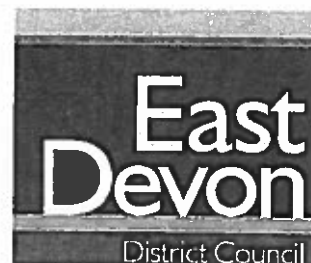


Date 7 June 2011  
Contact number: 01395 517544  
E-mail: [clane@eastdevon.gov.uk](mailto:clane@eastdevon.gov.uk)  
Our Ref: Chris Lane



To:  
Members of the Licensing & Enforcement Committee  
(Councillors David Atkins, Roger Boote, Peter Burrows, Bob Buxton,  
Madeleine Chapman, Steve Gazzard, Pat Graham, Steve Hall,  
John Jeffery, Jim Knight, Ken Potter, Philip Skinner, Pauline Stott,  
Tom Wright, Mark Williamson)

Corporate Legal & Democratic Services Manager  
Assistant Solicitor  
Licensing Manager  
Licensing Officer

East Devon District  
Council  
Knowle  
Sidmouth  
Devon  
EX10 8HL  
DX 48705 Sidmouth  
Tel: 01395 516551  
Fax: 01395 517507

**Meeting of the Licensing & Enforcement Committee  
Tuesday 14 June 2011 at 9.30am in the Council Chamber, Knowle, Sidmouth**

Members of the public are welcome to attend this meeting when items listed under Part A of the agenda are being considered. For the benefit of Councillors and members of the public a hearing loop system will be in use in the Council Chamber.

**A G E N D A**

- |   | Page/s  |
|---|---------|
| 1 To confirm the minutes of the meeting held on 3 March 2011.   | 3 - 5   |
| 2 To receive any apologies for absence.   |         |
| 3 To receive any declarations of interests relating to items on the agenda.   |         |
| 4 To consider any items which, in the opinion of the Chairman, should be dealt with as matters of urgency because of special circumstances.<br><br>(Note: Such circumstances need to be specified in the minutes; any Member wishing to raise a matter under this item is requested to notify the Chief Executive in advance of the meeting). |         |
| 5 To agree any items to be dealt with after the public (including the press) have been excluded. (There are no items which the Officers recommend should be dealt with in this way).  |         |
| 6 Committee Update - Licensing Act 2003, Gambling Act 2005, Taxis & General Licensing.  | 6 - 16  |
| 7. Policing and Crime Act 2009 – Draft Sexual Entertainment Venue and Sex Establishment Licensing Policy  | 17 – 61 |



# EAST DEVON DISTRICT COUNCIL

## Minutes of a Meeting of the Licensing & Enforcement Committee

Held at Knowle, Sidmouth on Tuesday, 1 March 2011

**Present:**

Councillors:

Chris Gibbings (Chairman)  
Steve Hall (Vice Chairman)

Roger Boote  
Pat Graham  
Jim Knight  
Frances Newth

Ken Potter  
Pauline Stott  
Mark Williamson

**Officers:**

John Tippin, Licensing Manager  
Giles Salter, Assistant Solicitor  
Chris Lane, Democratic Services Officer  
Neil McDonald – Licensing Officer

**Apologies:**

Councillors:  
David Atkins  
Ray Bloxham  
May Hardy  
John Humphreys  
Ann Liverton

The meeting started at 9.30 am and ended at 11.20 am.

\*17 **Minutes**

The minutes of the meeting of the Licensing & Enforcement Committee held on 23 November 2010, were confirmed and signed as a true record.

\*18 **Declarations of interest**

Councillor/ Officer	Agenda Item	Type of interest	Nature of interest
Councillor Jim Knight	19 – Committee update – Licensing Act 2003, Gambling Act 2005 and General Licensing	Personal	Chairman of charity in Seaton that held Street Trading events on the seafront.
Councillor Roger Boote	21 – How the proposals in the Police Reform and Social Responsibility Bill are likely to change the Licensing Act 2003 and the possible effects on the District.	Personal	Personal Licence Holder.

Councillor Chris Gibbings	21 – How the proposals in the Police Reform and Social Responsibility Bill are likely to change the Licensing Act 2003 and the possible effects on the District.	Personal	Personal Licence Holder.
---------------------------	--	----------	--------------------------

**\*19 Committee update – Licensing Act 2003, Gambling Act 2005 and General Licensing**

Consideration was given to the report of the Licensing Manager, which provided Members with an update on the activities of the Licensing Service under the Licensing Act 2003, Gambling Act 2005 and Taxi Legislation together with other general licensing matters. Members noted that the number of premises licences in East Devon had continued to fall during this quarter but five new premises licence applications and a new club certificate were currently being processed by the Licensing Team.

Members of the Licensing Team had visited two fairground amusement arcades on 5 November in Ottery St Mary as part of the routine visit for the Tar Barrels event. Both arcades had machines that were advertised for sale and both arcades had Category C machines which were not authorised for use on fairgrounds. In both cases the fairground owners were questioned and immediately agreed to make the unauthorised machines unavailable for use. Advice was given regarding the unauthorised sale of the machines.

It was reported that the new Taxi Ranks for both Exmouth and Honiton had now been completed. However, the rank in Victoria Road, Exmouth had been put into place with only two spaces, not the agreed four. The Licensing Service had been assured by Devon County Council that this would be rectified. The new rank in Honiton had been finalised, increasing the spaces from two vehicles to seven. This was a big improvement on the previous situation and comments from local taxi drivers had been very favourable. A solution to the rank issues in Honiton had taken over twelve years to resolve. No representations had been received to the proposed increases to Hackney Carriage fares following the publication of the required newspaper notice; the amended fare table came into effect on 8 December 2010.

Members reported on problems they had experienced with an Exmouth taxi firm contravening the one way system in the London inn car park. They were using a short cut and going out the wrong way against the traffic. There was also an issue with the two hackney carriage rank spaces outside Capel's fish restaurant in Imperial Road which were used as parking spaces by the general public frequenting Capel's. This often prevented their use by hackney carriage vehicles. The Licensing Manager reported that both these issues raised by Members would be monitored by the Licensing Service.

**RESOLVED** that the report be noted.

**20 Policing and Crime Act 2009 – Draft Sexual Entertainment Venue and Sex Establishment Licensing Policy** (Minute 16 of 23 November 2011 refers)

The Licensing Manager reported that the Committee at its meeting on 23 November 2011 had recommended that the Council adopt the legislation to regulate Sex Entertainment Venues as Sex Establishments under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982. On 9 December 2010 the Council adopted the recommendation which came into effect from 1 February 2011. There was now a transitional period of twelve

20 **Policing and Crime Act 2009 – Draft Sexual Entertainment Venue and Sex Establishment Licensing Policy (Cont)**

where existing operators could apply for licences under the new legislation.

Members noted the draft Sex Establishment Policy which was proposed for public consultation. If this was approved the consultation would commence immediately and the results would be reported to the next meeting of the committee on 14 June 2011.

**RESOLVED** that the report be noted.

**RECOMMENDED** that the Draft Sex Establishment Licensing Policy be approved for public consultation.

\*21 **How the proposals in the Police Reform and Social Responsibility Bill were likely to change the Licensing Act 2003**

Members received a presentation by John Tippin, Licensing Manager on how the proposals in the Police Reform and Social Responsibility Bill were likely to change the Licensing Act 2003. This Bill had received its second reading in the Commons on 13 December 2010 and had gone through the Committee stage on 20 February 2011. It would now proceed to the Lords and was likely to become law in April 2011. The Bill proposed amending the Licensing Act 2003 to assist with controlling noise nuisance and giving communities greater say in licensing conditions.

John Tippin, Licensing Manager was thanked for his presentation.

**RESOLVED** that the report be noted.

Chairman ..... Date .....



## Agenda Item 6

**Licensing & Enforcement Committee**

**14 June 2011**

**JT/NM/DJ/JL**

### **Committee Update -**

**Licensing Act 2003, Gambling Act 2005, Taxis & General Licensing**

### **Summary**

The report provides an update on the activities of the Licensing Service under the Licensing Act 2003, Gambling Act 2005 and Taxi legislation together with other general licensing matters.

### **Recommendation**

**That the report be noted**

#### **a) Reasons for Recommendation**

To keep the Council's statutory committee up to date with current arrangements and statistics relating to the Licensing Service.

#### **b) Alternative Options**

Not Applicable

#### **c) Risk Considerations**

Failure to provide an efficient licensing service may result in complaints or legal challenges being made against the Licensing Authority.

#### **d) Policy and Budgetary Considerations**

None

#### **e) Date for Review of Decision**

Not Applicable

---

## **1 Licensing Act 2003**

### **1.1 Licences Issued and Notices Given**

1.1.1 The numbers of licences issued and notices given since the last update report to the Committee are set out in Appendix A.

## 1.2 Premises Risk Ratings

- 1.2.1 As reported previously the visits to licensed premises identified on the risk rating system has been limited due to the reduction in staff following the departure of the Senior Licensing Officer from the team and the additional work required to process the applications and licences transferred from the Environmental Health Department to the Licensing Service. However the end of year results show that more than 80% of the high-risk premises have been visited by licensing officers. The visits to high-risk premises will continue this year and will start with the outstanding premises that were not visited from last year's list.

## 1.3 Enforcement

- 1.3.1 A co-ordinated multi agency approach to complaints received has secured swift resolutions without the need for formal enforcement action.
- 1.3.2 Resulting from the current economic situation the police licensing sections are currently being reviewed by the Devon and Cornwall Constabulary and the numbers of police licensing officers in the force are expected to be cut by up to 50%. If such cuts are made this may well affect the availability of a trained police licensing officer for joint enforcement work which has proved extremely valuable in recent years.

## 1.4 Hearings

- 1.4.1 The numbers of hearings held since the last update report to Committee are set out in **Appendix A**.

## 1.5 Applications Received and Notices Given

- 1.5.1 The numbers of applications received and notices given are set out in **Appendix A**.
- 1.5.2 The trend of a reduction in the number of premises licences in East Devon has changed during the last quarter with a number of new premises licences being issued.
- 1.5.3 On 15 March 2011 the Licensing Sub Committee heard its first review hearing requested by the police against Seasons, 9 Silver Street, Ottery St Mary. The review was called following the detection of unlicensed activities taking place at the premises during the Tar Barrel Event last year (2010). Following the hearing the committee suspended the premises licence for seven days.
- 1.5.4 The licensing section together with the legal team has successfully recovered two years worth of outstanding annual fees due from a public house in the Exmouth area. The outstanding fees (including costs) were recovered through the courts and by the use of the court bailiff. It is unfortunate that the Licensing Act does not allow a licence to be revoked or suspended for non-payment of the annual fee and any non-payment can only be recovered as a civil debt. However this may change in the future if new provisions currently in the Police Reform and Social Responsibility Bill are passed by Parliament.
- 1.5.5 It is pleasing to note that despite the financial situation the list of premises owing outstanding fees has been reduced and currently stands at eight premises. When licence holders fail



to pay their annual fees following a number of reminder letters from the Accountancy Section Council Licensing Officers have to act as unofficial debt collectors. Fortunately over the years we have been successful with only this one occasion where we have needed to involve the court.

## **1.6 Police Reform and Social Responsibility Bill**

1.6.1 The Police Reform and Social Responsibility Bill is now making heavy weather through the committee stage in the House of Lords and is expected to become law in the autumn of this year. However the regulations are not expected to be available until Spring 2012. The time scale is longer than observers originally anticipated and this is largely due to the controversy over elected Police Commissioners. The Licensing Manager provided a short presentation on the proposals to members on the 1 March. A further presentation will be offered once there is more certainty with the date of introduction as well as confirmation of what is finally agreed.

## **2 Gambling Act 2005**

### **2.1 Licences Issued and Notices Given**

2.1.1 The numbers of licences issued and notices given since the last update report to Committee are set out in **Appendix B**.

2.1.2 The process for issuing club machine permits to replace expired Part III registration certificates issued by the magistrates' courts with club machine permits is now complete. This means that transition from the old court licensing regime to the Council regime is now complete.

### **2.2 Premises Inspections and Risk Ratings**

2.2.1 A scheme of inspection, report and risk assessment has now been completed in consultation with the Gambling Commission and Partner Agencies. The final modification needed to link the data into LalPac – the Council's licensing software is also complete. The relevant data fields are in the process of being populated to measure premises risk assessments.

### **2.3 Enforcement**

2.3.1 Following from the detection of unauthorised gaming machines at fun fairs last year plans are in place this year to visit fun-fairs where it is suspected that illegal gaming machines are available for use.

### **2.4 Hearings**

2.4.1 The numbers of hearings held since the last update report to Committee are set out in **Appendix B**.

### **2.5 Applications & Notifications received**

2.5.1 The numbers of applications and notifications received since the last the update report to Committee are set out in **Appendix B**.





### **3 Taxis**

#### **3.1 Licences Issued**

3.1.1 The numbers of Licences issued since the last update report to Committee are set out in **Appendix C**.

#### **3.2 Enforcement**

3.2.1 The Licensing Team has continued the education based enforcement and monitoring approach to the Hackney Carriage and Private Hire drivers and vehicles as we have used with the Licensing Act. Close liaison is maintained with partner agencies and the taxi trade to ensure that the principles of consistency, transparency and proportionality are maintained.

3.2.2 Officers continue to plan and carry out enforcement operations within the district with the police and other partner agencies. There have been no operations in relation to taxi and private hire enforcement since the last report however an operation is planned for the summer period.

#### **3.3 Hearings**

3.3.1 Since the last update report to Committee there have been no hearings in relation to hackney carriage and private hire issues.

#### **3.4 Applications received**

3.4.1 The number of applications received since the last update report to Committee is set out in **Appendix C**.

#### **3.5 Taxi Rank Update**

3.5.1 **Exmouth** – At the Committee's last meeting in March you were advised that all the ranks the Committee had approved had been put in place except for two spaces in Victoria Road. This rank should have been able to accommodate four vehicles but had only been marked out for two. As agreed by Devon County Council this has now been rectified. There still remains a small problem with the main Strand rank as the rank users have found the squared off ends to this rank are not user friendly and difficult to negotiate. Some of the drivers that regularly use the rank claim the awkward manoeuvre required negotiating the ends of the rank often put their taxis in danger. It is hoped to set up a site meeting with Devon County Council and representatives of the trade together with members of this Committee to discuss the possibility of splayed ends to the Strand rank and an extension of the Victoria Road rank.

3.5.2 **Honiton** – As reported at the March committee meeting the new taxi ranks for Honiton have all been put in place. These have been well received and the taxi trade in Honiton have indicated that they are very please with the results.



## **4. General Licensing including Animal Licensing and Skin Piercing**

### **Animal, Skin Piercing and Scrap Metal Dealers Licensing Statistics**

- 4.1 The statistics relating to animal, skin piercing and scrap metal dealer licensing since the last update report to Committee are set out in **Appendix D**. These statistics include, where relevant, the numbers of licences issued, the number of hearings held and the number of applications received.
- 4.2 Members may be interested to know that we now have three Zoo licences in the District and a further application was received in March from Axe Valley Bird and Animal Park for a fourth licence. This application is currently going through the somewhat complicated application process set by legislation but it is anticipated a licence will be issued in a month or two after the Secretary of State's zoo inspector provides the Council with his report. Members may be interested to learn that Cricket St Thomas Park near Chard closed its zoo section over the winter and some of the animals have been transferred to Axe Valley Bird and Animal Park.

## **5. Street Trading**

- 5.1. The statistics relating to street trading since the last update report to Committee are set out in **Appendix E**. These statistics include, where relevant, the numbers of permits issued, the number of hearings held and the number of applications received.
- 5.1.1 The pitches for street trading on Sidmouth sea front have now been allocated for Folk Festival Week 2011. The pitches have again proved very popular and a reserve waiting list is in place. Enquiries are still being received concerning street trading during the festival and it is expected to be another busy event. A total of 60 pitches have been allocated.

## **6. Consultations and Partnership Working**

### **6.1 Meeting between Members, Taxi Proprietors and Officers**

- 6.1.1 The recent twice yearly liaison meeting between Members, representatives of the taxi trade and officers took place on Thursday 2 June at the Knowle, Sidmouth. A copy of the minutes of that meeting will be circulated to Members at your meeting on the 14 June. The next meeting with the taxi trade has been booked for **Wednesday 26 October at 2.00 pm** in the Council Chamber, Knowle, Sidmouth. The Committee's Chairman and Vice Chairman normally attend these meetings.

### **6.2 Police Staffing Reductions**

- 6.2.1 The police plans to greatly reduce the numbers of dedicated civilian Licensing Officers means that numerically the number of police licensing officers covering the district will reduce from two officers to one and this remaining officer will also have responsibility for the Mid Devon area as the single officer based in Tiverton is also to be lost. This reduction will be further compounded as the police administration staff member based in Exmouth will be transferred to one of two proposed 'hubs' in the Exeter and



Plymouth areas. Not only will these reductions mean that more responsibility for enforcement will have to fall on the District Council but also locating police licensing staff away from the district is certainly likely in time to lead to a reduction in ownership and local knowledge by the remaining staff.

## **7. Member Training**

- 7.1 A well attended training morning was held for members of this Committee on Thursday 2 June 2011. The subjects covered were the Licensing Act 2003, Sub Committee hearings and decision-making. It is planned that further training opportunities will be provided, time permitting, following your quarterly Committee meetings. I will provide a session on taxi licensing following the Committee meeting on Tuesday 14 June. The session will finish at the latest by 1300 hours.
- 7.2 I am in the process of arranging Devon wide training for members of Licensing Committees. I hope that Philip Kolvin, a leading licensing barrister and silk will accept an invitation for the autumn to provide two training days in the county at Sidmouth and Plymouth. These will be two identical days at least two weeks apart which will give all Licensing Members the opportunity to attend one venue. Those who have already had the opportunity to attend one of Philip's sessions will I am sure agree they shouldn't be missed. Although both sessions are designed for Councillors I already have lawyers asking for a place. As soon as I have confirmed dates I will circulate them to you but at this time I expect them to be during the period October/November.

## **Legal Implications**

## **Financial Implications**

---

John Tippin Ext. 2787  
Licensing Manager

Licensing & Enforcement Committee  
14 June 2011



**Licensing Act 2003**Licences Issued and Notices Given

	<b>Apr-11</b>	<b>Jan-11</b>	<b>Changes</b>
Premises Licences	585	578	7
Club Premises Certificates	59	60	-1
Personal Licences	1,537	1,490	47
Temporary Event Notices including sale or supply of alcohol	3,508	3,299	209
Temporary Event Notices Entertainment and/or Late Night Refreshment only	320	295	25

Hearings

	<b>Feb-11</b>	<b>Mar-11</b>	<b>Apr-11</b>
Hearings where no agreed position has been reached	0	1	0
Hearings held to approve an agreed position	0	0	2

Applications Received and Notices Given

	<b>Feb-11</b>	<b>Mar-11</b>	<b>Apr-11</b>
Grant of a Premises Licence	4	2	3
Variation of a Premises Licence	1	0	0
Transfer of a Premises Licence	1	2	0
Change of Designated Premises Supervisor	9	7	9
Minor Variations	2	1	4
Grant of a Personal Licences	6	13	6
Personal Licence Change of name or address	5	4	6
Temporary Event Notices given	51	57	69

**Gambling Act 2005**Licences Issued and Notices Given

	<b>Apr-11</b>	<b>Jan-11</b>	<b>Changes</b>
Premises Licences	13	13	0
Small Society Lotteries	175	184	-9

Hearings

	<b>Feb-11</b>	<b>Mar-11</b>	<b>Apr-11</b>
Hearings held	0	0	0

Applications Received and Notices Given

	<b>Feb-11</b>	<b>Mar-11</b>	<b>Apr-11</b>
Applications for a Permit	0	0	1
Application for a Licence	0	0	0
Notification of Intent to have Gaming Machines	1	2	1
Occasional Use Notices (Point to Point Betting)	0	1	1

**Taxis**Licences Issued

	<b>Apr-11</b>	<b>Jan-11</b>	<b>Changes</b>
Hackney Carriages	164	161	3
Private Hire Vehicles	14	27	-13
Hackney Carriage Drivers	217	212	5
Private Hire Drivers	24	41	-17
Private Hire Operators	10	14	-4

Hearings

	<b>Feb-11</b>	<b>Mar-11</b>	<b>Apr-11</b>
Hearings	0	0	0

Applications Received

	<b>Feb-11</b>	<b>Mar-11</b>	<b>Apr-11</b>
Hackney Carriage Licence (including renewals, transfers & vehicle changes)	3	5	2
Hackney Carriage Drivers Licence (including renewals)	4	3	1
Private Hire Vehicle Licence	0	0	2
Private Hire Vehicle Drivers Licence	0	0	7
Private Hire Operators Licence	0	0	3



**EH Licensing**Total Number of Licences

	<b>Apr-11</b>	<b>Jan-11</b>	<b>Changes</b>
Animal Home Boarding	20	20	0
Kennels/Catteries	20	19	1
Pet Shops	14	12	2
Dangerous Wild Animals	2	2	0
Zoo	3	2	1
Ear-Piercing	14	13	1
Electrolysis	14	14	0
Riding Establishments	9	8	1
Tattooing	9	9	0
Motor Salvage Operators	4	1	3
<u>TOTAL</u>	109	100	Jan-00

Hearings

	<b>Feb-11</b>	<b>Mar-11</b>	<b>Apr-11</b>
Hearings	0	0	0

Applications Received

	<b>Feb-11</b>	<b>Mar-11</b>	<b>Apr-11</b>
	6	6	8

**General Licensing****Permits Issued**

	<b>Apr-11</b>	<b>Jan-11</b>	<b>Changes</b>
Street Collections	169	144	25
Street Collection cancellations	12	0	12
House to House	7	0	7
Street Trading	0	0	0
Street Trading (Charitable)	3	0	3

**Hearings**

	<b>Feb-11</b>	<b>Mar-11</b>	<b>Apr-11</b>
Hearings	0	0	0

**Applications Received**

	<b>Feb-11</b>	<b>Mar-11</b>	<b>Apr-11</b>
	18	30	9

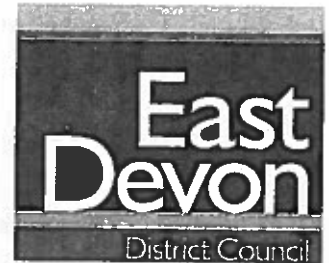
---

## Agenda Item 7

Licensing & Enforcement Committee

14 June 2011

JT



### **Local Government (Miscellaneous Provisions) Act 1982 as amended by the Policing and Crime Act 2009 – Sex Establishment Licensing Policy and Standard Conditions Adoption**

#### **Summary**

The report summarises a request for approval of a draft Sex Establishment Licensing Policy and for approval.

This report updates the Licensing & Enforcement Committee on the consultation on the draft Sex Establishment Licensing Policy including the results of the consultation process and invites the Committee to recommend that the Council adopt the amended draft Sex Establishment Licensing Policy at its next meeting on the 27 July 2011.

#### **Recommendation**

That the Committee:

1. Note the results of the public consultation undertaken on the Council's draft Sex Establishment Licensing Policy under the Local Government (Miscellaneous Provisions) Act 1982 as amended by the Policing and Crime Act 2009 and
2. Recommend to Council at its meeting on the 27 July 2011:
  - a. That the East Devon Sex Establishment Licensing Policy, as attached at Appendix 1, be adopted by the Council with immediate effect,
  - b. That the Standard Conditions for Sex Shops and Sex Entertainment Venues set out in the attached Appendices 3 & 4, be adopted by the Council with immediate effect and
  - c. That it agrees the licensing fees on the attached Appendix 5 including the rider to allow for the refund of part of the contested hearing fee where the hearing fee paid by the applicant exceeds the Council's costs relating to the hearing and any subsequent appeal.

#### **a) Reasons for Recommendation**

The legislation does not require the Council to have a policy relating to the licensing of Sex Establishments however it is regarded as good practice to have a policy to indicate the Authority's approach to licensing premises of this type within its area.

#### **b) Alternative Options**

To amend the proposed policy within the legal limitations which apply or not to have a policy.

**c) Risk Considerations**

N/A

**d) Policy and Budgetary Considerations**

Schedule 3 to the 1982 Act states that an application for the grant, renewal or transfer of a sex establishment licence shall pay a reasonable fee determined by the appropriate authorities, but does not expand on what would be considered to be reasonable. It is anticipated that there will be very few applications in the District for Sex Establishment licences. However any application for a licence is expected to attract opposition and therefore additional expense due to extra committee time and possible appeal.

**e) Date for Review of Decision**

N/A

---

**1 Background**

- 1.1 On the 23 November 2010 this committee considered a report by the Licensing Manager recommending the adoption of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended by the Policing and Crime Act 2009. The effect of adopting this Schedule was to require that all sex establishments including sex shops, sex cinemas and sex entertainment venues within the District would require licensing by the District Council. The District Council has since 1983 required that all sex shops and sex cinemas should be licensed and the effect of the recommendation was to include sex entertainment venues also.
- 1.2 Following consideration of that report this Committee recommended to Council that Schedule 3 should be adopted as amended by Section 27 of the Policing and Crime Act 2009.
- 1.3 On 9 December 2010 Council adopted the recommendation which came into effect on the 1 February 2011.
- 1.4 There is now a transitional period of twelve months where existing operators (of which there is one in the District) can apply for licences under the new legislation. There is no automatic "grandfather rights" as there were under the Licensing Act 2003 and the Gambling Act 2005. If an existing operator is granted a licence it will not take effect until the end of the twelve-month transitional period (3<sup>rd</sup> appointed day). Until that date the business will be allowed to continue to operate under its existing premises licence or club certificate.
- 1.5 New applicants can also within the first twelve months apply to the Licensing Authority for a Sex Establishment licence. However no application, for new or existing operators, can be determined before a six-month period has elapsed from the date the adoption took effect (1<sup>st</sup> appointed day). For easy reference the day at the end of the first six-month period is referred to as the '2<sup>nd</sup> appointed day'. The requirement for no applications to be considered before the expiry of the first six months of the transition period is to ensure that applicants are given sufficient time to submit their applications and all applications received on or before the 2<sup>nd</sup> appointed date will then be



considered on their individual merit and not on first come first serve basis. In East Devon's case the 2<sup>nd</sup> appointed date is the 1 August 2011.

- 1.6 The legislation does not require the Council to have a policy relating to the licensing of Sex Establishments however it is regarded as good practice to have a policy to indicate the Authority's approach to licensing premises of this type within its area. A draft policy was prepared for consultation and appears as **Appendix 1** to this report and sets out the policies the Council will generally apply when making decisions on applications. The document also explains the application process and provides information on what is expected of applicants. In addition it explains the processes by which representations may be made about an application.
- 1.7 The Licensing and Enforcement Committee meeting on the 1 March 2011 approved the draft policy for consultation. The document was made available for consultation on the 1 March 2011. Complying with the HM Government Code of Practice on Consultation the period for consultation ended on the 25 May 2011. However Exmouth Town Council has asked for an extension because their usual meeting schedule has been disrupted by the recent local government elections. Their views are awaited and with the Committee's permission any comments received from the Town Council and any other consultation comments received which are not included within this report will, if there is sufficient time, be circulated to members prior to the meeting. If that is not possible they will be reported to members during the meeting on the 14 June.
- 1.8 This report presents the Licensing Policy and the results of the public consultation.

## **2. Results of consultation**

- 2.1 Consultation was conducted with Parish and Town Councils within the District, local residents, the statutory responsible authorities and holders of premises licences under the Licensing Act 2003 and Chambers of Commerce within the District. A letter or email was sent to each of the consultees inviting them to make comment on the Policy. They were given the choice of downloading a PDF copy of the draft Policy from the District Council's website or requesting a printed copy to be sent out by post. A copy of the draft policy was placed on the Council's internet site with a general invitation to take part in the consultation.
  - 2.1. Very few comments have been received to date. Those that have been received are listed in the table at **Appendix 2** to this report. Column 6 (far right) in the document indicates whether a change is proposed to the draft Policy as a result of the consultee's comment.
  - 2.3 Although no major changes are recommended as a result of the consultation exercise I have identified a need to amend the draft policy. During the preparation of the draft Standard Sex Establishment Licensing Conditions it became apparent that there is a need for CCTV within sexual entertainment venues and possibly in sex shops as well. During 2010 this Committee agreed a CCTV Standards Policy following close liaison between District Council Officers and the Police. That policy has since been incorporated into the Council's Licensing Act 2003 Licensing Policy and it would seem good practice to align the Sex Establishment Licensing Policy in the same way. As a result the CCTV Standards Policy, slightly amended to meeting the different requirements of this licence

type, has been incorporated in the draft policy at **Appendix 1** and appears as **Appendix C** to that appendix (page 27).

### **3. Fees**

- 3.1 On the 9 December 2010 Council approved the fees set out in the table at **Appendix 5** for the licensing of Sex Establishments within East Devon. Since that date concern has been expressed at the high fees by a representative of the owner of Lush, the Exmouth business that has been operating as a lap-dancing venue. The suggestion has been levelled that the high fees could be directed towards a discouragement to apply for a licence.
- 3.2 The legislation permits the Council to set a 'reasonable fee'. While this appears to give a wide discretion, the European Services Directive ensures that the fee is limited to cost recovery. Our own (British) Provisions of Service Regulations effectively replicate the provisions of the directive, 'Local Authorities must set fees that are proportionate to the effective costs of the procedure dealt with'. Other government guidance goes on to say that fees should not be used as an economic deterrent to certain activities or to raise funds.
- 3.3 It is anticipated that any initial application for the grant of a licence under this legislation would face considerable opposition which would be costly to the Council in respect to hearings and possible appeals. It is at this initial application stage where objections are most likely. As a result I recommended to Council last December that the fee for the initial application be £6,000 which is based on the estimated costs of an opposed application for a licence under the Licensing Act 2003 which went to Magistrates Court appeal recently in South Devon.
- 3.4 The fee of £6,000 is made up of two parts and includes £4,000 which would be refunded if there were no contested hearing. On reflection the additional fee level set where there is a contested hearing is based on an almost worse case scenario and some contested hearings should not cost the Council as much as £4,000. If this occurred the Council could face criticism that at the very least it was using the fees to raise additional funds.
- 3.5 In view of this concern I recommend that the licensing fees agreed by Council on the 9 December 2010 should not be changed but that a rider be added that in the case of all contested grant and variation applications the Council's costs would be reviewed within 28 working days following the finalisation of the application process including any appeal. The review to be carried out by the Licensing Manager together with the Head of Finance and the Chairman of the Licensing and Enforcement Committee and where it was found that the Council's costs associated with the contested application were less than the £4,000 contested fee the difference will be refunded to the applicant.

### **4 Standard Conditions**

- 4.1 The legislation provides two separate but linked routes to the imposition of conditions. The first is the imposition of standard conditions. The second is the imposition of conditions tailored to the individual case.





- 4.2 Conditions play an important role in attaining the objectives of the legislation and in achieving the standards which the authority demands of licensed premises. They amount to a code of conduct for management and a clear set of rules to which staff may set out to adhere.
- 4.4 The legislation permits Councils to prescribe standard conditions applicable to licences for sex establishments. Standard conditions act as default conditions. A set of Standard Conditions for Sex Shops and Sex Entertainment Venues has been prepared and appear as **Appendix 3 and 4** respectively. These are based on a set of conditions collated by the Devon Licensing Officers' Group. These have since been amended following Torbay's consultation with the Sex Establishment businesses in their area. The East Devon police licensing officers and the owner of Lush have been asked for their views on the proposed conditions and these are awaited. If they are received in time they will be report to your meeting.
- 4.5 Standard Conditions act as default conditions. Meaning that there is a presumption that every licence granted, renewed or transferred is subject to such conditions, unless the conditions have been expressly excluded or varied. Therefore, an applicant who does not wish to be saddled with certain conditions would need to indicate as such at the time of making the application.

## Legal Implications

The legal framework is clearly set out within the report and requires no further comment.

## Financial Implications

A prudent approach to the 2011/2012 budget did not set any budget income level. When monitoring the actual income received there is a need to be aware of the possibility of refunds as outlined in the report.

## Appendices

- |                          |   |            |
|--------------------------|---|------------|
| <input type="checkbox"/> | Draft Sex Establishment Licensing Policy for adoption | Appendix 1 |
| <input type="checkbox"/> | Consultation Representations and Responses            | Appendix 2 |
| <input type="checkbox"/> | Standard Sex Shop Conditions                          | Appendix 3 |
| <input type="checkbox"/> | Standard Sex Entertainment Venue Conditions           | Appendix 4 |
| <input type="checkbox"/> | Fees  | Appendix 5 |

## Background Papers

- Report to Committee dated 23 November 2010 recommending adoption of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended by the Policing and Crime Act 2009
- Report to Committee dated 1 March 2011 requesting agreement to consult on a draft Sex Establishment Licensing Policy
- Policing and Crime Act 2009
- Local Government (Miscellaneous Provisions) Act 1982
- Sexual Entertainment Venues – Home Office Guidance for England and Wales (March 2010)

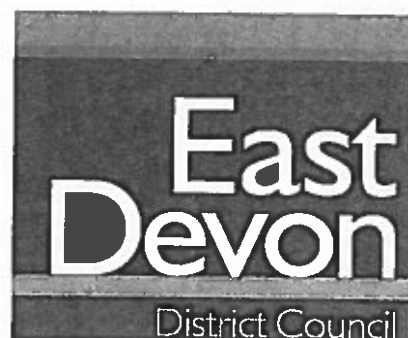


---

John Tippin Ext 2787  
Licensing Manager

Licensing & Enforcement Committee  
14 June 2011





**DRAFT Sex Establishment Licensing Policy Document February 2011**  
Published by

**Licensing Service**  
**Legal, Licensing & Democratic Service**  
**East Devon District Council**  
**Council Offices, Knowle**  
**Sidmouth, Devon**  
**EX10 8HL**  
**Tel: 01395 517410/517411**

<http://www.eastdevon.gov.uk/licensing>



# Contents

	Page
<b>Foreword</b>	9
<b>1.0 Introduction</b>	10
Definition of Sex Establishment	10
Geographical Location	10
Policy Development	11
Consultation	12
Amendment to Policy	12
Exchange of Information	12
Further Information	13
<b>2.0 Primary Considerations</b>	14
<b>3.0 The Application and Determination Process</b>	15
Making an Application	15
Duration of Licences	15
Commenting on Licence Applications	15
Determination of Applications	16
Conditions	17
Opening Hours	17
Refusal of Licences	17
Mandatory Grounds for Refusal	18
Discretionary Grounds for Refusal	18
Revocation of Licences	18
Cancellation of Licences	19
Appeals	19
<b>4.0 Complaints and Enforcement</b>	20
<b>Appendices</b>	
A Definition of Terms	21
B Requirements for Applying for Grant, Variation, Transfer or Renewal of a Sex Establishment Licence	24
C CCTV Standards Policy	27

## Foreword

This Licensing Policy sets out East Devon District Council's requirements for premises to be licensed as sex establishments within the meaning of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended by section 27 of the Policing and Crime Act 2009). This legislation shall be referred to thereafter as 'the Act'.

Section 2 of the Act provides that local authorities may resolve that Schedule 3 will apply to their area, which has the effect of requiring premises operating as sex establishments in that authority's area to be licensed. The adoption of Schedule 3 also allows the Council to set terms and conditions and fees for the grant, renewal, variation and transfer of such licences and the number of licences that may be issued in the area, which may be nil.

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. It is the Council's role as a Licensing Authority to administer this licensing regime in accordance with the law.

## 1.0 Introduction

- 1.1 East Devon District Council with effect from the 1 January 1983 resolved to apply Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, providing that anyone wishing to operate a 'sex establishment' within the district must first obtain a licence from the council. At that time the term 'establishment' related to shops and cinemas used for that purpose.
- 1.2 Following the reclassification of lap dancing style premises as sexual entertainment venues by Section 27 of the Policing and Crime Act 2009 the Council resolved that with effect from the 1 February 2011 the amended Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 would apply to the District. This means that all sex establishment venues including lap dancing style premises within the East Devon District are required to be licensed by this Council.
- 1.2 This Statement of Licensing Policy for Sex Establishments sets out the council's requirements for premises to be licensed as 'sex establishments' within the meaning of the Act.
- 1.3 The information contained in the appendices attached and referred to within this policy should be read as an inclusive part of this policy document.
- 1.4 Readers are strongly advised to seek their own legal advice if they are unsure of the requirements of the Act or schedules issued under the Act.

### Definition of Sex Establishment

- 1.5 A 'sex establishment' is defined under the Act as a 'sex shop', a 'sex cinema' or a 'sexual entertainment venue'. Full definitions of those and other relevant terms can be found in **Appendix A**. This appendix also provides detail on when a sexual entertainment venue is exempt from the provisions of the Act.
- 1.6 Sex establishments include 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.

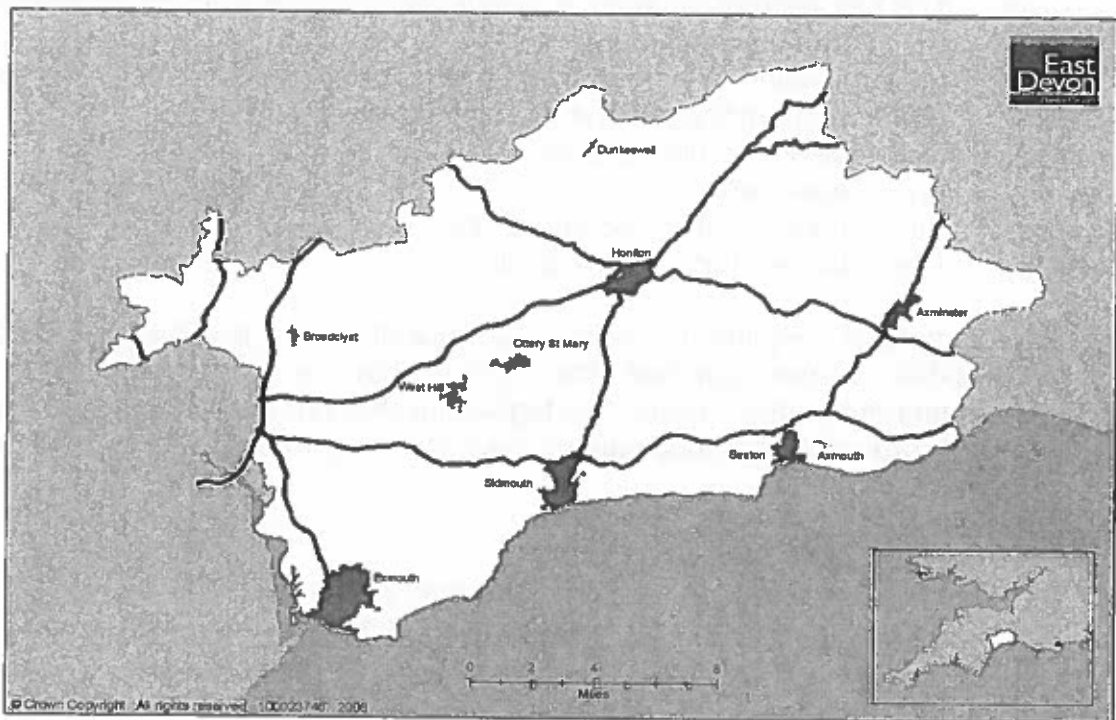
### The Geographical Area

- 1.7 East Devon is one of eight Devon districts and, in population terms, it is the largest in the County.
- 1.8 The District has a dispersed and mainly rural population. The rural nature of the area is emphasised by the low population density of 1.67 per hectare (the England and Wales average is 3.4). The District is fully parished with 68 Town and Parish Councils. Areas of Outstanding Natural Beauty and the World Heritage Coast cover a high proportion of the District.
- 1.9 The main settlements comprise the coastal resorts of Exmouth (Devon's largest town – population 35,762), Budleigh Salterton, Sidmouth and Seaton. In the mainly rural inland area the settlements comprise Honiton, Ottery St Mary, and Axminster. There are numerous villages and hamlets.





- 1.10 The District's population currently stands at 135,643: 63,900 males and 68,900 females. The black and ethnic minority population of East Devon is considerably small – only 2.5% (3400 people described their ethnic group as non-white in the 2006 ethnicity census, with Mixed race being the single largest grouping at 1,100). East Devon also has a high percent of elderly residents with 34% of the population over 60 years of age.



- 1.11 The East Devon population is set to grow over the next few years, projected to reach 145,800 in 2016 although this is less than had been projected before the recession. Currently those in 60 to 64 year age band form the largest age group in the district.
- 1.12 The entertainment industry within the District is a major contributor to the economy of East Devon. It attracts tourists and visitors, makes for vibrant towns and communities and is a major employer

### Policy Development

- 1.13 This Licensing Policy sets out the policies the Council will generally apply when making decisions on applications. This document explains the application process and provides information on what is expected of applicants. In addition, the processes by which representations may be made about an application are explained.
- 1.14 Whilst this policy stands alone, applicants are advised to also have regard to the Council's Licensing Act 2003 Policy which may impact on applicants, particularly those wishing to undertake other licensable activities such as the retail sale of alcohol.
- 1.15 In addition to considering the requirements of the Act, consideration has been given to the following requirements in developing this policy:

- (a) Section 17 of the Crime and Disorder Act 1998 to take all reasonable steps to reduce crime and disorder within the district;
- (b) The Regulators' Compliance Code (set out under the Legislative and Regulatory Reform Act 2006) not to impede economic progress by the regulations we set out and to particularly consider the impact of regulations on small businesses; and
- (c) The Provision of Services Regulations 2009 to ensure requirements are:
  - (i) non-discriminatory;
  - (ii) justified by an overriding reason relating to the public interest;
  - (iii) proportionate to that public interest objective;
  - (iv) clear and unambiguous;
  - (v) objective;
  - (vi) made public in advance; and
  - (vii) transparent and accessible.

1.16 At the time of adopting this policy, the Council has no licensed sex establishments but there is one premises that falls within the new definition of a sexual entertainment venue. Under the legislation this business has twelve months from the 1 February 2011 to become licensed or to stop trading in its current form.

### **Consultation**

1.17 The public consultation in relating to the draft policy took place between the 1 March 2011 and the 25 May 2011, in line with the HM Government Code of Practice on Consultation (published July 2008), which is available at [www.berr.gov.uk/files/file47158.pdf](http://www.berr.gov.uk/files/file47158.pdf). Consultation was conducted with local residents, the statutory responsible authorities under the Licensing Act 2003, and holders of premises licences under the Licensing Act 2003 in the District.

### **Amendments to Policy**

1.18 Any significant amendment to this policy will only be implemented after further consultation with those who are likely to be affected by the amendments including existing licence holders and statutory responsible authorities under the Licensing Act 2003.

1.19 For the purposes of clarity any significant amendment is defined as one that:

- (a) is likely to have a significant financial effect on the licence holders, or
- (b) is likely to have a significant procedural effect on the licence holders, or
- (c) is likely to have a significant effect on the community.

1.20 Any minor amendment to this Policy may be authorised by the Corporate Legal and Democratic Services Manager in consultation with the Chairman of the Licensing and Enforcement Committee.

1.21 The Authority will review the Policy when it identifies a need or as required by legislation changes or following government guidance.

### **Exchange of Information**

1.22 The authority may from time to time exercise its powers under section 115 of the Crime and Disorder Act 1998 to exchange data and information with the police and other



partners to fulfil its statutory objective of reducing crime in the area.

- 1.23 Details of applications and objections which are referred to a Licensing Sub-Committee for determination will be published in reports that are made publicly available in accordance with the Local Government Act 1972 and the Freedom of Information Act 2000.
- 1.24 The names and addresses of objectors will not be disclosed to applicants or published in public reports in accordance with the Act. Such details will be made available to Councillors on the Licensing Sub-Committee.

#### **Further Information**

- 1.25 Should you have comments regarding this policy please write to the address on the front of this document or email [licensing@eastdevon.gov.uk](mailto:licensing@eastdevon.gov.uk).
- 1.26 Relevant legislation can be viewed at [www.opsi.gov.uk](http://www.opsi.gov.uk).



## 2.0 Primary Considerations

- 2.1 East Devon District Council being the Licensing Authority for the purposes of the Act recognises that it can set a quantity limit in relation to the number of sex establishments in an area but has not chosen to do so based on the specific geographical characteristics and nature of this District.
- 2.2 Whilst the Council has not imposed a limit on the number of premises that may be licensed in any area, and whilst treating each application upon its own merits, the Council will not licence premises in proximity to:
- (a) a predominantly residential area;
  - (b) premises, areas or access routes to such premises or areas which are designed for or attract children or families, such as school, play areas, parks, children's centres, youth clubs, nurseries or leisure facilities, or any other similar establishment;
  - (c) a place of public religious worship;
  - (d) historic buildings and conservation areas, cultural and tourist attractions;
  - (e) educational establishments;
  - (f) community facilities and public buildings;
  - (g) an area with a history of social difficulties;
  - (h) a gateway to an identifiable locality.

## 3.0 The Application and Determination Process

### Making an Application

- 3.1 Whilst not required, the council would normally expect that applications for licences for permanent commercial premises should be from businesses with planning consent for the property concerned.
- 3.2 The Authority expects that applicants will have consulted with local residents, businesses and/or community groups in the vicinity of the premises so far as is reasonable practicable.
- 3.3 Applicants are advised to consult the Licensing Authority's pool of sex establishment conditions in order to ascertain the standard of the premises required, and the types of controls typically applied.
- 3.4 The Authority recognises that a partnership approach is more likely to ensure the licensing objectives are achieved and maintained. Pre-application discussions between the applicant, the Council's Licensing Service and other relevant agencies will be encouraged so that the licensing process can be as trouble free as possible.
- 3.5 Applications in respect of premises must state the full address of the premises. Applications in respect of a vehicle, vessel or stall must also state where it is to be used as a sex establishment.
- 3.6 Applications should be made in line with **Appendix B** to the policy, which explains the Council's application process including that required by legislation. Examples of these requirements include the requirement to notify the Police of an application and the display and publication of public notices giving notice of the application. Application forms can be downloaded from the Council's web site, completed online or are available upon request to the Council's Licensing Service.
- 3.7 An application form and relevant documentation for the new licence, renewal, variation or transfer must be completed and returned with the appropriate fee as set down by the Council. The current fee levels can be obtained by reference to the Council's Licensing Service.

### Duration of Licences

- 3.8 Licences will generally be issued on an annual basis but can be issued for a shorter term if deemed appropriate.

### Commenting on Licence Applications

- 3.9 Unlike some other licensing regimes (for example those for alcohol, entertainment, or gambling), a wide range of people can raise objections about sex establishment licences. The police are a statutory consultee for all applications. Objectors should have something to say which is relevant to the statutory grounds for refusal that are set out in the Act.
- 3.10 Representations must state the grounds on which the objection/positive representation is made. Objections must be made in writing and should ideally:



- be made in black ink;
- 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 representation.

- 3.11 Representations may only be made within the period of 28 days following the date on which the application was given to the Licensing Authority.
- 3.12 The Licensing Authority will not normally consider any objection or positive representation that does not contain the name and address of the person making it.
- 3.13 Representations received that are frivolous or vexatious or which relate solely to moral grounds are likely to be given lesser weight.
- 3.14 A vexatious objection is generally taken to be one which is repetitive, without foundation or made for some other reason, for example - malice. A frivolous objection is generally taken to be one that is lacking in seriousness.
- 3.15 Where representations are made the Council will provide copies to the applicant. The Council will not divulge the identity of the objector(s) to the applicant without the objector's permission to do so.

### **Determination of Applications**

- 3.16 When considering applications, the Licensing Authority will have regard to:
- The Local Government (Miscellaneous Provisions) Act 1982 (as amended);
  - Any supporting regulations;
  - This Licensing Policy
  - Any supporting Government Guidance
- 3.17 This does not, however, undermine the rights of any person to apply for a licence and have the application considered on its individual merits, nor does it override the right of any person to make objections on any application where they are permitted to do so under the Act.
- 3.18 When determining applications, the Licensing Authority will take account of any comments made by the Chief Officer of Police and any representations made.
- 3.19 We take the following approach to deciding applications:
- Each application will be decided upon its merits. This authority will not apply a rigid rule to its decision making;
  - Objectors can include residents'/tenants' associations, community associations and trade associations. Councillors and MPs may also raise objections. Elected councillors may represent interested parties providing they do not also sit on the Licensing Sub-Committee determining the application in question;
  - We will give clear reasons for our decisions.
- 3.20 Where objections are made and not withdrawn, a hearing before a Licensing Sub Committee will normally be held within 20 working days of the end of the period during which





representations may be made, unless all parties agree that a hearing isn't necessary.

- 3.21 Objections will be considered by a Licensing Sub Committee, where both applicants and objectors will be provided with an equal opportunity to address the Sub Committee.

## Conditions

- 3.22 As provided for by Paragraph 13 of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 the Authority will maintain a set of "standard conditions" to be attached to each sex establishment licence granted, renewed or transferred by the Authority unless expressly excluded or varied. The standard conditions will be kept under review by the Council's Licensing and Enforcement Committee and if the need is identified separate sets of standard conditions will be maintained for sex shops, sex cinemas and sexual entertainment venues. Further conditions may be attached to individual licences where the authority considers it necessary. A copy of the District Council's Standard Conditions appear at **Appendix C** to this report.

- 3.23 Should the Authority decide to grant a licence issues that it may seek to restrict by way of condition are:

- The hours of opening and closing
- Display and advertisements on or in the sex establishment
- The visibility of the interior of a sex establishment to passers-by
- Any change of use from one kind of sex establishment to another

- 3.24 The Authority will seek to avoid duplicating licence conditions where a premises holds licences under both the Licensing Act 2003 and the Local Government (Miscellaneous Provisions) Act 1982.

## Opening Hours

- 3.25 In the case of sex establishments (other than Sexual Entertainment venues), for example shops and cinemas, the Licensing Authority will normally expect that these premises will only open between 9.30 am and 6.00 pm and remain closed on Sundays, all bank holidays and public holidays.

- 3.26 In the case of sexual entertainment venues the Licensing Authority will normally expect that these premises to only provide sexual entertainment between the hours of 12 noon and 12 midnight on Mondays to Saturday inclusive. However in the case of premises that already hold a Premises licence under the Licensing Act the opening hours will normally be no longer than a commencement of no earlier than 12 noon or the start time for the regulated entertainment of dancing whichever is the later and the closing time no later than the closing time for the premises as shown on the Licensing Act 2003 Premises.

## Refusal of licences

- 3.27 Except where the council is prohibited from granting, renewing, varying or transferring a licence, the council will not refuse a licence without first:



- Notifying the applicant or holder of the licence in writing of the reasons;
- Giving the applicant or holder of the licence the opportunity of appearing and making representations before a Licensing Sub Committee.

### **Mandatory Grounds for Refusal**

- 3.28 The council must refuse to grant or transfer a licence to:
- (a) A person under the age of 18;
  - (b) A person who is for the time being disqualified from holding a licence;
  - (c) A person who is not resident in an EEA state or was not so resident throughout the period of 6 months immediately preceding the date upon which the application was made;
  - (d) A body corporate which is not incorporated in an EEA state; or
  - (e) A person who has, within the period of 12 months immediately preceding the date upon which 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.

### **Discretionary Grounds for Refusal**

- 3.29 An application for grant or renewal of a licence may be refused on one or more of the grounds shown below:
- (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, 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;
  - (c) That the number of sex establishments in the relevant locality that the application is made is equal to or exceeds the number which the council considers is appropriate for that locality (nil may be an appropriate number for these purposes).
  - (d) That the grant or renewal of the 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.

- 3.30 An application for transfer of a licence may be refused on either or both of the grounds shown in paragraphs (a) and (b) in paragraph 3.28 above.

### **Revocation of licences**

- 3.31 The council may revoke a licence:
- on any of the grounds specified in paragraph 3.27 (Mandatory Grounds for Refusal);
  - on either of the discretionary grounds specified in paragraph 3.28 (a) and (b).



3.32 The council will not revoke a licence without first giving the holder of the licence the opportunity of appearing and making representations before a Licensing Sub Committee.

### **Cancellation of licences**

3.33 The licence-holder may surrender the licence at any time and may request the council in writing to cancel the licence.

3.34 In the event of the death of a licence-holder, the licence will be deemed to have been granted to his personal representatives and will remain in force for 3 months from the date of death, unless previously revoked.

3.35 Where the council are satisfied that it is necessary for the purpose of winding up the estate of the deceased licence-holder, it may extend or further extend the period in which the licence remains in force.

### **Appeals**

3.36 Section 27 of the Act permits appeals by the applicant/licence holder against the decisions of the Council in relation to sex establishments. The Magistrate's Court will hear appeals in the first instance. Under normal circumstances a request for an appeal must be made to the Magistrates Court within 21 days of the Council's decision being notified to the applicant/licence holder.

3.37 An appeal can be made in the following circumstances:

- Refusal of an application for the grant, renewal or transfer of a licence.
- Refusal of an application to vary terms, conditions, or restrictions on or subject to which any licence is held.
- A grievance relating to any term, condition or restriction on or subject to which a licence is held.
- Revocation of a licence.

3.38 There is a right of appeal against refusal on mandatory grounds, only where the appellant alleges the ground did not apply to them.

3.39 There is no right of appeal against refusal on the grounds that there are sufficient sex establishments in the locality or that to grant would be inappropriate having regard to the character of the locality, use of premises in the vicinity and the layout, character, condition and location of the premises.

3.40 There is no right of appeal for objectors.

3.41 A person wishing to appeal against a Council decision on a sex establishment is strongly advised to seek legal advice prior to commencing any action in a Court of Law.

## 4.0 Complaints and Enforcement

- 4.1 Where possible and appropriate the council will give early warning to licence holders of any concerns about problems identified at premises and of the need for improvement.
- 4.2 The council is responsible for the administration and enforcement of the licensing regime and will have regard to the Department of Business Enterprise & Regulatory Reform's Regulators' Compliance Code, the Better Regulation Commission's five Principles of Good Regulation and the Licensing Services' own enforcement policy. The council will carry out its regulatory functions in a fair, open and consistent manner.
- 4.3 Specifically, the council is committed to:
- (a) be proportionate – to only intervene when necessary and remedies will be appropriate to the risk posed;
  - (b) be accountable – to justify decisions, be subject to public scrutiny and allow opportunities to resolve differences before enforcement action is taken, unless immediate action is needed;
  - (c) be consistent – to implement rules and standards fairly;
  - (d) be transparent – to be open and to provide clear explanations of what is needed, by when and the rights of appeal.
  - (e) target its regulatory action at cases in which action is needed.
- 4.4 The council recognises the interests of both citizens and businesses and will work closely, with partners, to assist licence holders to comply with the law and the conditions attached to the licence. However, proportionate but firm action will be taken against those who commit serious offences or consistently break the law or breach the conditions of the licence.
- 4.5 The council has set clear standards of service and performance that the public and businesses can expect. In particular, an enforcement policy has been created that explains how the council will undertake its role and how the principles of effective enforcement will be achieved.
- 4.6 This policy is freely available from the Licensing Service as are details of the corporate complaints procedures, both of which can also be viewed on the Council's web site.

### □ Definition of a 'Sex Establishment'

A 'Sex Establishment' is defined under the Act as a 'Sex Shop', a 'Sex Cinema' and a 'Sexual Entertainment Venue'.

It includes any premises, vehicle, vessel or stall used as a sex establishment but does not include a private dwelling to which the public are not admitted.

### □ Meaning of a 'Sex Cinema'

'Sex Cinema' means 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
- (b) 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.

### □ Meaning of a 'Sex Shop'

'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.

#### • '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 paragraphs (1) and (2) below applies.

This sub paragraph applies –

- (1) to 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
- (2) to 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
- (ii) is concerned primarily with the portrayal of, or primarily deals with or relates to genital organs or urinary or excretory functions.

- **Sex Articles and Significant Degree**

Licences for sex shops are required where 18R films are being sold, or where there is a "significant degree" of "sex articles".

The phrase 'sex articles' is defined in the 1982 Act, (as explained previously) but the phrase 'a significant degree' is not. When considering whether or not a business is selling a significant degree of sex articles and needs a licence, we will consider:

- (a) the ratio of sex articles to other aspects of the business;
- (b) the absolute quantity of sales;
- (c) the character of the remainder of the business;
- (d) the nature of the displays in the business;
- (e) turnover;
- (f) other factors which appear to be materially relevant.

- **Meaning of a 'Sexual Entertainment Venue'**

A 'sexual entertainment venue' means:

"any premises at which relevant entertainment is provided before a live audience for financial gain of an organiser. For the purposes of the Act it does not matter whether the financial gain arises directly or indirectly from the performance or display of nudity."

- **'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). An audience includes an audience of one.

- A **'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;

- An **organiser** means:

Any person who is responsible for the organisation or management of;

- (a) The relevant entertainment; or
- (b) The premises.

- **Exempt Premises**

The following are not sexual entertainment venues for the purposes of this policy:

- (a) premises at which the provision of relevant entertainment is such that:
  - (i) there have not been more than eleven occasions on which relevant entertainment has been so provided



- which fall (wholly or partly) within the period of 12 months;
- (ii) no occasion has lasted for more than 24 hours; and
  - (iii) no occasion has begun within the period of one month beginning with the end of any previous occasion on which relevant entertainment has been so provided

For the purposes of this policy, relevant entertainment is provided if, and only if, it is provided, or permitted to be provided, by or on behalf of the organiser before an audience and involves partial or full nudity.

**Note:** Whilst the Local Government (Miscellaneous Provisions) Act 1982 as amended by the Policing and Crime Act 2009 provides this exemption from the need to have a sex establishment licence in the circumstance set out above there is no exemption from the Licensing Act 2003 where licensable activities take place. This includes dancing and the sale of alcohol.



**Requirements for Applying for Grant, Variation, Transfer  
or Renewal of a Sex Establishment Licence**

**1. Grant of a licence**

To apply for the grant of a sex establishment licence an applicant must: -

- (a) send to the council: -
  - i) a completed application form (copies can be obtained from the Council's Licensing Service;
  - ii) a plan to the scale of 1:100 of the premises to which the application relates;
  - iii) a non-returnable application fee determined from time to time by the Licensing Authority [currently set at the time of the approval of this policy at £2,000];
  - iv) a 'hearings' fee determined from time to time by the Licensing Authority [currently set at the time of the approval of this policy at £4,000] (returnable if a committee hearing is not required);
- (b) display a notice on or near the premises (template notice available from the Council's Licensing Service);
- (c) advertise the application in a local newspaper (template notice available from the Council's Licensing Service);
- (d) send a copy of the application and plan to the Chief Officer of Police, Licensing Office, Devon & Cornwall Constabulary, Police Station, Exmouth, EX8 1JZ within 7 days of making the application to the council.

**2. Plan requirements**

2.1 The plan shall show: -

- (a) the extent of the boundary of the building, if relevant, and any external and internal walls of the building and, if different, the perimeter of the premises;
- (b) the location of points of access to and egress from the premises;
- (c) the location of escape routes from the premises;
- (d) in a case where the premises is to be used for more than one licensable activity, the area within the premises used for each activity;
- (e) fixed structures (including furniture) or similar objects temporarily in a fixed location (but not furniture) which may impact on the ability of individuals on the premises to use exits or escape routes without impediment;
- (f) in a case where the premises includes a stage or raised area, the location and height of each stage or area relative to the floor;
- (g) in a case where the premises includes any booths the location and area relative to the floor;
- (h) in a case where the premises includes any steps, stairs, elevators or lifts, the location of the steps, stairs, elevators or lifts;
- (i) in the case where the premises includes any room or rooms containing public conveniences, the location of the room or rooms;
- (j) the location and type of any fire safety and any other safety equipment including, if applicable, marine safety equipment; and
- (k) the location of a kitchen, if any, on the premises.





2.2 The plan may include a legend through which the matters mentioned or referred to above are sufficiently illustrated by the use of symbols on the plan.

2.3 Applicants should be aware that the Fire Authority will require a suitable risk assessment to be carried out by the responsible person "in order to ensure the safety of all relevant people".

### **3. Public notices**

3.1 A notice must be displayed at or on the premises to which the application relates for a period of not less than 21 consecutive days from the day following the day the application was given to the council, where it can be conveniently read from the exterior of the premises.

3.2 Where the premises cover an area of more than 50 square meters, a further identical notice must be displayed every 50 metres along the external perimeter of the premises abutting any highway.

3.3 The notice must be on white paper sized A4 or larger and printed legibly in black ink or typed in black in a font size equal to or larger than 16. A template of a blank notice can be obtained on request from the Council's Licensing Service.

3.4 The notice must state: -

(a) details of the application and activities that it is proposed will be carried on or from the premises,

(b) the full name of the applicant,

(c) the postal address of the premises, or in the case where there is no postal address, a description of the premises sufficient to enable the location and extent of the premises to be identified,

(d) the date, being at least 28 days after that on which the application is given to the council, by which representations may be made to the council and that representations should be made in writing,

(e) that it is an offence knowingly or recklessly to make a false statement in connection with an application and the maximum fine (£5,000) for which a person is liable on summary conviction for the offence.

3.5 A similar notice must be published in a local newspaper within 7 days of giving the application to the council.

### **4. Variation of a licence**

4.1 The holder of a licence may apply at any time for any variation of the terms, conditions or restrictions on or subject to which the licence is held.

4.2 The process of applying for a variation is the same as that for applying for an initial grant except that a plan of the premises is not required unless the application involves structural alterations to the premises.

### **5. Renewal of a licence**

5.1 The holder of a licence may apply for renewal of the licence. In order for the licence to continue to have effect during the renewal process, a valid application together with the appropriate fee must be submitted before the current licence expires.

5.2 The process of applying for renewal of a licence is the same as that for applying for an initial grant except that a plan of the premises is not required.

### **6. Transfer of a licence**



- 6.1 A person may apply for transfer of a licence at any time.
- 6.2 The process of applying for transfer of a licence is the same as that for applying for an initial grant except that a plan of the premises is not required.

## **CCTV Standards Policy**

16.1 Where the provision of CCTV system is a requirement of the conditions of a Sex Establishment licence the system must comply with at least the East Devon District Council's CCTV minimum standard. This has been set in consultation with the police to ensure that the systems provide a tool to prevent criminal and anti-social behaviour and to ensure that the images provided by the systems meet the recognition and identification standards necessary for the detection and prevention of crime and disorder.

### 16.2 The Minimum Standard

- (1) All installed CCTV systems must be of an evidential standard and installed and operated to the satisfaction of the Licensing Authority and the Police. It should cover all areas to which the public have access, excluding, where relevant, the inside of toilets. Images must be recorded at a frame rate no less than 25 frames per second. All cameras located on entrances must be able to produce images of an evidential standard as defined by the Home Office Guidance Manual or any guidance replacing it. Entrance cameras must be capable of providing good quality head and shoulder images of persons entering/leaving the premises. They should be high-resolution colour cameras complete with an auto iris vari-focal lens. Cameras in the main areas of the premises must be able to cope with the extreme lighting conditions that may be present. The cameras, recording equipment and all ancillaries should be maintained according to the manufacturers' instructions to ensure that the standard of the image is not compromised.
- (2) The numbers of cameras located within the premises and where appropriate for external coverage must be appropriate for the type of licensing activity carried out at the premises. The numbers of cameras, locations and views provided by these cameras must be to the satisfaction of the East Devon District Council as the Licensing Authority and Police. All cameras must provide evidence of identification and be correctly maintained.
- (3) Where, to satisfy the East Devon District Council and the Police, there is a requirement to provide an external camera for coverage of entrances it must be a high resolution, minimum of 450tvl colour day/night camera, complete with an auto iris vari-focal lens, fitted in a heated weatherproof external housing.
- (4) In all areas where cameras are operating including externally the lighting must be of sufficient brightness to complement the quality of the camera images.
- (5) The CCTV recordings must be stored on a digital multiplex recorder with either an on board CD/DVD re-writer and/or a USB port for evidence recovery.
- (6) The system must be capable of producing single images and forward, reverse, pause and slow motion at full screen resolution.



- (7) CCTV images must be retained for a minimum of 14 days and be produced on the request of the Police or a Licensing Officer of East Devon District Council. Recording media must be set to 25 frames per second.
- (8) Recordings of incidents occurring at the premises must be made secure and held for possible inspection.
- (9) All equipment shall have constant time/date generation.
- (10) Unless otherwise agreed in writing by the Licensing Authority there must be sufficient members of trained staff available during the hours of operation to be able to download evidence at the request of the police including the creation of evidential discs. Where an exemption to this requirement is agreed in writing then the evidence requested must be provided no later than 48 hours after the request.
- (11) Premises licence holder must be able to demonstrate that they have devised a recording management system that prevents recordings being tampered with, stolen, misplaced or failure to record. Recording equipment must be housed in a secure room/cabinet where access is restricted and the operation is strictly limited to authorised persons.
- (12) The CCTV system must be operational at all times whilst the premises are trading. If the system is faulty or not working then the Police and East Devon Council's Licensing Service must be informed immediately. Details of the malfunction must be recorded in the premises incident book.
- (13) A4 sized warning notices must be displayed in public areas of the premises and at all entrances advising that CCTV is in operation. The signs located at entrances should be located on the exterior of the building at, and adjacent to, all public access doors. All signs must comply with the requirements of the Data Protection Act 2002.

## **EAST DEVON DISTRICT COUNCIL**



# **Sex Establishment Licensing Policy Consultation**

Sex Shops, Cinemas and Entertainment Venues

## **REPRESENTATIONS AND RESPONSES**

under the

**Local Government (Miscellaneous Provisions) Act 1982 as amended by the  
Policing and Crime Act 2009**

Consultation Period: 1 March 2011 to 25 May 2011

June 2011

## Table Headings

- |   |                         |   |
|---|-------------------------|---|
| 1 | Reference number        | A unique number given to the particular representation  |
| 2 | Policy paragraph number | This identifies the section of the Policy to which the representation relates                   |
| 3 | Respondent              | The identification of the individual, company or organisation responding                        |
| 4 | Details of comments     | A copy of the representation made   |
| 5 | Appraisal of comments   | Sets out the appraisal of the representation  |
| 6 | Council's Response      | Details the Council's response to the representation – i.e. whether or not a change is proposed |

## Consultation Responses received – March/June 2011

1	2	3	4	5	6
D&CP1	General comment	Devon & Cornwall Police	Agree with the Policy's content and have no adverse comment	Comment Noted	No
46	General comment	Devon & Somerset Fire & Rescue Service	Accept the Policy's content and have no adverse comment	Comment Noted	No
	General comment	Budleigh Salterton Town Council	Members of the Town Council discussed the consultation document at a meeting held on the 23 May and agreed that such premises should be subject to licensing control. It is hoped that suitable funding is provided for your department to deal with any applications and the subsequent inspection/enforcement.	Comment Noted	No

1	2	3	4	5	6
Appendix B Para. 2	Devon & Somerset Fire & Rescue Service	Where plan & fire safety detail is mentioned a suitable risk assessment will need to be carried out by the responsible person in order to ensure the safety of all relevant people. Where the licencing authority consults with the Fire Authority we will focus on this detail to ascertain whether The Regulatory Reform (Fire Safety) Order 2005 is being complied with and follow up accordingly	An additional paragraph has been added to Appendix B (Paragraph 2.3) to accommodate the Fire Authority's comments.	Yes	Yes
2.2(d)	Richard Eley Sidmouth Chamber of Commerce	I am wondering whether the draft document might expand upon the reference to 'historic buildings' to say 'historic buildings and conservation areas'. Most potential locations would fall within the Town Centre Conservation Area, and an explicit reference to this designation would strengthen the hand of the authority if it was minded to refuse permission, as would presumably be the case, and which would certainly be in line with popular opinion.	Paragraph 2.2(d) has been amended as suggested by this correspondent.	Yes	Yes
2.2	Graham Gover, Solicitor representing The Q Club/Lush in Exmouth	Paragraph 2.2 is couched in terms that prevent the exercise of any real discretion. Whilst it says that each application will be considered on its merits, the starting point for consideration of the application is refusal based on proximity to the areas or types of premises referred to.  It is important to obtain an understanding of the purpose of the policy, which is not clear from the policy itself. One can guess that it has something to do with seeking to prevent exposure to the people who frequent the neighbouring premises (schools, churches.	It should be remembered that this is an East Devon wide policy and is not specifically catering for a specific area, town or even premises. What is appropriate in one area may not be in another so the policy needs to be wide ranging in its approach. The legislation when discussing the considerations that a Council can properly consider when deciding an application for a licence provides for both locality and vicinity. In the case of Section 2.2 the term vicinity should be read for the term proximity. Whilst	No	No

youth clubs and so on) from some aspect of the SEV, whether it is the activities carried on there, the patrons who use it, or exposure to the external appearance of the premises.

This can be achieved by a number of means, most usually conditions. Experience has shown that the customers who use Lush are extremely well behaved upon arrival and departure and do not put other persons using the premises in the vicinity in any sort of moral or other danger. They arrive and leave long after the types of premises referred to in the policy list have closed, thus avoiding any sort of clash which the policy seeks to prevent.

It is not difficult to imagine also that the purpose of the policy is to protect from any sort of harm persons who would have to walk past the premises when they are closed. Some operators have in the past used video screens to display multiple, changing images or video to depict the type of entertainment on offer inside the premises, or by means of display of other images such as posters containing both images and words to do likewise. It is understandable that this kind of display might be considered offensive to many and that children and the vulnerable should not be exposed to it, where they have no choice but to walk past the premises.

The answer to that issue is not down to the location of the premises but controlling the external appearance of the premises. This could be one of the pool of conditions, and it is a shame that a draft of such conditions does not form part of the consultation

conditions are a tool that Councils can use they are not the only ones and it is quite possible that the use of conditions may not be suitable. In short it may be that no amount of conditioning will make the location of the proposed licensed premises "appropriate".

The correspondent implies that the Council is fettering its discretion. It should be remembered that the Council could under the legislation impose a numerical control on the numbers of sex establishments in a particular locality and even set the one to nil. In East Devon's case the Council has decided not to go down that route but have described in its policy the localities where the sighting of a sex establishment would not be appropriate. It has not fettered its discretion merely because this advice is set out in its policy. The Council will not refuse to consider an application because it breaches its policy. All applications will be considered on their merits and the Sub Committee has the option of disregarding the policy if they feel a special case has been made.



		<p>exercise.</p> <p>The policy or core conditions could state that the premises may have signage to state the name of the premises and that they are licensed for certain activities but beyond that the licensee must obtain the consent of the licensing authority for further words and images.</p> <p>By a combination of restriction of the hours of operation and controlling the external appearance of the premises the same objective can be achieved without proscribing the location of the premises to be licensed.</p> <p>Many of the types of building referred to are of expansive meaning, so that, for example, if an application was to be made for premises in Exmouth shopping centre, it could be argued that the premises in the vicinity are close to churches, surrounded by historic buildings (especially the conservation area), cultural and tourist attractions, community facilities and public buildings (shops!). It is difficult to conceive of any premises in Exmouth that are not on an access route to schools, play areas, parks, children's centres, youth clubs, nurseries, leisure facilities or any other similar establishment.</p> <p>If these words are to be given their widest possible meaning in the context of a policy that leads by saying that "the Council will not licence premises in proximity to ..." it may not be possible to find any location in which such premises may be located.</p> <p>In my submission the policy should instead seek to minimise harm not by proscribing</p>	
--	--	---	--

1	2	3	4	5	6
50	3.28	Graham Gover, Solicitor representing The Q Club/Lush in Exmouth	<p>location but by examining location alongside measures that can be equally effective in minimising risk such as hours of operation and external appearance of the premises. Location can be a relevant consideration to which the Council can have regard, but expressed in a policy that equally considers mitigation measures. The words "will not licence" are too strong especially when coupled with the list of premises whose meaning may be vague or capable of wide application.</p> <p>It is not altogether clear from the policy what the interplay is between the Primary Consideration of proximity to certain types of premises and paragraph 3.29 and the discretionary grounds for refusal as they relate to the character of the relevant locality and the use to which premises in the vicinity are put. Paragraph 3.29 would on its own equally protect, for example, schools and youth clubs, and members' discretion is clearly spelled out, alongside the ability of the applicant to address these issues. It seems wrong to have two levels of filters to be applied: first the proximity to specific types of premises and then the character of the area. The latter is sufficient because it also includes the former, but not in a way that indicates a presumption of refusal. I have looked at many authority's draft policies and, although it is not a very exhaustive study, I have not found one that advocates this two-tier approach. All of them refer to the need to consider the character of the immediate area and some go on to refer in that part of the policy to schools, places of worship and so on, but no policy I have seen leads with a policy that says "the council will not</p>	<p>Please see the reply at paragraph 2.2.</p>	No

1	2	3	4	5	6
	3.26	Graham Gover, Solicitor representing The Q Club/Lush in Exmouth	<p>licence premises" that are close to such premises. Councils should give themselves an unfettered discretion to consider the character of the area and can take into account whether it contains sensitive premises but also allows licences to be granted even where they are close to such premises if the risk can be eliminated by conditions.</p> <p>Opening hours I have already commended the use of hours as a measure to mitigate harm. However, as presently expressed in the policy the hours for SEV's are unduly prescriptive and do not have the effect of mitigating harm. It is unrealistic to expect such premises to be open for such business during the daytime. There is no market in Exmouth or East Devon for this activity at any hour of daylight. If the hours were going to be limited by reference to the start time it should be from, say 9pm onwards to ensure that any sensitive neighbouring premises have closed and their patrons have gone home. For business reasons it is equally unrealistic to seek to prevent such entertainment being provided after midnight. For example, the licensees at Lush have learned that there is no market for such entertainment that starts before 11 pm. There would be no value to them in a licence that operated between 12 noon and 12 midnight if it could be used for only one hour. The Home Office Guidance on SEVs from March 2010 does not advocate hours restrictions on licences. I wonder whether your authority has market-tested this proposal or (the paragraph was unfinished)</p>	<p>These comments are helpful and paragraph 3.26 has been amended to cater for premises that hold Premises licences issued under the Licensing Act 2003 so that the closing time for premises holding a Sex Entertainment licence shall be no later than the closing time shown on the LA 2003 Premises licence.</p>	Yes

**Local Government (Miscellaneous Provisions) Act 1982 as amended by the Policing and Crime Act 2009**



**Sex Establishment Licensing Conditions**

**Standard Sex Shop Conditions**

- 1) Where any special conditions appear on any licence issued by the Council which appear to be inconsistent with these regulations, the regulations shall prevail.
- 2) The grant of a licence for a sex shop shall not be deemed to convey any approval or consent which may be required under any enactment, bye-law, regulation or order other than the Third Schedule to The Act.
- 3) Where marginal notes and headings have been inserted in these regulations, this has been done for the purpose of information and convenience only and shall not affect in any way the meaning or construction thereof.
- 4) The Council reserves the right from time to time in any special case to add to or modify these Licence Conditions.

**Opening Times**

- 5) Except with the prior consent of the Council, a Sex Shop shall not be open to the public before 9 am and shall not be kept open after 6 pm.
- 6) Sex shops must not operate on Good Friday, Easter Sunday, Christmas Day, and Boxing Day.

**Conduct and Management**

- 7) Where the Licensee is a body corporate or an incorporated 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 Council within 14 days of such change and such written details as the Council may require in respect of any new Director, Secretary or Manager are to be furnished within 14 days of a request in writing from the Council.
- 8) The Licensee or some responsible person nominated by him in writing for the purpose of managing the Sex Shop in his absence and of whom details (including photographs) have been supplied to and approved in writing by the Council shall be in charge of and upon the Premises during the whole time they are open to the public.

- 9) The name of the person responsible for the management of a Sex Shop at any particular time it is open to the public shall be prominently displayed within the premises throughout the time he or she is responsible for its conduct.
- 10) The Licensee shall maintain a daily register in which shall be recorded the name and address of any person who is to be responsible for managing the Sex Shop in his or her absence and the names and address of all those employed in the Sex Shop. The Register is to be completed each day of the Sex Shop opening for business and is to be available for inspection by the Police and Authorised Officers of the Council.
- 11) The Licensee shall retain control over all portions of the Premises and shall not let, licence or part with possession of any part of the Premises.
- 12) The Licensee shall maintain good order in the Premises.
- 13) No person under the age of 18 years shall be admitted to the Premises or employed in any position with regard to the business of a Sex Shop.
- 14) The Licensee shall ensure that the public are not admitted to any part of the Premises other than those parts which have been approved by the Council.
- 15) The Licensee shall ensure that no part of the Premises shall be used by prostitutes (male or female) for soliciting or for any immoral purpose.
- 16) 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.
- 17) The Licensee shall comply with all statutory provisions and any regulations made there under.
- 18) The Licensee shall ensure that during the hours the Sex Shop is open for business, every employee shall wear a badge of a type approved by the Council indicating his or her name and that he or she is an employee.
- 19) The copy of the Licence and of these Regulations required by be exhibited in accordance with Paragraph 14(1) of Schedule 3 to the Act shall, if reproduced, be to the same scale as the originals issued by the Council. The copy of the Licence required to be displayed as aforesaid shall be suitably framed and a copy of these regulations shall be retained in a clean and legible condition.

#### **Use**

- 20) A Sex Shop shall be conducted primarily for the purpose of the sale of goods by retail.
- 21) The Premises shall only be used as a shop.

- 22) No residential use shall be made of any part of the Premises unless a separate access is provided from the outside of the Premises.
- 23) No change of use of any portion of the Premises from that approved by the Council shall be made until the Consent of the Council has been obtained thereto.

#### **Goods available in Sex Shops**

- 24) All Sex Articles and other things displayed for sale, hire, exchange or loan within a Sex Shop shall be clearly marked to show to persons who are inside the Premises the maximum prices to be charged.
- 25) All printed matter offered for sale, hire, exchange or loan shall be available for inspection prior to purchase and a notice to this effect shall be prominently displayed within the Sex Shop.
- 26) No film or video film shall be exhibited, sold or supplied unless it complies with the Videos Recording Act 2010 and is a reproduction authorised by the owner of the copyright of the film or video film so certified.
- 27) The Licensee shall, without charge, display and make available in the Sex Shop such free literature on counselling in relation to sexual problems, published by any organisation as may be specified by the Council. Such literature is to be displayed in a prominent position approved by the Council adjacent to all sale points in the Sex Shop.
- 28) No display, advertisement, word, letter, model, sign, placard, board, notice, device, representation, drawing, writing, or any matter or thing (whether illuminated or not) shall be exhibited so as to be visible from outside the premises except: -
  - (a) Any notice of a size and in a form approved by the Council which is required to be displayed so as to be visible from outside the premises by law, or by any condition of a Licence granted by the Council.
  - (b) Such display, advertisement, word, letter, model, sign, placard, board, notice, device, representation, drawing, writing, or any matter or thing as shall have been approved by the Council.
- 29) The entrances to the Premises shall be of a material or covered with a material which will render the interior of the Premises not visible to passers by.
- 30) Windows and openings to the Premises other than entrances shall not be obscured otherwise than with the consent of the Council but shall have been suspended behind them, in a position and at an attitude approved by the Council, opaque screens or blinds of a type and size approved by the Council. This Regulation shall not be construed as lessening the obligation of the Licensee under Regulation 28 hereof.

## **State, Condition and Layout of the Premises**

- 31) All parts of the Premises shall be maintained in good repair and in a clean and wholesome condition.
- 32) A lobby area shall be provided at the entrance to the shop to ensure that the inside of the shop is not visible when the front door is opened.
- 33) 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 Sex Shop is open to the public.
- 34) The number, size and position of all doors or openings provided for the purposes of the ingress and egress of the public shall be approved by the Council and shall comply with the following requirements
  - (a) All such doors or openings approved by the Council shall be clearly indicated on the inside by the word "EXIT".
  - (b) Doors and openings which lead to parts of the Premises to which the public are not permitted to have access shall have notices placed over them marked "PRIVATE".
  - (c) Save in the case of emergency, no access shall be permitted through the Premises to any unlicensed Premises adjoining or adjacent.
- 35) The external doors to the Sex Shop shall be fitted with a device to provide for their automatic closure and such devices shall be maintained in good working order.
- 36) The Licensee shall make provision in the means of access both to and within the Sex Establishment for the needs of members of the public visiting the Sex Establishment who are disabled.
- 37) No fastenings of any description shall be fitted upon any booth or cubicle within the Sex Establishment nor shall more than one person (including any employee) be present in any such booth or cubicle at any time.
- 38) 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.

## **Safety**

- 39) The Licensee shall take all reasonable precautions for the safety of the public and employees.
- 40) The Licensee shall comply with any fire precautions and safety measures that may be required of him by East Devon District Council or the Fire Authority.
- 41) The Premises shall be provided with fire appliances suitable to the fire risks of the Premises and such fire appliances shall be maintained in proper working order and shall be available for instant use.



### **Standard Sex Entertainment Venue Conditions**

#### **General**

- 1) The Licensee must remain in personal control of the Premises at all times or nominate an individual in writing over the age of 18 with the authority to organise/arrange/facilitate activities within the Premises.

#### **Management Operation Manual (A guide to the safe operation of the venue including safety and security information)**

- 2) The Licensee must produce a Management Operation manual detailing all aspects of procedure when the Premise is operating the relevant entertainment. This document shall be regularly reviewed and be available for inspection by East Devon District Council, Police or civilian Police Licensing Officers upon request.
- 3) Control measures must be in place as part of the Management Operation Manual to ensure the safety of performers when they leave the Premises following a period of work.

#### **House Rules (A guide to the acceptable conduct of customers and performers)**

- 4) The Premises must provide a copy of its House Rules or any revisions to the Council and the Police before the premises open under its Sex Establishment Licence.
- 5) The Licensee must ensure that all performers and staff, including door supervisors, shall be made aware of the House Rules.
- 6) All dancers, staff and door supervisors shall read a copy of the House Rules relating to operating relevant entertainment. They shall sign and date a copy which shall be retained by the Premises as part of their due diligence. They shall be available for inspection by East Devon District Council, Police or civilian Police Licensing Officers upon request.
- 7) A clear copy of these conditions and the House Rules shall be exhibited at all times in or near the performers' changing room(s) in such a manner as they can be read by the performers. These conditions shall be protected against theft, damage or defacement.
- 8) A large print copy of the House rules must be clearly displayed at the entrance/lobby of the premises and each customer shall be advised of the House rules prior to entry.
- 9) House Rules on the performance of relevant entertainment will be displayed throughout the Premises and be clearly visible to customers. This will include any private individual booth area. The use of table/bar notices or prominent signage throughout the premises would be satisfactory.



## **Staff**

- 10) The Licensee shall ensure that all performers and all staff working within the sexual entertainment venue, if not a United Kingdom citizen, hold the required Work Permit.

## **Performers**

- 11) Performers shall be aged not less than 18 years. The Licensee must maintain adequate records of the names, addresses and dates of birth of performers including adequate identity checks using recognised photographic documentation, such as a passport or driving licence.
- 12) A log book shall be maintained on the Premises detailing the names, start and finish times, of the individual performers involved in all forms of adult entertainment.
- 13) Performers must remain clothed in public areas and all other areas except while performing in areas specified by the Council as where sexual entertainment may be provided.
- 14) No performer shall be allowed to work if, in the judgement of the management, they appear to be intoxicated or under the influence of illegal substances.
- 15) Performers must get dressed at the end of each performance to the extent that their breasts and genitals are fully covered.
- 16) Performers shall not accept any telephone number, email address, address or contact information from any customer.

## **Performances**

- 17) Performers shall only perform on the stage area, to seated customers or in such other areas of the licensed premises as may be agreed in writing with the Council.
- 18) There shall be no physical contact between customers and the performers except for the placing of money or tokens into the hands of the dancer at the beginning or conclusion of a performance.
- 19) Customers must be seated in an upright position against the back of the booth or seat with their hands by their sides before a dancer can start a table or private dance.
- 20) A clear distance must be maintained between customers and performers at all times and this must be documented in the Management Operation Manual to ensure performers are aware of this requirement. A distance of 1 meter is recommended for all performances.

- 21) Performers must not:
  - (a) Climb onto any furniture unless provided as an on stage prop for the purpose of their performance.
  - (b) Simulate any sex acts.
  - (c) Undertake any performance involving a sex act with any other performer, persons in the audience or any object.
  - (d) Use inappropriate, suggestive or sexually graphic language at any time.
- 22) In the event of the relevant entertainment being performed for private viewing, the customer shall be informed of the duration and price of the relevant entertainment, and the details shall be specified in a clearly visible notice in each area designed for private relevant entertainment.

### **Door Supervisors**

- 23) Any individual employed on the Premises to conduct a security activity (within the meaning of section paragraph 2(1)(a) of schedule 2 to the Private Security Industry Act 2001) must be licensed by the Security Industry Authority or any replacement organisation.
- 24) An adequate number of registered Door Supervisors shall be on duty on the Premises whilst relevant entertainment takes place. There shall be at least one Door Supervisor on each entrance and in each separate part of the Premises. Provision must also be made for the security of performers, with either a door supervisor located at the entrance to the changing rooms or a secure entry mechanism such as a PIN door lock installed on the changing room door.

### **Customers**

- 25) No person under the age of 18 shall be admitted to the Premises. Customers who appear to be under the age of 25 must be asked to provide approved photographic proof of their age, i.e. passport, driving licence or pass-scheme. The Licensee must provide prominent notices at each entrance to the Premises to this effect.
- 26) No customer shall be admitted to the Premises if, in the judgement of the management or the SIA door staff, they appear to be intoxicated, or under the influence of illegal substances.
- 27) Customers may not dance at any time except in areas specifically designated by the Council as being separate from areas for sexual entertainment.
- 28) Customers must remain appropriately clothed at all times.

### **Closed Circuit Television (CCTV)**

- 29) CCTV must be installed, operated and maintained to the satisfaction of the East Devon District Council and the Chief Officer of Police in accordance with the requirements set out in the EDDC Sex Establishment Licensing Policy.

- 30) CCTV images must be retained for a minimum of 14 days and be produced on the request of the Police or a Licensing Officer of the East Devon District Council. Recording media must be set to 25 frames per second.
- 31) The CCTV system must be operational at all times whilst the premises are trading. If the system is faulty or not working then the Police and East Devon Licensing Service must be informed immediately. Details of the malfunction must be recorded in the premises incident book.
- 32) A4 sized warning notices must be displayed in public areas of the premises and at all entrances advising that CCTV is in operation. The signs located at entrances should be located on the exterior of the building at, and adjacent to, all public access doors. All signs must comply with the requirements of the Data Protection Act 2002.
- 33) CCTV shall be installed and maintained in all private performance areas to the satisfaction of the East Devon District Council and the Chief Officer of Police in accordance with the requirements set out in the EDDC Sex Establishment Licensing Policy.
- 34) Other than recordings made in accordance with the conditions relating to CCTV, no filming, recording or electronic transmission of performances shall take place without the prior consent of the Licensing Authority.

#### **Layout of Premises and Safety of Performers**

- 35) The approved activities shall only take place in the areas designated by the Licensing Authority
- 36) A suitable system must be installed to ensure the safety of performers whilst in private booths. This should include a combination of CCTV and door supervisors and be fully documented as part of the Premises Management Operation Manual. Where the Premises is unable to satisfy East Devon District Council and/or the Police that the measures in place adequately protect performers, then all dance booths used as part of the approved activities must be equipped with a panic alarm for safety. Procedures shall be put in place to ensure that this alarm system is monitored at all times during approved entertainment.
- 37) The Licensee shall ensure to the Council's satisfaction (including, where required, necessary planning or building control consents) that the interior of the premises is not visible from the outside of the Premises, and that the exterior is maintained to a satisfactory level of decorum. At no point may dancers be visible from outside of the Premises.
- 38) The Licensee shall ensure that any occupancy limits set by East Devon District Council are not exceeded whilst sexual entertainment takes place on the premises.

- 39) Information shall be clearly displayed within the internal exit areas of all sexual entertainment venues, reminding customers to behave in a responsible and appropriate way towards all persons, after leaving the venue.

### **Advertising**

- 40) The Licensee shall ensure that neither they nor any person promoting or providing entertainment on the Premises (nor any person acting on behalf of any such person) shall display advertisements promoting the entertainment or the Premises in any unlawful manner.
- 41) Where the Council has given notice in writing to the Licensee objecting to an advertisement on the grounds that, if displayed, it would offend against good taste or decency or be likely to encourage or incite crime or to lead to disorder or to be offensive to public feeling, that advertisement shall not be displayed.
- 42) The Licensee shall not permit the display outside of the Premises of photographs or other images which indicate or suggest that striptease or similar entertainment takes place on the Premises and which may be offensive.
- 43) The Licensee shall ensure that neither they nor any person promoting or providing entertainment on the Premises (nor any person acting on behalf of any such person) shall distribute flyers direct to residential premises, advertising the venue.

### **Documentation**

- 44) The Licensee shall provide in a timely fashion copies of any documents reasonably required by an authorised officer of the Council in relation to compliance with this Licence.

## APPENDIX 5

### EDDC Sex Licensing Fee Structure

<b>Grant</b>	<b>Renewal</b>	<b>Transfer</b>	<b>Variation</b>
£2,000 (+ refundable uncontested hearing fee of £4,000) Total £6,000	£1,000	£1,200	£1,000 (+ refundable uncontested hearing fee of £4,000) Total £5,000

The "refundable uncontested hearing fee" for both grant and variation applications will be payable with the non refundable fee at the time the application is made. When the application is not contested the whole of the uncontested hearing fee will be refunded to the applicant. Where a contested hearing occurs the Council's costs will be reviewed within 28 working days following the finalisation of the application process including any appeal. The review will be conducted by the Licensing Manager in consultation with the Head of Finance and the Chairman of the Licensing Enforcement Committee and where it is found that the Council's costs associated with the contested application is less than the £4,000 contested costs fee the difference will be refunded to the applicant.





Faint, illegible text or markings on the right side of the page.



