

Appendix One

Tower Hamlets Council

Sex Establishment Licensing Policy

Introduction

This policy sets out Tower Hamlets Council's proposed approach to regulating sex establishments and the procedure that it will adopt in relation to applications for sex establishment licences.

The policy of the Council is to refuse applications for sexual entertainment venues. This policy is intended to be strictly applied and will only be overridden in genuinely exceptional circumstances. Such circumstances will not be taken to include the quality of the management, its compliance with licence conditions, the size of the premises or its operating hours.

The policy is intended as a guide to applicants, licence holders, people who want to object to applications and members of the Licensing Committee who are responsible for determining contested applications. It also aims to guide and reassure the public and other public authorities, ensuring transparency and consistency in decision making.

When the decision making powers of the Council are engaged each application will be dealt with on its own merits but this policy gives prospective applicants an early indication of whether their application is likely to be granted or not. It also provides prospective applicants details of what is expected of them should an application be made.

The legal controls for sex establishment premises are contained in the Local Governmental (Miscellaneous Provisions) Act 1982 as amended by the Greater London Council (General Powers) Act 1986 and the Policing and Crime Act 2009 ("the 1982 Act").

There are 3 types of sex establishments which fall into the licensing regime:-

Sex shops

Sex cinemas

Sexual entertainment venues

The role of the Council in its position as Licensing Authority is to administer the licensing regime in accordance with the law and not in accordance with moral standing. The Council recognises that Parliament has made it lawful to operate a sex establishment and such businesses are a legitimate part of the retail and leisure industries.

Policy Rationale

The policy has been developed to set out how the legislation will be administered and applied within the London Borough of Tower Hamlets. The policy identifies how the Council would exercise the licensing regime in relation to sexual entertainment venues.

The policy has been developed to reflect and complement existing Council plans and strategic approach, namely:-

- Tower Hamlets Community Plan.
- Tower Hamlets Crime & Drug Reduction Partnership Plan.
- Tower Hamlets Enforcement Policy.
- Tower Hamlets Core Strategy.
- Tower Hamlets Town Centre Spatial Strategy.
- Tower Hamlets Statement of Licensing Policy (Licensing Act 2003).
- Tower Hamlets Statement of Licensing Policy (Gambling Act 2005).

The policy has also been prepared with regard to:

- Consultation responses

- Human Rights Act 1998
- Equalities Act 2010

The policy seeks to contribute to the “One Tower Hamlets” principle by fostering community cohesion, reducing inequalities and empowering communities.

The public consultation that was undertaken concerning the adoption of a nil policy did not have overwhelming support. Therefore careful consideration has been given to the policy response, given the balance that the consultation returns did not give overwhelming support.

Policy Considerations

Existing Licensed Premises

The Council has had the ability to licence sex shops and sex cinemas under the Local Government (Miscellaneous Provisions) Act 1982 for many years.

There are no licensed sex shops in Tower Hamlets.

The businesses that hold premises licences under the Licensing Act 2003 with permissions that will be affected by the adoption of the sexual entertainment venue licensing regime are as follows:-

| NAME | ADDRESS |
|---|--|
| THE BEEHIVE | 104-106 Empson Street, London, E3 3LT |
| EONE CLUB | 168 Mile End Road, London, E1 4LJ |
| NAGS HEAD PUBLIC HOUSE | 17-19 Whitechapel Road, London, E1 1DU |
| THE PLEASURE LOUNGE | 234 Cambridge Heath Road, London, E2 9NN |
| WHITE SWAN | 556 Commercial Road, London, E14 7JD |
| ASTON'S CHAMPAGNE AND WINE BAR BASEMENT & 1ST FLOOR | 187 Marsh Wall, London, E14 9SH |
| CLUB PAISA | 28 Hancock Road, London, E3 3DA |
| OOPS | 30 Alie Street, London, E1 8DA |
| WHITE'S GENTLEMANS CLUB | 32-38 Leman Street, London, E1 8EW |

| | |
|---------|--|
| SECRETS | 43-45 East Smithfield, London, E1W 1AP |
| IMAGES | 483 Hackney Road, London, E2 9ED |

Tower Hamlets Council has adopted schedule 3 to the 1982 Act with effect from **XXXXX 2013** so that it can:

- set a limit on the number of sexual entertainment venues
- determine premises that are appropriate for the borough and
- licence sexual entertainment venues

Sexual entertainment venues are those that regularly provide lap dancing and other forms of live performance or live display of nudity solely or principally for the purpose of sexually stimulating any member of the audience (whether by verbal or other means).

Establishments that hold events involving full or partial nudity less than once a month may be exempt from the requirements to obtain a sex establishment licence or have provided such on no more than 11 occasions in a 12 month period and applicants are advised to contact the Licensing Team for advice.

Limits on the number of licensed premises

The Council has determined that there are a sufficient number of sex shops, sex cinemas and sexual entertainment venues currently operating in the borough and it does not want to see an increase in the numbers of premises that are currently providing these activities.

Whilst the Council intends to adopt a policy to limit the number of sexual entertainment venues in the borough to nil, it recognises that there are a number of businesses that have been providing sexual entertainment in Tower Hamlets for several years. The Council will not apply this limitation when considering applications for premises that were already trading with express permission for the type of entertainment which is now defined as sexual entertainment on the date that the

licensing provisions were adopted by the authority if they can demonstrate in their application:

- High standards of management
- A management structure and capacity to operate the venue
- The ability to adhere to the standard conditions for sex establishments

The Council will consider each application on its merit although new applicants will have to demonstrate why the Council should depart from its policy. Furthermore if any of the existing premises cease trading there is no presumption that the Council will consider any new applications more favourably.

Location of premises

The Council's policy is that there is no locality within Tower Hamlets in which it would be appropriate to license a sex establishment. Accordingly, the appropriate number of sex establishments for each and every locality within Tower Hamlets is zero.

As previously stated in the policy the Council will treat each application on its own merits however applicants should be aware that the Council will take into consideration the location of the proposed premises and its proximity to:

- residential accommodation,
- schools,
- premises used by children and vulnerable persons
- youth, community & leisure centres,
- religious centres and public places of worship
- access routes to and from premises listed above
- existing licensed premises in the vicinity

Impact

In considering applications for the grant of new or variation applications the Council will assess the likelihood of a grant causing impacts, particularly on the local community.

The Council will take the following matters into account:

- the type of activity
- the duration of the proposed licence
- the proposed hours of operation
- the layout and condition of the premises
- the use of other premises in the vicinity
- the character and locality of the area
- the applicant's previous knowledge and experience
- the applicant's ability to minimise the impact of their business on local residents and businesses
- any evidence of the operation of existing /previous licences held by the applicant
- any reports about the applicant and management of the premises received from residents, Council officers or the police
- the ability of the proposed management structure to deliver compliance with licensing requirements, policies on staff training and the welfare of performers
- crime and disorder issues
- cumulative impact of licensed premises, including hours of operation
- the nature and concerns of local residents
- any evidence of complaints about noise or disturbance caused by premises

In considering applications for renewal the Council will take into account

- the applicant's ability to minimise the impact of their business on local residents and businesses
- any reports about the licensee and management of the premises received from residents, Council officers or the police
- whether appropriate measures have been agreed and put into place to mitigate any adverse impacts

- any evidence of complaints about noise or disturbance caused by premises

In considering applications for transfer the Council will take into account:

- the applicants previous knowledge and experience
- the applicants ability to minimise the impact of their business on local residents and businesses
- any evidence of the operation of existing /previous licences held by the applicant
- any reports about the applicant and management of the premises received from residents, Council officers or the police
- the ability of the proposed management structure to deliver compliance with licensing requirements, policies on staff training and the welfare of performers

Applicants

Where appropriate the Council expects applicants to:

- demonstrate that they are qualified by experience
- have an understanding of general conditions
- propose a management structure which will deliver compliance
- have appropriate operating conditions for example
 - i. management competence
 - ii. presence of management at the premises
 - iii. credible management structure
 - iv. enforcement of rules internally – training & monitoring
 - v. a viable business plan covering door staff, CCTV
 - vi. policies for welfare of performers
- demonstrate that they can be relied upon to act in best interests of performers through remuneration, facilities, protection, physical and psychological welfare
- have a transparent charging scheme with freedom from solicitation
- a track record of management compliant premises or employ individuals with such a track record

New applicants may be invited for interview by the Licensing Officer and /or Police Officer prior to the application being referred to the Licensing Committee for determination.

Applications from anyone who intends to manage the premises on behalf of third party will be refused.

Premises appearance and layout

The Council expects premises to:-

- have an external appearance which is in keeping with the locality
- prevent the display outside the premises of photographs or other images which may be construed as offensive to public decency
- adequate lighting to allow monitoring of all public areas
- surveillance by CCTV
- surveillance by CCTV of all private booths

Conditions

The council will prescribe, and from time to time revise, standard conditions which will apply generally to licences that the council will grant or renew.

Through standard conditions the council seeks to ensure that sexual entertainment venues are well managed and supervised, restrict the sexual entertainment activities and the manner in which they are permitted to be provided, protect performers, and control the impact of the venue and its customers in relation to its locality.

Specifically, standard conditions could include measures which are found in the appendix of this policy.

The Application Process

Making a new, renewal, transfer or variation application

The Act requires the Council to refuse an application if the applicant:

- Is under the age of 18 or
- Is disqualified by virtue of having had their licence revoked in the last 12 months or
- Is not resident in an EEA state, or has not been an EEA state resident for the last 6 months immediately preceding the date when the application was made or
- Has been refused an application in the last 12 months immediately preceding the date when the application was made or
- Is a corporate body which is not incorporated in an EEA state

Applications forms and details of current fee levels are available:

- on the Council's website (www.towerhamlets.gov.uk)
- from the Licensing Team on 020 7364 5008
- by email to licensing@towerhamlets.gov.uk

The Council prefers to receive electronic applications and *offers a choice of payment options the details of which are contained in the application pack.*

The Council expects the premises to have planning consent for the intended use and hours of operation, or otherwise have lawful planning status before making an application for a new licence.

In order for the application to be valid the applicant must:

- Submit the completed application form
- Pay the application fee
- Submit a floor plan, drawn to scale showing the layout of the premises (new applications only)
- Submit a location plan (1:1250) showing the location of the premises (NB. plans will not be required for transfers nor renewal applications)
- 2 passport size photos of the applicant where the applicant is an individual rather than a limited company

- 2 passport size photos of the manager if applicant is a limited company(NB: photos will only be required if there has been a change of applicant or manager since the last application)
- Display an A4 notice at the proposed premises for 21 days beginning with the date of the completed application is made setting out the application details. The notice must be in a prominent position so that it can be easily read by passers-by. A notice template will be provided with the application form.
- Publish a notice on at least one occasion in a local newspaper, during the period of ten working days starting on the day the application was given Council. The advert can be any size or colour but must be readable.

The date of the application is the date that it is received by the Council.

Applicants who wish to advertise the application in another local newspaper are advised to contact the Licensing Team beforehand, to confirm that it is acceptable.

On receipt of a valid application the Council will consult:

- The Police
- The Fire Brigade
- Building Control
- Health and Safety
- Ward Councillors

For new and variation applications the Council will also consult:

- Development Control Team
- Local residents living within 50m of the premises

Authorised Officers from the Council, Fire Brigade and Police may choose to inspect the premises and require works to be carried out to bring the premises up to the required standard before the premises can be used for licensable activities.

The Council will not determine an application for a licence unless the applicant allows an authorised officer reasonable opportunity to enter the premises to make such

examination and enquiries as may be necessary to determine the suitability of the applicant and the sex establishment.

Representations

Anyone wishing to object to the application must submit a representation, in writing, not later than 28 days after the date of the application.

Representations can either be submitted via

- Our website: www.towerhamlets.gov.uk
- Email to: licensing@towerhamlets.gov.uk
- Post to: Consumer and Business Regulations, Licensing Team, 6th Floor, Mulberry Place, 5 Clove Crescent, E14 2BG.

A person making a representation must clearly state their name, address, and the grounds for objecting to the application and indicate whether they consent to have their name and/ or address revealed to the applicant. Copies of representations will be made available to the applicant 14 days before the committee hearing.

The Council will not consider objections that are frivolous or vexatious or which relate to moral grounds (as these are outside the scope of the Act).

The Council prefers to receive electronic representations.

Late representations may be admissible at the discretion of the Council if there's sufficient reason to indicate that applicants will not be significantly prejudiced by the decision to allow a late objection to be considered. In making such a decision the Council will take into account:

- The length of the delay
- The amount of time that the applicant has to consider the representation before the hearing date
- If other representations have been received before the deadline

Determining an application

Applications with no representations will be determined under delegated authority to officers.

Applications with representations recommending that conditions be attached to the licence and which are acceptable to both the applicant and person making the representation can be determined under delegated authority to officers.

All other contested applications will be referred to the Licensing Committee for determination. The applicant, anyone making a representation and the ward Councillors will be notified the date, time and venue of the hearing and invited to attend to address the committee in person.

Applications can take up to 14 weeks to be determined. If an application is likely to take longer than 14 weeks to determine the Council will notify the applicant in writing before this deadline. Applications for sex establishment licenses are exempt from the tacit consent provisions of the EU Services Directive on the grounds of public interest and the legitimate interests of third parties.

The applicant will be notified in writing about the outcome of their application within 5 working days of the decision being made.

Sex Establishment licences are usually issued for 12 months, but can be issued for a shorter period if deemed appropriate.

In order to continue operating as a sex establishment the licence holder must make a renewal application prior to the expiry of the existing licence.

Appeals

Any applicant who is aggrieved by a decision to refuse an application or by the imposition of any conditions can appeal to the Magistrates Court within 21 days beginning with the date of receiving the decision in writing.

Grounds for refusing an application

1. The applicant is unsuitable to hold a licence by reason of having been convicted of any offence or for any other reason

2. That if the license 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 license if he made the application himself

3. That the number of sex establishments in the relevant locality at the time the application is made is equal to or exceeds the number which the authority consider is appropriate for that locality

4. That the grant or renewal of the license would be inappropriate, having regard:-
 - a. to the character of the relevant locality

 - b. to the use to which any premises in the vicinity are put; or

 - c. to the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.

Transitional Arrangements

Broadly speaking, those existing sexual entertainment venues (lap dancing clubs etc) with a premises licence under the Licensing Act 2003, under which it is lawful to provide such entertainment, will continue to be able to operate for one year after the Council adopts the 2009 Act provisions or, if later, the determination of any application submitted during that year.

The 'transitional period' will last for 12-months beginning with the date that the Council resolves that Schedule 3 as amended by the 2009 Act will come into force in their area ('the 1st appointed day'). Six months following the 1st

appointed day will be known as the '2nd appointed day' and the day on which the transitional period ends will be known as the '3rd appointed day'

Existing Operators

To allow time to comply with the new regime, existing operators, who, immediately before the 1st appointed day, have a 2003 Act licence and lawfully use premises as a sexual entertainment venue under that licence or are undertaking preparatory work to use the venue in that way will be allowed to continue to provide relevant entertainment until the 3rd appointed day or the determination of any application they have submitted before that time (including any appeal against the refusal to grant a licence), whichever is later

For the purposes of the Transition a "2003 Act Licence" means a premises licence or club premises certificate under the Licensing Act 2003 under which it is lawful to provide relevant entertainment.

"Preparatory work" refers to work carried out by an operator, such as a refurbishment or refit, in order that they can use the premises as a sexual entertainment venue in the future. The operator will have been granted a 2003 Act licence before the 1st appointed day but will not have used the premises as a sexual entertainment venue by that date. It is likely that such operators will be known to the Council. However, where a dispute arises between the Council and a licence-holder over whether the licence-holder qualifies as an existing operator by virtue of this provision the Council will need to seek evidence from the licence-holder to demonstrate that they clearly intended to operate a sexual entertainment venue in the future and work had been done to achieve this end.

For the purposes of the Transition a "2003 Act Licence" means a premises licence or club premises certificate under the Licensing Act 2003 under which it is lawful to provide relevant entertainment.

Appointed Days

1st Appointed Day

The day on which the Sexual Entertainment Venue regime comes into force in the Borough and the beginning of the transitional period (xxxxxxx2013)

2nd Appointed Day

The day 6 months after the 1st appointed day (xxxxxxxxxx2013)

3rd Appointed Day

The day 6 months after the 2nd appointed day and the end of the transitional period (xxxxx2014)

New Applications

New applicants are people who wish to use premises as a sexual entertainment venue after the 1st appointed day but do not already have a premises licence or club premises certificate to operate as such under the 2003 Act or do have such a licence but have not taken any steps towards operating as such. After the 1st appointed day new applicants will not be able to operate as a sexual entertainment venue until they have been granted a sexual entertainment venue licence

Determining Applications Received On or Before the 2nd Appointed Day

Applicants will be able to submit their application for a sexual entertainment venue from the 1st appointed day onwards.

As the Council is able to refuse applications having regard to the number of sex establishments they consider appropriate for a particular locality, all applications made on or after the 1st appointed day but on or before the 2nd appointed day shall be considered together. This will ensure that applicants are given sufficient time to submit their application and all applications received on or before the 2nd appointed day are considered on their individual merit and not on a first come first serve basis.

No applications shall be determined before the 2nd appointed day. After the 2nd appointed day the appropriate authority shall decide what if any licences should be granted. If a new applicant is granted a licence it will take effect immediately. If an existing operator is granted a licence, it will not take effect until the 3rd appointed day, up to which point they will be allowed to continue to operate under their existing premises licence or club premises certificate.

Determining Applications Received After the 2nd Appointed Day

Applications made after the 2nd appointed day shall be considered when they are made but only once all applications made on or before that date have been determined. However, reference to determination here does not include references to the determination of any appeal against the refusal of a licence.

As with applications received on or before the 2nd appointed day, licences granted to new applicants shall take effect immediately and licences granted to existing operators shall take effect from the 3rd appointed day or, if later, the date the application is determined.

Outstanding Applications

The Council will attempt where possible to determine outstanding applications made under the 2003 Act, which include an application for the provision of relevant entertainment, before the date that Schedule 3 as amended by the 2009 Act comes into force in their area.

Where it has not been possible to determine application before the 1st appointed day, applicants will need to submit an application for a sex establishment licence as set out in Schedule 3 if they wish to provide relevant entertainment. From the 1st appointed day onwards outstanding applicants shall be dealt with as though they are new applicants

Additional information and advice

Please contact:

Consumer and Business Regulations

Licensing Team

6th Floor,

Mulberry Place,

5 Clove Crescent,

E14 2BG.

licensing@towerhamlets.gov.uk

020 7364 5008