

Sex Establishments Policy on Determining the Number for the Relevant Locality

1. The licensing of Sex Establishments i.e. sex shops ,sex cinemas and sex entertainment venues, is governed by the Local Government (Miscellaneous Provisions Act 1982 Section 2 and Schedule 3 (as amended by Section 27 Policing and Crime Act 2009

2. This policy presents guidelines for Members of Licensing Sub Committees when determining the appropriate number of sex establishments in the 'Relevant Locality when considering an application for a sex establishment licence.

3. Section 12 of the Act sets out statutory and discretionary grounds for the refusal of a licence

4. Statutory Grounds for refusals are

- The applicant is under 18
- The applicant has been disqualified from holding a licence following revocation of a licence
- The applicant is not a Body Incorporated in the United Kingdom
- The applicant has been refused a licence in the last 12 months for the same site

5. Discretionary Grounds for Refusal

- The applicant is unsuitable by virtue of having been convicted of an offence or any other reason
- The licence would be managed by or operated for the benefit of someone other than the applicant
- The number of sex establishments in the relevant locality at the time the application is made (determined) is equal to or exceeds the number the authority considers appropriate
- The grant or renewal 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
 - iii to the layout, character or condition of the premises, vehicle vessel or stall in respect of which the application is made

6. In considering the locality/vicinity aspects Members must be clear that:

- A local authority does not have the right to have regard to the morality of sex establishments. Its approval or disapproval of sex establishments is not a matter that can be considered

- Objections on the ground that sex establishments should not be allowed to exist have no part to play in a local authority consideration of policy regarding these premises

7. The policy will focus on the three grounds for refusal outlined in the Act that may be used when refusing an application:

- the character of the relevant locality is inappropriate;
- the use to which any premises in the vicinity are put is inappropriate;
- Paragraph 12(1) of Schedule 3 also states that a licence may be refused if the number of sex establishments in the relevant locality at the time the application is made is equal to or exceeds the number which the authority consider is appropriate for that locality (this may be nil).

8. The policy guidelines regarding these three areas are given at paragraphs 10-16 below.

9. Each application must be considered on its own merits. An applicant has a legal right to argue that in their particular case there are no good and sufficient reasons to refuse a licence. The details outlined in this policy, would however guide applicants when considering the siting of Sex Establishments, and Members when determining licence applications.

10. Policy Guidelines

11. Character of Relevant Locality

12. Locality is to be defined by Members of a Licensing Subcommittee as an area around the premises capable of being affected by the operation of a sex establishment.

13. A locality whose character falls predominantly into one of the following categories would generally be considered unsuitable as a site for a licensed Sex establishment.

- Family and child oriented leisure and shopping areas, including markets and covered markets
- Predominantly residential areas i.e. consisting of substantial amounts of residential accommodation and not forming part of a local retail centre
- Areas containing a large student population
- Main tourist areas

14. Inappropriate Premises Use within the vicinity

15. The presence of the following premises in the vicinity (defined as the area close to the premises) of the proposed premises would generally warrant refusal of the application:

- Places of worship
- Community facilities or public buildings including but not limited to, swimming pools, leisure centres, public parks, youth centres/clubs, sheltered housing

Approved by the Executive on 29 September 2010 and effective from 1 January 2011

- Educational establishments including schools and nurseries
- Premises particularly attractive to young people and children e.g. retail shops such as toyshops, confectionary (sweet) shops etc.

16. Limiting the number of Sex Establishments in pre-defined localities

17. Where an application is referred to a Licensing Sub Committee for determination Members will define the relevant locality in relation to the proposed establishment.

18. Members will then consider the appropriate number of Sex Establishments for this locality based on the policy guidelines (this may be nil) and determine the application having regard to this.

19. Future applications, which were considered to fall within the same locality, may then be determined having regard to this limit.

20. Specific Decisions

21. In 2005 a Nil limit was set for Bromley Town Centre following an application for a sex shop at 24/24a London Road

22. (Note: for the purposes of this policy 'Bromley Town Centre' is the same area currently covered by the Alcohol Consumption in designated public places order and the Special Policy of Cumulative Impact under the Licensing Act 2003).

23. Reasons for limit

It is considered an inappropriate locality for licensed Sex Establishments for the following reasons:

- It is a family oriented shopping and entertainment locality which has a natural attraction for and is therefore frequented by families, children and young people
- A large number of school children use the locality as a thoroughfare, gathering place and social centre
- The presence of an Open-air market, Theatre, Library, Seating Areas, Fast Food outlets including McDonalds within the locality contribute to the community oriented character of the locality

24. REVIEW OF POLICY

25. Substantial changes in the character and use of premises within the locality may necessitate the number recommended being reviewed.

26. Whilst this may be taken into account within the context of an individual application, Members will review this policy generally and specifically regarding limits for pre-defined localities at least every three years.

27. LEGAL IMPLICATIONS

28. The licensing of Sex Establishments i.e. sex shops and sex cinemas, is governed by the Local Government (Miscellaneous Provisions) Act 1982 Schedule 3. The determination of sex establishment licence applications is a statutory duty of the Council.

29. Each application will be considered on its merits and exceptions to the policy may be considered if the circumstances justify this. It should be noted that the legislation only indicates that an application may be refused if the policy adopted allows for this. Members should note that if they were minded to refuse to grant a licence, they should only do so if they are satisfied that this represents a fair balance between controlling the use of the property in the general public interest and the applicants right to carry on a business subject to reasonable controls.

30. Human Rights

While all Convention Rights must be considered, those of particular relevance are:

- Article 8 - Right to respect for private and family life
- Article 1 of the First Protocol - Protection of Property
- Article 6(1) - Right to Fair Hearing
- Article 10 – Freedom of Expression

31. All Rights must be delivered without discrimination (Article 14), emphasising the need for the formulation and application of any guidelines to avoid "moral judgements". Each party must be given a fair hearing and the decision itself must represent a fair and proportionate balance between the competing interests of the applicant and objectors.

32. Any Sex Establishment Licence may be granted subject to Conditions imposed by the Council. Therefore an application should not be refused if conditions could adequately address any area of concern.

33. The decision of the Council in respect of an application to grant, renew, transfer or revoke a licence can be appealed against within 21 days of the date of the decision. Appeals must be made to Bromley Magistrates Court.

The Court House
London Road
Bromley Kent
England
BR1 1RA

Tel 0845 6013600