

# Policy on Sex Establishment Licensing

## 1. Licensing Requirement

- 1.1. The Local Government (Miscellaneous Provisions) Act 1982 as amended ('the 1982 Act') provides that where Schedule 3 has been adopted by a local authority, no person shall in that area use any premises, vehicle, vessel or stall as a sex establishment except under and in accordance with the terms of a licence granted under that Schedule by the authority.
- 1.2. Harrow Council has resolved that Schedule 3 of the 1982 Act as amended applies to its area.
- 1.3. The 1982 Act imposes a duty on a local authority to refuse to grant a licence to a:
  - a.) person under the age of 18; or
  - b.) person who is for the time being disqualified following the revocation of a licence; or
  - c.) 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.) body corporate which is not incorporated in [an EEA state] ; or
  - e.) 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 of the premises, vehicle, vessel or stall in respect of which the application is made, unless the refusal has been reversed on appeal.
- 1.4. Furthermore the 1982 Act allows a Local Authority to refuse to grant a licence where:
  - a.) the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reasons; or
  - 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; or

- c.) 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; or
- d.) that the grant or renewal of the licence would be inappropriate, having regard to:

- i) the character of the relevant locality; or
- 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.

1.5. The 1982 Act provides that for the purpose of paragraph 1.4(c) above, nil may be an appropriate number.

1.6. Harrow Council is of the opinion that it is inappropriate for the Council to treat the whole borough as a relevant locality.

1.7. The Council considers it appropriate to consider each individual ward as a relevant locality and that the appropriate number of sex establishments in each ward is nil.

1.8. Therefore, whilst all applications for sex establishment licences for premises in the borough of Harrow will be properly considered on their own merit, there will be a presumption of refusal of applications for such licences.

## **2. Crime and Disorder**

2.1 In accordance with Section 17 Crime and Disorder Act 1998, the Council is under a duty to exercise its functions with due regard to the likely effect on, and the need to do all that it reasonably can to prevent, crime and disorder in its area. The possible crime and disorder implications are relevant factors in the consideration of all applications. In giving due regard to the possible implications members, when determining an application for a sex establishment licence, will consider and weigh up all the information available and representations made, including those from the public and other relevant authorities.

### **3. Human Rights**

- 3.1 In determining applications, the principles of the Human Rights Act 1998 must be taken into consideration. The 1982 Act acknowledges that local authorities are entitled, amongst other things, to act where this is in the “general interest”. It should also be noted that there is a right of appeal to the Magistrates Court on certain grounds.
- 3.2 The Human Rights Act 1998 incorporates the European Convention on Human Rights and makes it unlawful for a local authority to act in a way that is incompatible with a Convention right. The Council will have particular regard to the following relevant provisions of the European Convention on Human Rights:

**a.) Article 6 – Right to Fair Hearing**

In the determination of civil rights and obligations everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law

**b.) Article 8 – Right to respect for private and family life**

Every person has the right to respect for his home and private life.

**c.) Article 1 First Protocol – Right to protection of property**

Persons are entitled to the peaceful enjoyment of their possessions. However, this is subject to the right of the State, through statute, to control the use of premises.

### **4. Consideration of Applications**

- 4.1 In considering any application for the grant, renewal or transfer of a licence the Council is obliged to have regard to any observations submitted by the Metropolitan Police and any relevant objections received from members of the public, within the 28 day consultation period.
- 4.2 The Council recognises that Sex Establishment Licensing is controversial and stimulates very emotive arguments. However under the legislation, the Council does not have the right to have regard to the morality of sex establishments when considering applications for licences. Consequently, straightforward objections on the grounds that sex establishments should not be allowed on moral grounds will not be considered regarding sex establishment applications, and will be rejected.

- 4.3 All applications for new Sex Establishment Licences and renewals will be considered by the Licensing Committee or subcommittee thereof, at a public hearing.
- 4.4 An applicant for the grant or renewal of a licence whose application is refused has the right of appeal to the Magistrates' Court within 21 days. However, if refusal was on the grounds specified in 1982 Act Schedule 3 Section 12(3) c. or d. above then no right of appeal is available under this legislation.
- 4.5 Any person who has made a representation, objecting to or supporting an application, has no right of appeal under the legislation.

## **5. Policy Review**

- 5.1 Harrow Council will review this policy as required by the governing legislation or in light of new guidance from a relevant body.

## **6. Further Information**

- 6.1 For further information on any aspect of this policy, please contact:

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