

Sex Establishment Policy

December 2011



Contents

1. Preface

2. Introduction

3. The Policy

4. Commenting on Applications

5. Application Process

Appendix A – Standard Conditions

1. Preface

- 1.1 Telford & Wrekin Council has adopted Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 (as amended by section 27 of the Policing and Crime Act 2009) (otherwise referred to in this document as the Act) so that it can licence sex shops, sex cinemas and sexual entertainment venues in the Borough. In this policy, we refer to these as sex establishments unless specified otherwise.
- 1.2 The role of the Council in its position as Licensing Authority is to administer the licensing regime in accordance with the law and not in accordance with any moral standing. The Council recognises that Parliament has made it lawful to operate a sex establishment and such businesses are a legitimate part of the retail and leisure industries.
- 1.3 The Local Government (Miscellaneous Provisions) Act 1982 ('the 1982 Act') and the Policing and Crime Act 2009 ('the 2009 Act') can be viewed in full at www.opsi.gov.uk
- 1.4 A consultation on this policy was undertaken between 6th May 2011 and was formally adopted by the Licensing Committee on 29th July 2011

2.Introduction

- 2.1 The aim of this policy is to provide guidance for prospective applicants, existing licence holders, those who may wish to object to an application and Members of the Licensing Committee when making a determination on an application.
- 2.2 While each application will be dealt with on its own merits, this policy gives prospective applicants an early indication as to whether their application is likely to be granted or not. It also provides prospective applicants with details of what is expected of them should an application be made.
- 2.3 There is a wide range of sports and leisure facilities in Telford & Wrekin including an ice rink, exhibition centre, museums and the Ironbridge Gorge World Heritage Site (WHS).
- 2.5 The night-time economy encompasses a range of activities for inhabitants of and visitors to the Borough. It comprises pubs and clubs, cinemas, theatres, cafés and restaurants etc. It is supported by public transport, taxis and many public services such as the police, council services such as cleaning, refuse collection, planning and licensing, and impacts upon the health service.
- 2.6 The growth of the night time economy as a whole has been taken into account in formulating this policy, and in particular the continuing expansion of various areas of the Telford & Wrekin area, such as the Southwater Development.
- 2.7 The promotion and advancement of the night time economy will be actively pursued by partnership working, responsible retailing and management, increased training and the promotion of good practice.
- 2.8 This policy recognises that the diversity of the local community enriches the Borough, contributes to its social and economic prosperity, and that all members of the community have a right to equality of opportunity, fairness and access.
- 2.9 Applicants and licensees must have due regard to the requirements of the **Equality Act 2010**
- 2.10 The Equality Act 2010 section 20 requires applicants and licensees to take such steps as it is reasonable to avoid putting disabled people at a disadvantage caused by a physical feature, e.g. design or construction of a building, exit or access to a building and fixtures and fittings etc.
- 2.11 The Council expects applicants to be aware of and comply with all legislation relating to unlawful discrimination.
- 2.12 The Council is under a duty to protect the rights of residents to privacy and family life under **Article 8 of the European Convention on Human Rights**.

At the same time, the Council must recognise the right of legitimate businesses to operate their premises without unnecessary restraint.

- 2.13 The Council is duty bound to consider the rights that applicants for licences may have under Article 10 (right to freedom of expression) and Article 1, Protocol 1 (protection of property) of the European Convention on Human Rights.
- 2.14 This policy has taken into account the Telford & Wrekin Equality and Diversity Policy and the Equality Act 9 protected characteristics; Age, Disability, Gender reassignment, Marriage and civil partnership, Race, Religion or belief, Sex, Sexual orientation, in its formulation.

3 The Policy

3.1 Definition of a Sex Establishment

A sex establishment is defined under the Act as a sex shop, a sex cinema or a sexual entertainment venue.

It includes any premises, vehicle, vessel or stall used as a sex establishment but does not apply to the sale, supply or demonstration of articles which are manufactured for use primarily for the purposes of birth control or primarily relate to birth control.

3.1.1 Sex Cinema

1) 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

iii) 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.

2) No premises shall be treated a sex cinema by reason only—

a) If they may be used for an exhibition of a film (within the meaning of paragraph 15 of schedule 1 of the Licensing Act 2003) by virtue of an authorisation (within the meaning of section 136 of that Act), of their use in accordance with that authorisation; or

b) Of their use for an exhibition to which section 6 of that Act (certain non-commercial exhibitions) applies given by an exempted organisation within the meaning of section 6 (6) of the Cinemas Act 1985.

3.1.2 Sex Shop

1.1 A sex shop means 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.
- 2) 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.

3.1.3 Sex Article

- 3) A sex article means—
- a) anything made 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;
 - b) anything to which sub-paragraph 4 below applies.
- 4) This sub-paragraph applies to —
- a) 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
 - b) any recording of vision or sound 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.

3.1.4 Sexual Entertainment Venue

A Sexual Entertainment Venue is any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer.

- 1) In this paragraph relevant entertainment means-
- a) any live performance; or
 - b) any 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 the audience (whether by verbal or other means).

2) The following are not sex encounter venues: -

a) sex cinemas and sex shops;

b) premises at which relevant entertainment is provided as mentioned in sub-paragraph (1) no more than eleven times within 12 months, not longer than 24 hours on each occasion and more than one month between each event; or

c) premises specified or described in an order made by the relevant national authority

3) The relevant national authority may by order amend or repeal paragraph 3(b) above

4) For the purposes of this Schedule references to the use of any premises as a sexual entertainment venue are to be read as references to their use by the organiser.

5) Other definitions:

‘audience’ includes an audience of one;

“relevant entertainment” means any live performance or any 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 the audience (whether by verbal or other means).

“display of nudity” means—

(a) in the case of a woman, exposure of her nipples, pubic area, genitals or anus; and

(b) in the case of a man, exposure of his pubic area, genitals or anus;

“the organiser”, in relation to the provision of relevant entertainment at premises, means any person who is responsible for the organisation or management of—

(a) the relevant entertainment; or

(b) the premises;

“premises” includes any vessel, vehicle or stall but does not include any private dwelling to which the public is not admitted;

“relevant national authority” means— in relation to England, the Secretary of State;

and for the purposes of sub-paragraphs (1) and (2) it does not matter whether the financial gain arises directly or indirectly from the performance or display of nudity.”

3.2 Suitability and Locality

3.2.1 Paragraph 12 of Schedule 3 to the 1892 Act provides specific grounds for refusing a licence some of these reasons include:-

- 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) at the time the application is determined, the number of sex establishments, or sex establishments of a particular kind in the relevant locality is equal to or exceeds the number which the authority consider appropriate for that locality.
- c) The grant or renewal 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 to the layout, character or condition of the premises.

3.2.2. The Premises must be situated within the mixed use zones of District Centres within the Borough of Telford & Wrekin.

3.23 The Council may decide, with reference to a particular locality, notwithstanding the application fulfilling the above criteria, that the appropriate number of Sex Establishments in that locality should be nil.

3.3 Length of Licence

Unless there are exceptional circumstances a licence will be granted for a maximum of 12 months.

3.4 Granting a Waiver

The 1982 Act contains provisions that permit the Licensing Authority to grant a waiver from the requirement to hold a sexual entertainment licence. However we do not consider that it would be appropriate to grant such waivers, particularly as the legislation allows relevant entertainment on an infrequent basis of no more than eleven occasions within a 12 month period.

3.5 Application Form

We have a standard application form, including public notices, which are available on request from the Licensing Service, telephone 01952 383264, or email Licensing@telford.gov.uk or off the Council's website www.telford.gov.uk.

3.6 Fees

Our fees are set each year and details are available from the Licensing Service (as 3.5 above).

3.7 Conditions

If Members of the Council's Licensing Committee are minded to grant an application they may prescribe conditions relating to:

- The Hours of opening and closing.
 - Display or advertisements on or in such an establishment.
 - The visibility of the interior of the establishment to passers by.
 - Such other terms and conditions and restrictions that are to be standard on all Licences.
 - Any other condition that it is felt necessary for a particular application.
- Standard conditions which may be attached to licences are attached at Appendix A.

4. Commenting on Applications

- 4.1** The 1982 Act permits a wide range of persons to raise objections about sexual entertainment licences. Objectors can include residents, resident associations, trade associations, businesses, Councillors (providing they do not sit on the Licensing Committee) or MP's. The Police are a statutory consultee for all applications.
- 4.2** The Licensing Authority will not consider objections that are frivolous or vexatious or which relate to moral grounds (as these are outside the scope of the 1982 Act). When deciding whether an objection is frivolous or vexatious officers will do so in an objective manner and not on the basis of any political judgement.
- 4.3** Where objections are rejected the person(s) making the objection will be given written notification of why their objection was rejected. A report will be presented to the Licensing Committee determining the application, indicating the general grounds of the representations and the reason it was rejected.
- 4.4** As a general rule an objection will be considered vexatious where it is repetitive, without foundation or is made with malice. An objection will be considered frivolous if it lacks seriousness.
- 4.5** Unless being submitted electronically objections should be in writing. All objections should indicate the name, and address of the person or organisation making the objection and clearly set out the reasons for making the objections. (Objector's names and address are not revealed to the applicant without the specific consent from the person(s) or organisation making the objection.)
- 4.6** Objections will be considered by Members of the Licensing Committee determining the application. The applicant will be informed in general terms of any objections received in respect of his application. A copy of the order of proceedings for the hearing will be sent to the applicant and any objectors prior to the hearing.

5 Application Procedure

- 5.1 All applications will follow the following procedure:-
- 5.1.1 Application received by the Licensing Service. Application is checked to ensure that it complies with the requirements laid down in the Act.
 - 5.1.2 Arrangements made for applicant and officers to attend the site to view premises and its locality.
 - 5.1.3 Formal Hearing – A report detailing the application and any objections to be presented to the Licensing Committee at a Public Hearing in accordance with established procedures.
 - 5.1.4 Decision by Members of the Licensing Committee taken in private session.
 - 5.1.5 The decision of the Licensing Committee will be given to the Public Hearing.

Contact Details

For information, advice and guidance relating to licensing and the application process please contact;



Licensing Service
Telford & Wrekin Council,
Darby House,
Lawn Central,
Telford,
TF3 4LB

Telephone: 01952 383262/383264

Fax: 01952 381993

Email: licensing@telford.gov.uk

www.telford.gov.uk

Appendix A

Standard Conditions

Notes : Nothing in these conditions shall be construed as interfering with (i) the discretion of the licensee or his representative regarding the admission of any person or (ii) the need to strictly comply with all relevant statutory requirements.

Definition

In these Regulations save when the context otherwise requires the following expressions shall have the following meaning:

“Sex Shop”, Sex Cinema and “Sex Article” shall have the meanings prescribed to them in the Third Schedule of the Local Government (Miscellaneous Provisions) Act 1982.

“Premises” means a building or part of a building and any forecourt yard or place of storage used in connection with a building or part of a building which is the subject of a licence for a Sex Establishment granted under the said Third Schedule.

“Approval of the Council” or “Consent of the Council” means the approval or consent of the Council in writing.

“Approved” means approved by the Council in writing.

“The Council means the Borough of Telford & Wrekin.

Sex Shops

1. Access to premises

1.1 Access must be afforded at all reasonable times to authorised officers of the council and the police and fire services.

2. Management and Staffing of the Licensed Premises

2.1 Where the licensee is a body corporate or an unincorporated body any change of director, company secretary or other person responsible for the management of the body is to be notified in writing to the Licensing Authority within fourteen days of such change and such written details as the Licensing Authority may require in respect of any new director, secretary or manager are to be furnished within fourteen days of a request in writing from the council.

2.2 A person shall only be approved for the purposes of the foregoing condition if the Licensing Authority considers him or her to be a suitable person to have control of the premises.

2.3 At all times during which the premises are open to the public, one or more approved persons shall be present on the premises and shall be responsible for their management.

2.4 No person under the age of 18 shall be admitted to the licensed premises or employed by the licensee to work at the licensed premises.

2.5 The licensee shall operate a Challenge 21 Policy and persons under the age of 21 shall be required to show proof of ID.

2.6 Neither the licensee nor any employee or other person shall seek to obtain custom for the licensed premises by means of personal solicitation, by means of flyers, handouts or any like thing, outside or in the vicinity of the licensed premises.

2.7 The copy of the licence and these conditions shall be displayed in accordance with paragraph 14(1) of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 in a conspicuous position at the premises for the customers to see.

3 External Appearance

3.1 No advertisements or other notices or items shall be displayed so as to be visible from the exterior of the premises, subject to conditions in 3 above.

3.2 The council shall approve the design of the front elevation of the establishment.

3.3 No external signage or displays should be made without prior approval of the Council

3.4 The exterior and entrance to the licensed premises shall be suitably screened so as to prevent any part of the interior being visible from outside the premises.

3.5 On the external facing of the inner door, there shall be displayed a notice in accordance with the requirements of the Indecent Displays (Control) Act 1981 namely:

“WARNING

Persons passing beyond this notice will find material or activities on display which they may consider indecent. No admittance to persons under 18 years of age”

3.6 All items sold or hired from the premises shall be wrapped or contained in such a way that the contents and source of purchase is not identifiable.

- 3.7 There shall be displayed above the entrance or main entrance to the premises hereby licensed a notice in permanent form in letters not less than 2" high nor more than 3" high stating the name of the licensee of the said premises and that the said premises are licensed under Section 2 and Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as a Sex Shop.
- 3.8 All windows, doors or other means by which the interior of the premises would otherwise be visible to any person lawfully using any street, highway, close, yard, court, footpath or place to which the public has access for the time being shall be obscured or screened in such a way as to prevent the interior of the said premises being visible to any such said persons.

4 Maintenance and Repair

- 4.1 The licensee shall take appropriate measures to ensure that refuse and discarded sex articles or waste stock from the premises are kept secure from public accessibility pending removal from site.
- 4.2 Alterations or additions either internal or external and whether permanent or temporary to the structure, lighting or layout of the premises shall not be made except with the prior approval of the Council.
- 4.3 The external doors to the Premises shall be fitted with a device to provide for their automatic closure and such devices shall be maintained in good working order.

Sex Cinemas

1. Access to premises

1.1 Access must be afforded at all reasonable times to authorised officers of the council and the police and fire services.

2. Management and Staffing of the Licensed Premises

2.1 Where the licensee is a body corporate or an unincorporated body any change of director, company secretary or other person responsible for the management of the body is to be notified in writing to the Licensing Authority within fourteen days of such change and such written details as the Licensing Authority may require in respect of any new director secretary or manager are to be furnished within fourteen days of a request in writing from the council.

2.2 A person shall only be approved for the purposes of the foregoing condition if the Licensing Authority considers him or her to be a suitable person to have control of the premises.

2.3 At all times during which the premises are open to the public, one or more approved persons shall be present on the premises and shall be responsible for their management.

2.4 No person under the age of 18 shall be admitted to the licensed premises or employed by the licensee to work at the licensed premises.

2.5 The licensee shall operate a Challenge 21 Policy and persons under the age of 21 shall be required to show proof of ID.

2.6 No film shall be exhibited, unless it has been passed by the British Board of Film Classification or it has been classified by Telford & Wrekin Council and bears a certificate to that effect.

2.7 Neither sex articles nor other things intended for use in connection with, or for the purpose of stimulating or encouraging sexual activity or acts of force or restraint which are associated with sexual activity shall be sold, hired, exchanged, or loaned in a Sex Cinema.

2.8 No fastenings of any description shall be fitted upon any booths or cubicles set aside for the display of films.

2.9 Lighting in all parts of the premises as approved by the Council shall be in operation continuously during the whole of the time that the premises are open to the public.

2.10 The licensee shall ensure that during the hours the premises are open for business every employee wears a badge of a type to be approved by the Council indicating his name and that he is an employee.

2.11 Neither the licensee nor any employee or other person shall seek to obtain custom for the licensed premises by means of personal solicitation, by means of flyers, handouts or any like thing, outside or in the vicinity of the licensed premises.

2.12 The copy of the licence and these conditions shall be displayed in accordance with paragraph 14(1) of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 in a conspicuous position at the premises for the customers to see.

3. External Appearance

3.1 There shall be displayed above the entrance or main entrance to the premises hereby licensed a notice in permanent form in letters not less than 2" high nor more than 3" high stating the name of the licensee of the said premises and that the said premises are licensed under Section 2 and Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as a Sex Cinema.

3.2 The exterior and entrance to the licensed premises shall be suitably screened so as to prevent any part of the interior being visible from outside the premises.

3.3 On the external facing of the inner door, there shall be displayed a notice in accordance with the requirements of the Indecent Displays (Control) Act 1981 namely:

"WARNING

Persons passing beyond this notice will find material or activities on display which they may consider indecent. No admittance to persons under 18 years of age"

3.4 No external signage or displays should be made without prior approval of the Local Authority.

3.5 All windows, doors or other means by which the interior of the premises would otherwise be visible to any person lawfully using any street, highway, close, yard, court, footpath or place to which the public has access for the time being shall be obscured or screened in such a way as to prevent the interior of the said premises being visible to any such said persons.

3.6 No such signs or notices shall be illuminated in any other way than to provide illumination during hours of darkness to the satisfaction of the local authority.

Sex Entertainment Venues

1. Access to premises

1.1 Access must be afforded at all reasonable times to authorised officers of the council and the police and fire services.

2. Management and Staffing

2.1 Where the licensee is a body corporate or an unincorporated body any change of director, company secretary or other person responsible for the management of the body is to be notified in writing to the Licensing Authority within fourteen days of such change and such written details as the Licensing Authority may require in respect of any new director, secretary or manager are to be furnished within fourteen days of a request in writing from the council.

2.2 A person shall only be approved for the purposes of the foregoing condition if the Licensing Authority considers him or her to be a suitable person to have control of the premises.

2.3 Neither the licensee nor any employee or other person shall seek to obtain custom for the licensed premises by means of personal solicitation, by means of flyers, handouts or any like thing, outside or in the vicinity of the licensed premises

2.4 The Licensee shall ensure that the public are not admitted to any part or parts of the premises other than those which have been approved by the Local Authority. Doors and openings which lead to areas of the premises to which the public are not permitted to have access shall have notices placed over them marked "Private".

2.5 The person in charge shall not be engaged on any duties which will prevent him from exercising general supervision and he shall be assisted as necessary by suitable adult persons to ensure adequate supervision. The person in charge should be conversant with these conditions, a copy of which should be held on the premises.

2.6 A notice showing the name of the person in charge of the premises at the time they are open under the licence shall be conspicuously exhibited in a position where it can be easily seen by customers.

2.7 All members of staff shall be easily identifiable as such. If required by the Licensing Service in writing, the licensee shall ensure that during the hours the premises are open for business every employee or person (apart from, where employed, hostesses or other companions) working in the licensed premises wears a badge of a type approved by the Council indicating his name and that he is an employee or person working in the premises.

- 2.8 No person under the age of 18 shall be admitted to the licensed premises or employed by the licensee to work at the licensed premises.
- 2.9 The licensee shall operate a Challenge 21 Policy and persons under the age of 21 shall be required to show proof of ID.
- 2.10 An appropriate room, to be agreed in writing with the Local Authority, shall be set aside to provide a changing and rest area for entertainers. Arrangements shall be made to ensure that there is restricted access to this room which shall be maintained at all times whilst the licensable activities are taking place and until such time as all performers using the dressing room have finished.
- 2.11 Only the performers shall provide the entertainment, no audience participation shall be permitted.
- 2.12 The copy of the licence and these conditions shall be displayed in accordance with paragraph 14(1) of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 in a conspicuous position at the premises for the customers to see.

3.External Appearance

- 3.1 On the external facing of the inner door, there shall be displayed a notice in accordance with the requirements of the Indecent Displays (Control) Act 1981 namely:

“WARNING

Persons passing beyond this notice will find material or activities on display which they may consider indecent. No admittance to persons under 18 years of age”

- 3.2 No external signage or displays should be made without prior approval of the Local Authority.

4.Tariffs

- 4.1 There shall be prominently and legibly displayed a comprehensive tariff of all charges and prices which shall be illuminated and placed in such a position that it can easily and conveniently be read by persons before entering the premises. No employee shall stand in such a position as to obscure the notice.
- 4.2 No order shall be accepted unless the customer has been provided with a copy of the said tariff and has been given sufficient time and opportunity to read it.
- 4.3 No charge shall be made to the customer for any drink provided for the hostess or companion unless that customer has specifically ordered it having first been made aware of the cost.

5..Special Risks and Special Effects

- 5.1 Any activity which involves special risks, and special effects, (e.g. lasers, dry ice and smoke machines, strobe lighting, real flame and pyrotechnics), or the bringing onto the premises of any explosive or flammable substance may only be permitted or used with the Licensing Authority's prior consent in writing. At least seven days' notice shall be given for an application for consent under this rule. Full details of what is proposed shall be given in writing to the Licensing Authority.

6.CCTV

- 6.1 The licensee shall install a CCTV system covering all of the licensed area. This system shall be linked to a date and time recording facility. This CCTV system shall be maintained in good working order and shall operate at all time when the premises are open.

7.Door Supervisors

- 7.1 A minimum of 2 Security Industry Authority door supervisors shall be on duty when the premises are open to the public.
- 7.2 The door supervisors should be positioned so that a door supervisor is present at all times on the entrance to the premises. At least 1 door supervisor should patrol the public areas and should monitor the interaction between any performer and their customer.
- 7.3 Where the premises has more that one entrance then there must be at least one door supervisor per entrance.
- 7.4 A written record should be kept of all door supervisors employed and this record should have, at the minimum, the following information: Name, SIA badge number, time shift started, time shift finished, signature, date.