers provided by Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 (“the 1982 Act”), in relation to sex shops and sex cinemas.
- 1.2 On 6 April 2010 the Policing and Crime Act 2009 (“the 2009 Act”) came into force and amended Schedule 3 to the 1982 Act by adding Sexual Entertainment Venues (“SEVs”) as a category of sex establishments in order to enable local authorities to regulate those premises which provide lap dancing, pole dancing, table dancing, strip shows, peep shows and live sex shows and other similar entertainment.
- 1.3 The Council resolved on2013 to adopt the new amendments with effect from 2013. As a result it is necessary to introduce a new policy which is to apply to SEVs within Lichfield District.
- 1.4 The policy will be reviewed on a regular basis and revised where necessary.
- 1.5 The underlying principle of the policy is that each application for a SEV licence will be dealt with on its own individual merits.
- 1.6 Notwithstanding matters contained within this policy, consideration will also be given to the provisions of the Human Rights Act 1998 and the Home Office Guidance issued in March 2010 entitled “Sexual Entertainment Venues – Guidance for England and Wales” when considering applications for SEVs.
- 1.7 The Council does not take a moral stance in approving this policy. The Council recognises that Parliament has made it lawful to operate sex establishments and that such businesses are a legitimate part of the retail and leisure industry. It is the Council’s role as a Licensing Authority to regulate such premises in accordance with the law.

2. **Sexual Entertainment Venues**

- 2.1 A SEV is defined in the 2009 Act as “any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer”.
- 2.2 The meaning of ‘relevant entertainment’ is “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)”.
- 2.3 These definitions would apply to the following forms of entertainment [as they are commonly known]: lap dancing; pole dancing; table dancing; strip shows; peep shows, live sex shows and any sexual entertainment of a similar nature.
- 2.4 The 2009 Act provides exemptions from the definition of SEVs as follows:
- Sex shops and sex cinemas (which are separately defined in Schedule 3 to the 1982 Act).
 - Premises which provide relevant entertainment on an infrequent basis. These are detailed 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.
- 2.5 Premises which provide regulated entertainment on an infrequent basis will continue to be regulated under the Licensing Act 2003 (‘the 2003 Act’) insofar as they are providing regulated entertainment under that Act either by virtue of a premises licence or club premises certificate or a temporary event notice.
- 2.6 In practice this means that the vast majority of lap dancing clubs and similar venues will require both a SEV licence for the provision of relevant entertainment and a premises licence or club premises certificate for the sale of alcohol or provisions of other types of regulated entertainment not covered by the definition of relevant entertainment.
- 2.7 Live music or the playing of recorded music which is integral to the provision of relevant entertainment such as lap dancing for which a SEV licence is required is specifically excluded from the definition of regulated entertainment in the 2003 Act. Therefore, a SEV will not require a premises licence or club premises certificate under the 2003

Act merely because it plays recorded music for a performer to dance to.

3. **Waivers**

- 3.1 Schedule 3 to the 1982 Act makes provision for the Council to grant a waiver from the requirement to hold a sex establishment licence in any case where it considers that to require a licence would be unreasonable or inappropriate. A waiver may be for such a period as the Council thinks fit.
- 3.2 The Council however, does not generally consider it would be appropriate to permit waivers from the requirements to hold a sex establishment licence in respect of SEVs, particularly as the legislation allows relevant entertainment on an infrequent basis of no more than 11 occasions within a 12 month period, providing there is at least one month between each period of entertainment.
- 3.3 Whilst each application for a waiver will be considered on its own merits by the Licensing (Miscellaneous) Committee, in light of the exemption in relation to the provision of relevant entertainment on an infrequent basis the Council takes the view that waivers are unlikely to be appropriate in relation to relevant sexual entertainment and would therefore only be considered in exceptional circumstances.

4. **Determination of an Application**

- 4.1 All applications for the grant, renewal, variation or transfer of an SEV licence will be determined by the Council's Regulatory and Licensing Committee ("the committee").
- 4.2 The 1982 Act provides five mandatory grounds and four discretionary grounds for the refusal of a SEV licence. Each application will be determined on its own individual merits and the committee will give clear reasons for its decisions. Any decision to refuse a licence **MUST** be relevant to one or more of the following grounds set out in paragraphs 5.1 and 5.2 below:

5. **Grounds for refusal**

- 5.1 The Act provides that a licence cannot be granted on the following mandatory grounds:
- (a) to any person under the age of 18 years;
 - (b) to any 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;
 - (c) to any 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

- (d) to a body corporate which is not incorporated in an EEA State; or
- (e) to any person who has, within a period of 12 months immediately preceding that date when the application was made, been refused that 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.

5.2 The following are discretionary grounds for refusal :

- (a) the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reasons;
- (b) 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/she made the application himself/herself;
- (c) the number of sex establishments, or of sex establishments of a particular kind, in the relevant locality at the time which the authority consider is appropriate for the locality;
- (d) that the grant or renewal of the licence would be inappropriate, having regard:
 - (i) to the character of the relevant locality; or
 - (ii) to the use to which any premises in the vicinity are put; or
 - (iii) to the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.

6. **Suitability of an Applicant**

6.1 With regard to paragraphs 5.2(a) and (b) above, insofar as the unsuitability of an applicant to hold a licence is concerned, the committee will normally consider the following criteria:

- that the operator is honest.
- that the operator is qualified by experience to run the type of sex establishment in question.
- that the operator understands the general conditions.
- that the operator is proposing a management structure which delivers compliance with the operating conditions e.g. through managerial competence, presence, a credible management structure, enforcement of rules internally, a viable business plan and policies for the welfare of performers.
- that the operator can be relied upon to act in the best interests of performers e.g. in how they are remunerated, the facilities they enjoy, how they are protected and how and by whom their physical and psychological welfare is monitored.

- that the operator can be relied upon to protect the public e.g. transparent charging, freedom from solicitation.
- that the operator can show a track record of management of compliant premises, or that he/she will employ individuals who have such a track record.

7. **Number of Sexual Entertainment Venues**

- 7.1 As set out within paragraph 5.2(c) above, the committee may refuse an application if it is satisfied that the number of sex establishments in the relevant locality at the time the application is made is equal to or exceeds the number which the authority consider is appropriate for that locality. The committee does have the power to determine that the appropriate number for a particular locality is nil.
- 7.2 In determining the appropriate number of sex establishments for a particular locality the committee will consider each application on its own individual merits.

8. **Relevant Locality**

- 8.1 With reference to paragraph 5.2(d) above, 'relevant locality' for the purposes of paragraph 12 of Schedule 3 of the Act means, in relation to the premises, the locality where they are situated.
- 8.2 In considering whether the grant, renewal or variation of a SEV licence would be appropriate, having regard to the character of the relevant locality or to the use of which any premises in the vicinity are put, the committee will consider, among other things, the following :
- (a) The proximity and position of the premises in relation to any -
- schools, or other establishments for the education, training or care of young persons, including youth clubs or similar establishments ;
 - leisure centres, libraries or other buildings used by the community for sporting or other activities ;
 - nearby residential dwellings ;
 - places of public religious worship
 - buildings of historical or cultural interest or tourist attractions ;
 - play areas
- (b) The general nature and character of the locality
- (c) The number of any licensed sex establishments already in the area at the time the application is made
- 8.3 The committee will determine the extent of each locality on a case by case basis taking into account the particular circumstances in each case.

8.4 The committee shall have regard to this policy when determining applications for SEV licences, subject to the overriding principle that each application will be determined on its own merits.

9. Planning Permission

9.1 Applicants for SEV licences in respect of permanent commercial premises will be required to produce planning consent for the premises concerned.

Draft December 2012
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