



SEX ESTABLISHMENT POLICY

December 2010

CONTENTS

Page number

1. Introduction	2
2. Consideration of sex establishment licence applications	2-3
3. Representations	3
4. Existing licence holders	3-4
5. Exchange of information	4
6. Compliance and enforcement	4
7. Relevant locality and a nil policy	5
8. Length of licence	5
9. Waivers	5
10. Application forms	5
11. Licence conditions	5
12. Fees	5
Appendix A	6-8
Appendix B	8-9

Sex Establishment Licensing Policy

1. Introduction

The London Borough of Richmond upon Thames has adopted section 2 and schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 (LG(MP)A82) (as amended by section 27 of the Policing and Crime Act 2009) in order to licence sexual entertainment venues (SEVs) in the Borough, and had previously adopted the LG(MP)A82 for the licensing of sex shops and sex cinemas. Sexual entertainment venues, sex shops and sex cinemas are referred to below collectively as 'sex establishments' **see Appendix A**. The 1982 Act and the 2009 Act can be viewed at www.opsi.gov.uk. The provisions relating to sexual entertainment venues came into force in the London Borough of Richmond upon Thames on 14 December 2010.

Licences for sex establishments are required pursuant to paragraph 6 of the Schedule 3 of the 1982 Act because "no person shall in any area in which this Schedule is in force use any premises, vehicle, vessel or stall as a sex establishment except under and in accordance with the terms of a licence granted under this Schedule by the appropriate authority".

Local authorities are entitled to have a policy as to the appropriate number of sex establishments in their area. This number can be nil. In 1988 following consultation with members the Council first adopted a policy where the appropriate number of sex establishments per ward was determined to be nil. In 2004, following ward consultations, the Council's Regulatory Committee determined that the appropriate number of sex establishments within each ward was again nil. That consultation reflected changes in ward boundaries and elected members, following the council election in 2002. These earlier policies referred to sex shops and sex cinemas. The existence of this nil policy may be one of the reasons why the borough has attracted few applications for such sex establishments.

Between 23 August 2010 and 3 October 2010 the council consulted on whether to adopt the new provisions of the LG(MP)A82 to licence sexual entertainment venues, a new form of sex establishment. The consultation provided an opportunity not only to seek views on the appropriate number of sexual entertainment venues but also to update views on the appropriate number of sex shops and sex cinemas. For all types of sex establishments the over whelming response was that there were no localities in the borough appropriate for such licensable activities. Nil, was therefore adopted as the appropriate number of sex establishments within the borough.

2. Consideration of sex establishment licence applications

In adopting, enforcing or considering applications under this legislation the licensing authority does not take a moral stand but recognises that Parliament has made it lawful to operate sex establishments, and that such businesses, in suitable localities are a legitimate part of the retail and leisure industries. Relevant locality, comprising the area surrounding the premises will need to be determined once a licence application is made.

With 'nil' being the adopted appropriate number of sex establishments within the borough the policy presumption is that sex establishment applications will normally be refused.

Notwithstanding this presumption each application will be considered on its own merits. The Licensing Authority recognises that there are different locality characteristics across the borough and in some circumstances there may be net benefits of a licensed sex establishment, tightly conditioned, over an activity operating just outside of the need to be licensed that may result in greater detriment to the locality.

Where relevant representations are received by the Licensing Authority from a person or body opposing an application, the application shall be heard before a Licensing Sub-Committee drawn from the Licensing Committee who will have regard to this policy and all relevant legislation when making its decision.

For representations to be considered they should relate to the statutory grounds for refusal as set out in Para 12 of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (see Appendix B).

3. Representations

There is no vicinity test applied to those wishing to make representations whether against or in support of a sex establishment licence application. The police are a statutory consultee.

Applications will be considered by a Licensing Sub-Committee. Applicants and objectors are given an equal opportunity to state their case in accordance with our protocol which is available on our website at www.richmond.gov.uk or via our licensing team.

Representations/objections should ideally:

- be made in writing (submitted by post or electronically);
- if submitted by post, it should be in black ink on single sides of A4 paper;
- indicate the name and address of the person or organisation making the representation (although this will not be disclosed to licence applicants);
- indicate the premises to which the objection relates, the date of the meeting or application submitted;
- indicate the proximity of the premises to the person making the objection. A sketch map or plan may be helpful to show this;
- clearly set out the reasons for making the objection.

4. Existing licence holders

When determining a licence application, the licensing authority must have regard to any rights the applicant may have under ECHR considerations, specifically Article 10 (right to freedom of expression) and Article 1, Protocol 1 (protection of property) of the European Convention on Human Rights. The Provision of Services Regulations 2009 amended Schedule 3 to the 1982 Act to state that, if having considered an application for the grant, renewal or transfer of a licence, the appropriate authority decides to refuse it on one or more of the above grounds, it must provide the

applicant with reasons for the decision in writing. Accordingly a decision in writing will be issued.

It is established law that it would be prudent to assume that freedom of expression includes the right to use particular premises as sexual entertainment venues and that a person who is denied the right to use his premises as a sexual entertainment venue where he already has a licence to do so under the 2003 Act (or in future under the 1982 Act) has been deprived of possessions. It would still be open to the Licensing Authority to argue that such rights were not engaged in a particular case.

Sub-Committees must consider whether any interference with the applicant's rights under Article 10 or Article 1, Protocol 1 of the European Convention on Human Rights is necessary and proportionate for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others or, in the case of Article 1, Protocol 1, can be justified in the general interest.

Provided a Licensing Authority and/or Licensing Sub-Committee exercise their powers rationally and in accordance with the purposes of the statutory provisions, it would require very unusual facts for it to amount to a disproportionate restriction on Convention rights.

5. Exchange of Information

The authority may from time to time be called upon to comply with its' duty 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.

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.

The names and address of objectors will not be disclosed to applicants or published in public reports in accordance with the Local Government (Miscellaneous Provisions) Act 1982 (such details will be made available to Councillors on the Licensing Sub-Committee).

6. Compliance and Enforcement

It is acknowledged that sex establishments are not generally a source of crime or disorder. The Licensing Authority will carry out inspections of premises no more than once a year unless there are exceptional circumstances, or intelligence requires otherwise, and where necessary enforcement action will be taken.

Our approach to enforcement is set out in our enforcement policies which are available on the web site www.richmond.gov.uk .

7. Relevant locality

“Relevant locality’ means —

- (a) in relation to premises, the locality where they are situated; and
- (b) in relation to a vehicle, vessel or stall, any locality where it is desired to use it as a sex establishment.”

8. Length of licence

Licences will be granted for the duration of up to a year at a time.

Renewal applications submitted before the expiry of the current licence will be deemed to continue until a determination is made by a Licensing sub-committee and or any appeal tribunal

9. Waivers

The Licensing Authority will generally not permit waivers from the requirements to hold a sex establishment licence but will consider any applications on their individual merits.

In respect of applications for sexual entertainment licence waivers the licensing authority will take into account the current exemption for no more than eleven occasions within a 12-month period, providing there is at least one month between each period provided it involves entertainment which itself does not last for more than 24 hours.

10. Application forms

Applications must be submitted using the standard application form, including public notices, which are available on request from the licensing team or can be downloaded from our website at www.richmond.gov.uk. or completed electronically.

11. Licence conditions

Standard conditions for the operation of sex shops will be applied where it is reasonable to impose conditions. Wherever possible, these will be discussed in advance with operators by our licensing officers, and operators are invited to make that approach prior to submission of an application.

12. Fees

Our fees are set each year and details are available from our licensing team or from our website at www.richmond.gov.uk.

Appendix A

Sex Shops

Definition of Sex Shops

Licences for sex shops are required where there are a “significant degree” of “sex articles” for sale, which would include the sale of ‘R18 video recordings’ [which means any disc magnetic tape or any other device capable of storing data electronically] containing information by the use of which the whole or a video work may be produced.

A “sex shop” is defined in the 1982 Act as:

“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 Shops: Significant degree

The phrase “a significant degree” is not defined in the 1982 Act. When considering whether or not a business is selling a significant degree of sex articles and needs a licence, we will consider:

- (1) the ratio of sex articles to other aspects of the business;
- (2) the absolute quantity of sales;
- (3) the character of the remainder of the business;
- (4) the nature of the displays in the business or on its website or in its window display;
- (5) turnover;
- (6) other factors which appear to be materially relevant.

It should be noted that “No premises shall be treated as a sex shop by reason only of their use for the exhibition of moving pictures by whatever means produced”.

Sex Shops: Sex Articles

The phrase “sex articles” is defined in the 1982 Act as:

“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; and ... (a) 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 (b) 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; or (ii) is concerned primarily with the portrayal of, or primarily deals with or relates to, genital organs, or urinary or excretory functions.”

Sex Cinemas

Definition of Sex Cinema

A “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; or (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”.

No premises shall be treated as a sex cinema by reason only (a) if they may be used for an exhibition of a film (within the meaning of [paragraph 15 of Schedule 1](#) to the [Licensing Act 2003](#)) by virtue of an authorisation (within the meaning of [section 136](#) of that Act), of their use in accordance with that authorisation; or (b) of their use for an exhibition to which [section 6](#) of that Act (certain non-commercial exhibitions) applies given by an exempted organisation within the meaning of [section 6 \(6\)](#) of [the [Cinemas Act 1985](#)].”.

SEXUAL ENTERTAINMENT VENUES

Definition of a Sexual Entertainment Venue

A “sexual entertainment venue” means any premises at which “relevant entertainment” is provided before a live audience for the financial gain of the organiser or the entertainer”. Licences for sexual entertainment venues are required for “any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer”.

Such activity would no longer be classified as regulated entertainment under the LA03, subject to the exception of eleven occasions a year. [Where a premises has a Premises Licence allowing “regulated entertainment”, “relevant entertainment” can be provided without a SEV Licence on 11 occasions per annum, provided it is for less than 24 hours and a month has expired from the last occasion.]

Relevant entertainment

“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 can consist of just one person or more than one person (Paragraph 2A of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended by section 27 of the Policing and Crime Act 2009)).

Sexual Entertainment Venue licences will be required for premises providing lap dancing, pole dancing, table dancing, strip shows, peep shows, or live sex shows,

but may also be required where the operation would fall into the definition of “relevant entertainment”. Adult entertainment not classed as “relevant entertainment” may still require licensing under the Licensing Act 2003. The Licensing Authority will consider each potential operation at particular premises on its own merits.

It should be noted that premises that traded legally under their Licensing Act 2003 Premises Licence in the past may find that the criteria for grant of an SEV licence is different. It was envisaged by Government that this may see some operators refused an SEV licence, especially where they are located in residential areas.

Transitional provisions in respect of SEV's

The ‘Transitional Order’ allows a local authority to refuse applications, whether they are from existing operators or new applicants, on one or more grounds set out in paragraph 12 of Schedule 3 of the 1982 Act. When making such decisions, the Licensing Authority must take into account any rights the existing operators may have under Article 1, Protocol 1 of the European Convention on Human Rights (which entitles every person to the peaceful enjoyment of their possessions) and Article 10 (freedom of expression). See ECHR Considerations in the section 6 above.

Appendix B

Grounds for refusal: mandatory

The Licensing Authority or the Licensing Sub-Committee cannot grant a licence:

- (a) to a person under the age of 18; or
- (b) to a person who is for the time being disqualified; or
- (c) to a person, other than a body corporate, who is not resident in an EEA state or was not so resident throughout the period of six months immediately preceding the date when the application was made; or
- (d) to a body corporate which is not incorporated in an EEA state; or
- (e) to a person who has, within a period of 12 months immediately preceding the date when the application was made, been refused the grant or renewal of a licence for the premises, vehicle, vessel or stall in respect of which the application is made, unless the refusal has been reversed on appeal.

Grounds for refusal: discretionary

The Licensing Authority or the Licensing Sub-Committee has discretion to grant or refuse a licence:

- (a) if the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason;
- (b) if the licence were to be granted, renewed or transferred the business to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant, renewal or transfer of such a licence if he made the application himself;

(c) if the number of sex establishments, or of sex establishments of a particular kind, in the relevant locality at the time the application is determined is equal to or exceeds the number which the authority consider is appropriate for that locality and Nil may be an appropriate number;

(d) if the grant or renewal of the licence would be inappropriate, having regard—

- (i) to the character of the relevant locality; or
- (ii) to the use to which any premises in the vicinity are put; or
- (iii) to the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.

A decision to refuse a licence must be relevant to one or more of the above grounds.

Clear reasons will be given for Licensing Authority or the Licensing Sub-Committee decisions.

Licensing,
Environmental Directorate
London Borough of Richmond upon Thames
Civic Centre
44 York Street
Twickenham
TW1 3BZ

020 8831 6455
licensing@richmond.gov.uk