

## APPENDIX 'C'

### Licensing of Sex Establishments

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#### **1. Introduction**

This document sets out the policy of Newcastle under Lyme Borough Council on the Regulation of Sex Establishments and the procedure relating to applications for Sex Establishment Licences.

The Local Government (Miscellaneous Provisions) Act 1982 ('the Act') introduced a licensing regime to control sex establishments. The Council adopted schedule 3 of the Act on the 31<sup>st</sup> March 2010 and the schedule took effect on the 3<sup>rd</sup> August 2010. This means the Council can control and regulate the operation of certain kinds of sex establishments within its area. No sex establishment can operate unless it has obtained a licence from the Council. Any licence may contain conditions that will restrict how that sex establishment may trade.

#### **2. Period of Licensing Policy**

- 2.1 The Statement of Licensing Policy will be used by the Council in the administration and enforcement of its duties under the Act. It will remain in force for a period of three years from the ..... and will be reviewed and subject to further consultation before the end of the three year period.
- 2.2 A new Statement of Licensing Policy will be prepared to come into operation at the expiration of the current Policy.

#### **3. Review of Licensing Policy**

3. During the currency of any Statement of Licensing Policy the Council will keep the operation of the Policy under review and make appropriate revisions to ensure the effectiveness of the Policy subject to appropriate consultation.

#### **4. Exercise of Responsibilities**

- 4.1 In exercising its duties and responsibilities under the terms of the Act the Council will have regard to this Statement of Licensing Policy and to guidance issued by the Home Office.

- 4.2 Subject to 4.1 the Council will not follow this policy inflexibly but shall take all relevant factors into consideration in determining an application. Each case will be decided on its merits.

## 5. Definitions

<b>The Term</b>	<b>The Meaning</b>
The Council	Newcastle under Lyme Borough Council
The Act	The Local Government (Miscellaneous Provisions) Act 1982 as amended
Licensed Premises	any premises, vehicle or stall licensed under the Act
Licence Holder	a person who is the holder of a Sex Establishment Licence
Permitted Hours	The hours during which the licensed premises are permitted to be open to the public
Sex Establishment Licence	A licence granted pursuant to Schedule 3 of the Act (as amended)
Relevant Locality	the Borough of Newcastle under Lyme
Inappropriate Proximity	a minimum distance of 100 metres in direct line of sight between the proposed establishment or more in the case of the proposed establishment being in proximity to a primary school
Sex Establishment	Sex Cinema, Sex Shop or Sexual Entertainment Venue
Sex Cinema	Any premises, vehicle, vessel or stall used to a significant degree for the exhibition of moving pictures, by whatever means produced which: <ul style="list-style-type: none"> <li>• Are concerned primarily with the portrayal of or primarily deal with or relate to, or are intended to stimulate or encourage: <ul style="list-style-type: none"> <li>i) sexual activity</li> <li>ii) acts of force or restraint which are associated with sexual activity</li> </ul> </li> <li>• 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</li> </ul>
Sex Shop	Any premises, vehicle, vessel or stall used for a business which consists to a significant degree of selling, hiring, exchanging, lending, displaying or demonstrating – <ul style="list-style-type: none"> <li>a) sex articles;</li> <li>b) other things intended for use in connection with, or for the purpose of stimulating or encouraging:- <ul style="list-style-type: none"> <li>i) sexual activity</li> <li>ii) acts of force or restraint which are associated with sexual activity</li> </ul> </li> </ul>
Sex Article	Anything made for use in connection with, or for the purpose of stimulating or encouraging <ul style="list-style-type: none"> <li>a) sexual activity or</li> <li>b) acts of force or restraint which are associated with sexual activity;</li> </ul> and <ul style="list-style-type: none"> <li>• anything 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</li> </ul>

	<p>or manufacture or any such article and</p> <ul style="list-style-type: none"> <li>• to any recording of vision or sound which:- <ol style="list-style-type: none"> <li>1. 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</li> <li>2. is concerned primarily with the portrayal of, or primarily deals with or relates to genital organs or urinary or excretory functions.</li> </ol> </li> </ul>
Sexual Entertainment Venue	<p>Any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer.</p> <p>Relevant Entertainment means:-</p> <ol style="list-style-type: none"> <li>a) any live performance; or</li> <li>b) any live display of nudity;</li> </ol> <p>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)</p>

## 6. Requirement for a Licence

- (a) The Act provides that no person shall in any area in which the 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 the Schedule by the authority.
- (b) The Council may waive the requirement for a licence for such period as the Council deems fit in any case where they consider that to require a licence would be unreasonable or inappropriate

## 7. The Application Process

- (a) Individuals, limited companies and firms may apply for a licence. (b) The application form and relevant documentation for the new licence, transfer or renewal must be completed and returned with the appropriate fee as set out in the Council's fees and charges.
- (c) A copy of the application form and supporting documentation must be forwarded to the Chief Officer of Police within seven days.
- (d) A notice of the application will need to be advertised both on or near to the sex establishment and no later than seven days after the application is made in a newspaper circulating within the area of the Sex Establishment. The notice must identify the sex establishment to which it relates and remain in place for 21 days beginning on the date of the application.
- (e) The Council will consult with the Police, Fire and Rescue Service, Council Ward Members, Environmental Health and the Local Planning Authority.
- (f) Objections to the application shall be in writing stating the terms of the objection no later than 28 days after the date of the application.(g) Where objections are received the Council will give notice in writing to the applicant of the general nature of the objection before it is given due consideration.

## **8. Mandatory Ground for Refusal**

- 8.1 The Act imposes a duty on the Council 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 the United Kingdom 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 incorporate in the United Kingdom; 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 sex establishment, vehicle, vessel or stall in respect of which the application is made, unless the refusal has been reversed on appeal.

## **9. Discretionary Grounds for Refusal**

- 9.1 The Act allows the Council to refuse to grant or renew a licence on the grounds that:
- (a) The applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason; or
  - (b) If the licence were to 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) The number of sex establishments in the relevant locality at the time the application is made or determined is equal to or exceeds the number which the Authority consider is appropriate for that locality; or
  - (d) 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 sex establishment in the vicinity are put;
    - (iii) To the layout, character or condition of the sex establishment, vehicle, vessel or stall in respect of which the application is made
  - (e) The Act provides that the appropriate number under 6.1(c) may be nil. This policy sets the appropriate number of premises at 1 (one)
  - (f) The Council cannot have regard to the morality of sex establishments. Its approval or disapproval of sex establishments is not a matter which can be considered.

## **10. Relevant Locality**

- 10.1 The Council has determined that it is appropriate to consider the Borough of Newcastle under Lyme as the relevant locality.
- 10.2 The Council is of the view that it is not appropriate to have a sex establishment situated within inappropriate proximity to:-
- (a) Purely or primarily residential accommodation
  - (b) Schools, play areas, nurseries, children's centres or similar premises
  - (c) Places of worship
  - (d) Community facilities or public buildings including, but not limited to, swimming pools, leisure centres, public parks, youth centres/clubs, and sheltered housing
  - (e) Historic buildings or tourist attractions.

- 10.3 The Council is of the view that it may be appropriate to grant a licence in a commercial area where there are no residential premises, such as on a business park.
- 10.4 In considering all applications for the grant of new licences the Council will take into account paragraphs 10.1- 10.3 and the potential impact of the licensed activity on
- (a) Crime and disorder
  - (b) Public nuisance
  - (c) Public safety
  - (d) Protecting children from harm

## **11. Duration of licences**

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

## **12. Hours of opening**

- 12.1 The Council does not prescribe hours of opening. Hours will be considered on a case by case basis.

## **13. Fitness of applicant**

- 13.1 An applicant must be a fit and proper person to hold a licence. In determining suitability for a new licence or a transfer the Council will in most cases take into account:-
- (a) Previous knowledge and experience of the applicant;
  - (b) Any evidence of the operation of any existing or previous licence held by the applicant, including any licence held in any other borough;
  - (c) Any report about the applicant and management of the Sex Establishment received from statutory objectors/responsible authorities
  - (d) Any criminal convictions or cautions of the applicants

## **14. Determination of Applications**

- 14.1 Each application will be considered on its own merits following the appropriate consultation and in accordance with this Policy.
- 14.2 Any 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
- 14.3 All licences will be subject to the Council's Standard Conditions for Sex Establishments in addition to any conditions that the Licensing Committee may impose
- 14.4 All applications for the grant of a new licence will be determined at a public hearing by the Licensing Committee.
- 14.5 All applications for a renewal of an existing licence where no objections are received will be considered by the Licensing Committee
- 14.5 All applications for a transfer of an existing licence will be referred to the Licensing Committee or a Licensing Sub-Committee to be determined at a public hearing.

## 15. Standard conditions

- (1) The sex establishment shall be closed throughout Good Friday, Christmas Day and every Sunday.
- (2) A copy of the Sex Establishment Licence and the conditions made by the authority must be kept exhibited in the public area of the sex establishment.
- (3) No person under the age of 18 years is to enter the sex establishment.
- (4) All customers appearing to be under the age of 21 to be required to provide proof of their age before being allowed access to the sex establishment.
- (5) No person under the age of 18 years is to be employed in the business of the sex establishment.
- (6) At all entrances there shall be prominently displayed (so as to be visible at all times to persons approaching the sex establishment) a notice prohibiting entry to all persons under 18 years of age.
- (7) The licensee of the sex establishment shall ensure that all persons employed by the sex establishment are aware of the age restriction on customers and that they exclude or remove from the sex establishment any person attempting to evade the restriction.
- (8) The licensee shall not display outside, near to, or within the sex establishment any advertising material, sign or pictorial display referring to the licensed sex establishment or the goods, articles or services provided by the Sex Establishment, in such a position or manner that it is visible to any person using adjacent highways, streets, footpaths or forecourts except any notice displaying the name or trading title of the licensee, any notice indicating the times of opening of the premise or required by statute, regulation or bylaw applicable to the sex establishment or business carried thereon.
- (9) The sex establishment shall be so arranged by screening or obscuring windows, doors and other openings so that the interior of the licensed sex establishment and the displays of articles sold at the sex establishment shall not be visible at any time to persons outside the building. The external doors shall be fitted with automatic closing devices.
- (10) A police officer or an authorised officer of the Council or the Police may at any reasonable time enter and inspect the sex establishment in respect of which a sex establishment licence is in force or an application for the grant of a new licence has been served.
- (11) All refuse produced by the sex establishment and materials, goods and articles discarded for any reason shall be securely stored within the sex establishment and delivered in closed containers to the refuse collection service.
- (12) The licensee shall make such provision for the reception of goods and articles for sale, hire, exchange, loan, demonstration or display on the sex establishment so that they are received directly into the sex establishment or packaged such that they are not identifiable.
- (13) The licensee or some responsible person nominated by him/her in writing for the purpose and approved by the Council shall be in charge of and upon the

licensed sex establishment during the whole time they are open to the public. Such written nominations shall be continuously available for inspection by authorised officers of the Council or the Police.

- (14) No part of the sex establishment shall be used for the purposes of prostitution.
- (15) The licensee shall ensure that no employee or other person shall seek to obtain custom for the sex establishment by means of personal solicitation or marketing material identifying the sex establishment.
- (16) A record shall be kept of all mail order transactions (if any) in such form as agreed by the Council.
- (17) A CCTV system shall be installed in the sex establishment to the satisfaction of the Police Architectural Liaison Officer or in their absence the Police Licensing Officer. The system shall efficiently record the operation of the sex establishment and automatically indicate the time and date of events recorded to a standard that would be acceptable as evidence in Court. All recordings shall be securely maintained for a minimum of 28 days and shall be made available at the sex establishment for inspection within 24 hours by a police officer or an authorised officer of the Council or the Police.