



castlepoint

benfleet | canvey | hadleigh | thundersley

Sex Establishment Policy

1. Introduction

1.1 The policy

- 1.1.1 This document sets out Castle Point Borough Council's policy on the regulation of sex establishments.

1.2. The law

- 1.2.1. The Local Government (Miscellaneous Provisions) Act 1982 introduced a licensing regime to control sex establishments. Castle Point Borough Council has adopted Schedule 3 of the Act. This means that the Council can control and regulate the operation of certain kinds of sex establishments within its Borough. No sex establishment can operate unless it has obtained a licence from the Council and any such licence will contain conditions that will restrict how that premises may trade.
- 1.2.2 Under Section 17 of the Crime and Disorder Act 1998, local authorities must have regard to the likely effect of the exercise of their functions and do all that they can to prevent crime and disorder in their area. This policy has regard to the likely impact of such licences on related crime and disorder in the Borough.
- 1.2.3 Where applicable the Council will involve the Community Safety Partnership (CSP) in decision-making in relation to actual crime and disorder.
- 1.2.4 The policy should be read in conjunction with, and without prejudice to, other existing national and European Union legislation, such as the Human Rights Act 1998 and the Disability Discrimination Act 1995.

1.3 Current premises

- 1.3.1 At present there one sexual entertainment venue which is located in Benfleet.

2. Sex establishment licensing applications

2.1 Right to waiver

- 2.1.1 Castle Point Borough Council may upon application waive the requirement for a licence in any case where it considers that to require a licence would be unreasonable or inappropriate.
- 2.1.2 Each application for a waiver will be considered on its own merits however, any establishment that would normally require licensing under the provisions of the Act is unlikely to be granted a waiver other than in exceptional circumstances.

2.2 Application details

- 2.2.1 The applicant will be required to make their application in accordance with

Clause 10, Schedule 3, of The Act.

2.3 Fitness of the applicant

2.3.1. An applicant must be a fit and proper person to hold a licence. In determining suitability for a new licence or a transfer of an existing one the Council will take the following into account:

- a) Previous relevant knowledge and experience of the applicant;
- b) Any evidence of the operation of any existing or previous licence(s) held by the applicant, including any licence held in any other District or Borough;
- c) Any report about the applicant and management of the premises received from statutory objectors.

2.3.2 Whilst every application will be considered on its merits the Council will be unlikely to grant an application from any person or for the benefit of any person with unspent criminal convictions.

2.4 Impact of the sex establishment

2.4.1 In considering applications for the grant of new licences or variation of conditions the Council will assess the likelihood of such a grant causing adverse impacts particularly to local residents. The Council will take the following general matters into account:

- a) Type of activity;
- b) Duration of proposed licence;
- c) Layout and condition of the premises;
- d) The use to which premises in the vicinity are put;
- e) The character of the locality in which the premises are situated.

2.4.2 In considering applications for the grant of new licences or applications for variations of conditions the Council will take into account the potential impacts of the application on:

- a) Crime and disorder (see 2.4.3 for more information);
- b) Cumulative impact of licensed premises in the area, including hours of operation;
- c) The character of the locality in which the premises is situated (see 2.5 for more information).

2.4.3 In considering all applications for renewal of sex establishment licences the Council will take into account:

- a) Levels of related recorded crime and disorder in the existing or proposed area of the sex establishment;
- b) Past demonstrable adverse impact from the licensed activity;
- c) Whether appropriate measures have been agreed and put into effect by the applicant to mitigate any adverse related impacts.

2.5 The location of premises

- 2.5.1 In accordance with relevant case law the Council shall decide on the suitability of a particular locality for a sex establishment as a matter of fact to be determined by the particular circumstances of each case and not by the prescription of boundaries as stated on a map.
- 2.5.2 The Council is mindful of its power to determine that no sex establishment should be located in a particular locality.
- 2.5.3 Notwithstanding the above licences will only be granted in predominately commercial areas and the Council is mindful of its power to determine each application on its own merits. Applications will not normally be granted if they are to be within:
- a) areas that are exclusively, or predominantly, residential in character; or
 - b) the vicinity of residential properties; or
 - c) 200m of a school or any other premises used by children or by vulnerable adults; or
 - d) A publicly accessible open space that is regularly frequented by children or vulnerable adults; or
 - e) 200m of place of worship; or
 - f) areas with a level of recorded crime that give the police cause for concern; or
 - g) areas that are likely to be adversely effected due to the cumulative impact of existing sex establishments; or
 - h) 200m of an existing sex establishment.

2.6 Consultation arrangements

2.6.1 Public Consultation

The Council will consult local residents in relation to the grant renewal or transfer of a licence.

3. Determination of applications

3.1 General

- 3.1.1 In determining an application relating to a sex establishment licence the Council will assess the application on its merits having regard to the content of this policy, the relevant legislation and any relevant guidance that may be issued from time to time.
- 3.1.2 Where it is necessary for the Council to depart substantially from this policy clear and compelling reasons for doing so will be given. Only a Licensing and Appeals Sub-Committee may authorise a departure from the policy if it feels it appropriate for a specific application.
- 3.1.3 The sub-committee may consider granting licences of a 12 month duration for a shorter term.

3.2 Grant of new Licence

- 3.2.1 All applications for the grant of a new licence will be determined by a Licensing and Appeals Sub-Committee, irrespective of whether representations are received.
- 3.2.2 The Council will give the applicant(s) the opportunity of appearing before and being heard by a Licensing and Appeals Sub-Committee before:
 - a) refusing to grant a licence; or
 - b) refusing to renew a licence; or
 - c) refusing to transfer a licence; or
 - d) refusing to vary an existing licence.
- 3.2.3 In determining an application for the grant, renewal, transfer or variation of a licence the Council must have regard to any representations that it has received.

3.3 Renewal, transfer or variation of an existing licence

- 3.3.1 The granting of an application for renewal, transfer or variation of an existing licence will be considered by the Head of Licensing and Safer Communities unless representations are received.
- 3.3.2 If the Head of Licensing and Safer Communities is minded to refuse such an application the application will be referred to a Licensing and Appeals Sub-Committee for determination.
- 3.3.3. Where representations are received the application will be referred to a Licensing and Appeals Sub-Committee for determination.

3.4 Refunds

In the event of an application being refused the application fee may be refunded less an appropriate charge for the administrative process undertaken in determining the application, including any hearing before the Licensing and Appeals Sub-Committee.

4. Power to prescribe conditions

- 4.1 Schedule 3 section 13 of the Act provides a power for the Council to specify standard conditions in relation to sex establishment licences.
- 4.2 The Council's standard conditions are detailed in Appendix A of this policy.
- 4.3 All licences will be granted, renewed, transferred or varied subject to these standard conditions unless expressly excluded or varied by a Licensing and Appeals Sub-Committee.

5. Hearing procedure

- 5.1 Where the Council is required to determine an application by reference to a Licensing and Appeals Sub-Committee the applicant and objectors will be advised of the date, time and venue of hearing.
- 5.2 In preparation for the hearing all parties will receive a copy of the Head of Licensing and Safer Communities report prior to the hearing. The report will contain a summary of the application, representations and any other relevant information.
- 5.3 At the hearing, all parties will have the opportunity to address the Sub-Committee and ask questions of all parties that they feel relevant to the determination process.
- 5.4 The Sub-Committee will communicate their decision at the end of the hearing and all parties will receive written confirmation of the decision within 7 days.

6. Operation and management

6.1 Proposed operation and management

- 6.1.1 The Council requires all licensees to ensure that they and their employees comply with all relevant licence conditions and health and safety regulations.
- 6.1.2 In terms of management of licensed premises the Council strongly encourages where possible and appropriate that licensees:
 - a) Work with statutory agencies such as the Police and the Council in order to create and maintain a safe environment both within licensed premises and in the environs around them;
 - b) Particularly those who's premises are located in areas with the highest levels of recorded crime should develop crime prevention strategies in consultation with the Police and the Council
 - c) In terms of the management of licensed premises the Council strongly encourages and where possible and appropriate all licensees to develop strategies and procedures to increase access for disabled people to the premises.
 - d) In terms of the employment of staff in licensed premises the Council requires that all relevant staff be appropriately trained in areas such as health and safety, first aid and fire precautions.

7. Determination of applications

- 7.1 It is recognised that well-directed enforcement activity by the Council benefits not only the public but also the responsible members of the trade.
- 7.2 In pursuing its objective of encouraging responsible businesses the Council will operate a proportionate enforcement regime.
- 7.3 The responsibility for the overall supervision of sex establishment licensing lies with the Head of Licensing and Safer Communities.

8. Amendments to this policy

- 8.1 Any significant amendment to this policy will only be implemented after further consultation with the trade and the public. All such amendments to this policy will be undertaken in accordance with the Council's Constitution.

For the purpose of this section, any significant amendment is defined as one that:

- a) is likely to have a significant financial effect on licence holders, or
 - b) is likely to have a significant procedural effect on licence holders, or
 - c) is likely to have a significant effect on the community.
- 8.2 Any minor amendments to this policy may be authorised by the Head of Licensing and Safer Communities and undertaken in accordance with the Council's Constitution. For the purpose of this section any minor amendment is an amendment not defined as significant in Section 8.1 of this policy.

9 Definitions

The Act

Local Government (Miscellaneous provisions) Act 1982

Authorised Officer

Any officer of the Council authorized under the Council's Scheme of Delegation as contained within the Constitution

The Council

Castle Point Borough Council

He, his

All references to 'he' or 'his' also include 'she' or 'hers'

Head of Licensing and Safer Communities

The current post holder authorized by the Council's Scheme of Delegation.

Licence Holder

A person who holds a Sex Establishment Licence under the Act

This Policy

Castle Point Borough Council's Sex Establishment Policy

Premises

A building or part of a building and any forecourt, yard or place of storage used in connection with a building or part of a building which is the subject of a Sex Establishment Licence granted under the Act

Sex Establishment - as defined in section 2 of Schedule 3 of the Act

Sex Cinema - as defined in Section 3 of Schedule 3 of the Act;

1 In this Schedule, –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 is 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

2 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 schedule 1 to the Licensing Act 2003) by virtue of an authorisation (which the meaning of section 136 of the 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.

Sex Shop - as defined in Section 4 of Schedule 3 of the Act

1 In this schedule sex shop means 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 is associated with sexual activity.

- 2 No premises shall be treated as a sex shop by reason only of their use or the exhibition of moving pictures by whatever means produced.
- 3 In this schedule sex article means-
 - (a) anything made for use in connection with, or for the purpose of stimulating or;
 - 1 sexual activity; or
 - 2 acts of force or restraint which are associated with sexual activity; and
 - (b) anything to which sub-paragraph (4) below applies.
- 4 this sub-paragraph applies-
 - (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.

Appendix A - Standard conditions applicable to licences for sex establishments

1 General

- a) These standard conditions will apply to all licences unless varied by a Licensing and Appeals Sub-Committee.
- b) The granting of a licence for a sex establishment shall not be deemed to convey any approval or consent which may be required under any enactment by law order or regulation other than the Third Schedule of the Local Government (Miscellaneous Provisions) Act 1982.
- c) In the event of a conflict between these standard conditions and any special conditions contained in a licence relating to a sex establishment the special conditions shall prevail.

2 Times of opening

- a) Unless amended by a Licensing and Appeals Sub-Committee, the usual permitted hours shall be:

Monday to Saturday 0900hrs to 2100hrs

- b) Unless amended by a Licensing and Appeals Sub-Committee, a sex establishment shall not be open on Sundays, Good Friday, Easter Day, Christmas Day or any public holiday.

3 Conduct and management of sex establishments

- a) Where the licensee is a body corporate or unincorporated body any change of director, company secretary or other person responsible for the management of the body is to be notified in writing to the Council within fourteen days of such change. Such written details as the Council may require in respect of any new director, secretary or manager are to be furnished within fourteen days of a request in writing from the Council.
- b) The licensee or some responsible person nominated by him in writing for the purpose of managing the sex establishment in his absence shall be in charge of and upon the premises during the whole time it is open to the public. Details of any responsible person nominated by the licensee (including photographs) must be supplied to and approved in writing by the Council before a change to the management of the premises.
- c) The name of the person responsible for the management of a sex establishment shall be prominently displayed within the premises.
- d) The licensee shall maintain a daily register. It must record the name and address of any person who is to be responsible for managing the sex establishment in his absence and the names and addresses of those employed in the sex establishment. The register is to be completed each

day within thirty minutes of the sex establishment opening for business and is to be available for inspection by the Police and by authorised officers of the Council.

- e) The licensee shall retain control over all areas of the premises and shall not let, licence or part with possession of any part of the premises.
- f) The licensee shall maintain good order in the premises.
- g) No person under the age of eighteen shall be admitted to the premises or employed in the business of a sex establishment.
- h) The licensee shall ensure that the public are not admitted to any part or parts of the premises other than those which have been approved by the Council.
- i) No part of the premises shall be used by prostitutes (male or female) for the purpose of solicitation or otherwise exercising their calling.
- j) Neither the licensee or any employer or other person shall seek to obtain custom for the sex establishment by means of personal solicitation anywhere in the Castle Point Borough.
- k) The licensee shall comply with all statutory provisions and any regulations made there under.
- l) The licensee shall ensure that during the hours the sex establishment is open for business every employee wears a badge of a type to be approved by the Council indicating their name and that they are an employee.
- m) The copy of the licence and of these standard conditions required in accordance with paragraph 14 (1) of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 shall be reproductions to the same scale as those issued by the Council. The copy of the licence shall be displayed, framed and exhibited to the satisfaction of the Council. A clean and legible copy of these standard conditions shall be retained on the premises and available upon request.
- n) A sex shop shall be conducted primarily for the purpose of the sale of goods by retail.
- o) No change of use of any portion of the premises from that approved shall be made without the consent of the Council.
- p) Change from a sex cinema to a sex shop or from a sex shop to a sex cinema shall not be effected without the consent of the Council.
- q) Sex articles or other things intended for use in connection with, or for the purpose of stimulating or encouraging sexual activity or acts of force or restraint which are associated with sexual activity shall not be displayed,

sold, hired, exchanged, loaned or demonstrated in a sex cinema.

4 Goods available in sex establishments

- a) All sex articles and other things displayed for sale, hire, exchange or loan within a sex shop shall be clearly marked to show to persons who are inside the sex shop the respective prices to be charged.
- b) All printed matter offered for sale, hire, exchange or loan shall be available for inspection prior to purchase and a notice to this effect is to be prominently displayed within the sex establishment.
- c) No film or video film shall be exhibited, sold or supplied unless it has been passed by the British Board of Film Classification and bears a certificate to that effect and is a reproduction authorised by the owner of the copyright of the film or video film so certified.
- d) The licensee shall, without charge, display and make available in the sex establishment such free literature on counselling of matters related to sexual problems as may be published by the Family Planning Association and by such other similar organisations as may be specified by the Council. Such literature is to be displayed in a prominent position approved by the Council adjacent to all cash collection points in the sex establishment.

5 External appearance

- a) No display, advertisement, word, letter, model, sign, placard, board, notice, device representation, drawing, writing, or any matter or thing (whether illuminated or not) shall be exhibited so as to be visible from outside the premises except:
 - Any notice of a size and in a form approved by the Council which is required to be displayed so as to be visible from outside the premises by law, or by any conditions of a licence granted by the Council.
 - Such display, advertisement, word, letter, model, sign, placard, board, notice, device, representation, drawing, writing or any matter or thing as shall have been approved by the Council.
- b) The entrance to the premises shall be of a material or covered with a material which will render the interior of the premises invisible to passersby, and shall be so provided with a partition as to ensure that the interior of the premises remain invisible to such passersby when the entrance is open.
- c) Windows and openings to the premises other than entrances shall not be obscured otherwise than with the consent of the Council but shall have suspended behind them, in a position and at a position approved by the Council, opaque screens or blinds of a type and size approved by the council.

6 State, condition and layout of the premises

- a) The premises shall be maintained in good repair and condition.
- b) Lighting in all parts of the premises as approved by the Council shall be in operation continuously during the whole of the time the sex establishment is open to the public.
- c) The number, size and position of all doors or openings provided for the purpose of the ingress and egress of the public shall be approved by the Council and shall comply with the following requirements:
 - i) All such doors or openings approved by the Council shall be clearly indicated on the inside by the word –exit.
 - ii) Doors and openings which lead to parts of the premises to which the public are not permitted to have access shall have notices placed over them marked ‘private“.
 - ii) Save in the case of emergency, no access shall be permitted through the premises to any unlicensed premises adjoining or adjacent.
- d) The external doors to the sex establishment shall be fitted with a device to provide for their automatic closure and such devices shall be maintained in good working order.
- e) The licensee shall make provision in the means of access both to and within the sex establishment for the needs of members of the public visiting the sex establishment who are disabled.
- f) No fastenings of any description shall be fitted upon any booth or cubicle within the sex establishment nor shall more than one person (including any employee) be present in any such booth or cubicle at any time.
- g) Alterations or additions either internal or external and whether permanent or temporary to the structure, lighting or layout of the premises shall not be made except with the prior approval of the Council.
- h) All parts of the premises shall be kept in a clean and wholesome condition to the satisfaction of the Council.

7 Safety

- a) The licensee shall take all reasonable precautions for the safety of the public and employees.
- b) The licensee shall comply with any fire prevention and safety measures that may be required of him by The Regulatory Reform (Fire Safety) Order 2005.
- c) The premises shall be provided with fire appliances suitable to the fire risks of the premises and such fire appliances shall be maintained in a proper working order and shall be available for instant use.