

# **LICENSING COMMITTEE AGENDA**

**Wednesday 20th July 2022 at 7.15pm**

**Council Chamber, Braintree District Council, Causeway House, Bocking  
End, Braintree, CM7 9HB**

**THIS MEETING IS OPEN TO THE PUBLIC**

*(Please note this meeting will be broadcast via the Council's YouTube Channel,  
webcast and audio recorded) [www.braintree.gov.uk](http://www.braintree.gov.uk) [www.braintree.gov.uk/youtube](http://www.braintree.gov.uk/youtube)*

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**Members of the Licensing Committee are requested to attend this meeting to  
transact the business set out in the Agenda.**

**Membership:-**

Councillor J Baugh (Chairman)	Councillor Mrs I Parker
Councillor Mrs J Beavis	Councillor Mrs J Pell
Councillor Mrs M Cunningham	Councillor S Rehman
Councillor P Euesden	Councillor B Rose (Vice Chairman)
Councillor S Hicks	Councillor P Schwier
Councillor H Johnson	Councillor Mrs L Walters
Councillor T McArdle	Councillor B Wright

Substitutes: Councillors J Coleridge, A Munday, Mrs J Sandum, D White,  
Vacancy x 2

Apologies: Members unable to attend the meeting are requested to forward their  
apologies for absence to the Governance and Members Team on 01376  
552525 or email [governance@braintree.gov.uk](mailto:governance@braintree.gov.uk) by 3pm on the day of the  
meeting.

Any Member who is unable to attend a meeting is able to appoint a  
Substitute. Written notice must be given to the Governance and Members  
Team no later than one hour before the start of the meeting.

A WRIGHT  
Chief Executive

## **INFORMATION FOR MEMBERS - DECLARATIONS OF INTERESTS**

### **Declarations of Disclosable Pecuniary Interest (DPI), Other Pecuniary Interest (OPI) or Non- Pecuniary Interest (NPI)**

Any member with a DPI, OPI or NPI must declare the nature of their interest in accordance with the Code of Conduct. Members must not participate in any discussion of the matter in which they have declared a DPI or OPI or participate in any vote, or further vote, taken on the matter at the meeting. In addition, the Member must withdraw from the Chamber where the meeting considering the business is being held unless the Member has received a dispensation from the Monitoring Officer.

### **Public Question Time – Registration to Speak:**

The Agenda allows for a period of up to 30 minutes for Public Question Time. Members of the public wishing to participate are requested to register by contacting the Governance and Members Team on 01376 552525 or email [governance@braintree.gov.uk](mailto:governance@braintree.gov.uk) by **midday on the second working day** before the day of the Committee meeting. For example, if the Committee meeting is on a Tuesday, the registration deadline is midday on Friday, (where there is a Bank Holiday Monday you will need to register by midday on the previous Thursday). The Council reserves the right to decline any requests to register to speak if they are received after this time.

Members of the public may speak on any matter listed on the Agenda for this meeting. Registered speakers will be invited to speak immediately prior to the relevant item. All registered speakers will have up to three minutes each to make a statement.

The Chairman of the Licensing Committee has discretion to extend the time allocated to registered speakers and the order in which they may speak.

**Public Attendance at Meeting:** The Council has reviewed its arrangements for this meeting of the Licensing Committee in light of the Covid pandemic. In order to protect the safety of people attending the meeting, Councillors and Officers will be in attendance at Causeway House, Bocking End, Braintree. Members of the public may also attend the meeting 'in person', but priority will be given to those people who have registered to speak during Public Question Time. Members of the public will be able to view and listen to the meeting either as a live broadcast, or as a recording following the meeting, via the Council's YouTube channel at <http://www.braintree.gov.uk/youtube>

**Health and Safety/Covid:** Causeway House is a Covid secure building and arrangements are in place to ensure that all visitors are kept safe. Visitors are requested to follow all instructions displayed around the building or given by Officers during the course of their attendance. All visitors will be required to wear a face covering, unless an exemption applies.

Visitors are asked to make themselves aware of the nearest available fire exit. In the event of an alarm sounding visitors must evacuate the building immediately and follow all instructions provided by staff. Visitors will be directed to the nearest designated assembly point where they should stay until they are advised that it is safe to return to the building.

**Mobile Phones:** Please ensure that your mobile phone is switched to silent during the meeting in order to prevent disturbances.

**WiFi:** Public Wi-Fi (called BDC Visitor) is available in the Council Chamber at Causeway House; users are required to register when connecting.

**Substitute Members:** Only the named Substitutes on this Agenda may be appointed by a Member of the Committee to attend in their absence. The appointed Substitute becomes a full Member of the Committee with participation and voting rights.

**Documents:** Agendas, Reports and Minutes can be accessed via [www.braintree.gov.uk](http://www.braintree.gov.uk)

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[https://www.braintree.gov.uk/info/200136/access\\_to\\_information/376/privacy\\_policy](https://www.braintree.gov.uk/info/200136/access_to_information/376/privacy_policy)

**Webcast and Audio Recording:** Please note that this meeting will be webcast and audio recorded. You may view webcasts for up to 6 months after the meeting using this link: <http://braintree.public-i.tv/core/portal/home>. The meeting will also be broadcast via the Council's YouTube Channel.

**Comments and Suggestions:** We welcome comments to make our services as efficient and effective as possible. If you have any suggestions regarding the meeting you have attended you may send these to [governance@braintree.gov.uk](mailto:governance@braintree.gov.uk)

## **PUBLIC SESSION**

## **Page**

- 1 Apologies for Absence**
- 2 Declarations of Interest**  
To declare the existence and nature of any Disclosable Pecuniary Interest, Other Pecuniary Interest, or Non-Pecuniary Interest relating to Items on the Agenda having regard to the Code of Conduct for Members and having taken appropriate advice where necessary before the meeting.
- 3 Minutes of the Previous Meeting**  
To approve as a correct record the Minutes of the meeting of the Licensing Committee held on 16th March 2022 (copy previously circulated).
- 4 Public Question Time**  
(See paragraph above)
- 5 Statement of Licensing Policy for Sex Establishments – Revised 2022** 5-55
- 6 Hackney Carriage Proprietor’s Licence – Allocation** 56-59
- 7 Licensing Committee Update** 60-68
- 8 Urgent Business - Public Session**  
To consider any matter which, in the opinion of the Chairman, should be considered in public by reason of special circumstances (to be specified) as a matter of urgency.
- 9 Exclusion of the Public and Press**  
To agree the exclusion of the public and press for the consideration of any Items for the reasons set out in Part 1 of Schedule 12(A) of the Local Government Act 1972.  
*At the time of compiling this Agenda there were none.*

## **PRIVATE SESSION**

## **Page**

- 10 Urgent Business - Private Session**  
To consider any matter which, in the opinion of the Chairman, should be considered in private by reason of special circumstances (to be specified) as a matter of urgency.

<b>Report Title: BRAINTREE DISTRICT COUNCIL'S REVISED STATEMENT OF LICENSING POLICY FOR SEX ESTABLISHMENTS (INCLUDING SEX SHOPS, SEXUAL ENTERTAINMENT VENUES AND SEX CINEMAS)</b>	
<b>Report to: LICENSING COMMITTEE</b>	
<b>Date: 20th July 2022</b>	<b>For: Decision</b>
<b>Key Decision: No</b>	<b>Decision Planner Ref No: N/A</b>
<b>Report Presented by: John Meddings, Principal Licensing Officer</b>	
<b>Enquiries to: John Meddings, Principal Licensing Officer</b>	

## **1. Purpose of the Report**

- 1.1 To consider the revised Braintree District Council Statement of Licensing Policy for Sex Establishments and to seek approval for consultation.

## **2. Recommendations**

- 2.1 To approve the revised Braintree District Council Statement of Licensing Policy for Sex Establishments (with amendments deemed appropriate by Members) and to seek approval for consultation.

## **3. Background**

- 3.1 This policy sets out the Council's approach to regulating sex establishments and the procedures it will adopt in relation to applications for sex establishment licences.
- 3.2 The policy is intended as a guide to applicants, licence holders, objectors and Members of the Licensing Committee and it provides information on what the Council expects to see in relation to an application. The advice and guidance contained in the appendices attached to the policy are intended only to assist applicants and other parties and should not be interpreted as legal advice. All parties are advised to seek their own legal advice if they are unsure of any of the requirements of the legislation in so far as they relate to the licensing of sexual entertainment venues. It should be noted that the Council, as the Licensing Authority, is required to implement the licensing regime in accordance with the law and not in accordance with any moral codes.
- 3.3 Braintree District Council resolved to adopt Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 on 14 October 1982. This provided the Council with the ability to license sex establishments. The Policing and Crime Act 2009 amended the Miscellaneous Provisions Act in so far as it related to the licensing of sex establishments, by adding the new category of "sexual entertainment venue".

- 3.4 On 13 October 2011 the Council resolved to re-adopt Schedule 3 of the Miscellaneous Provisions Act, as amended by the Policing and Crime Act 2009, thereby requiring all premises operating as sex establishments in the Council's area to be licensed. The definition of sex establishments now includes sexual entertainment venues. Adoption of Schedule 3 also allows the Council to set terms, conditions and fees for the grant, renewal, transfer and variation of such licences and the number of licences that may be issued in the area. The provisions of the Act came into effect, after advertisement, in the Braintree District area on 31 January 2012.
- 3.5 The District currently has one licensed sex shop and no sex cinemas or sexual entertainment venues. To date the Council has not imposed a restriction on the number of sex establishment licences that can be issued.
- 3.6 The currently licensed sex shop in the District has been licensed since 2018 and although this venue initially attracted objections at application there have been no complaints or concerns recorded since issue.
- 3.7 The legislation allows for the Authority to impose a numerical control on the number of sex establishments in a particular locality. Further, it is specifically provided that nil may be an appropriate number.

#### **4. Amendments**

- 4.1 Added additional sections (1.6 – 1.9) highlighting other legislation that may be relevant and should be read in conjunction with the policy.
- 4.2 Added additional section (1.10) emphasising that the policy is not taking a moral stand and that such businesses are a legitimate part of the retail and leisure industries.
- 4.3 Added general section (1.11) advising readers to seek their own legal advice.
- 4.4 Added a section (2.1 – 2.2) listing key stakeholders that are consulted as part of the policy review and that responses received will be considered prior to the policy being published.
- 4.5 Added several sections (3.2 – 3.5) giving further details on which activities the Council considers to fall within the scope of the definition of sex establishments.
- 4.6 Added section (5.2) explaining that public safety issues will be considered in determining appropriate locations.

#### **5. Consultation**

- 5.1 A draft Statement of Licensing Policy for Sex Establishments will be available for public consultation following this Committee meeting and for a period of twelve weeks.

- 5.2 Letters advising of the consultation will be sent to Responsible Authorities, Members and other persons who would have an interest in the policy:

Consultation with a range of organisations including faith groups, voluntary and community organisations working with children and young people, primary care trusts, and advocacy.

- 5.3 The revised policy specifically stipulates a list of key stakeholders that will be consulted.

- the Chief Officer of Police for Essex
- the Chief Officer of the Essex Fire and Rescue Service
- persons/bodies representative of local holders of premises licences
- persons/bodies representative of local holders of club premises certificates
- the child protection agency
- other organisations as appear to the Licensing Authority to be affected, including Councillors, local community, cultural, educational and entertainment organisations.

- 5.4 The policy will be made available for viewing via the Council's website.

- 5.5 Representations received during the consultation period will need to be considered and responded to before the policy is adopted by the Licensing Committee. A report setting out the representations received and the Council's responses will be presented to the Licensing Committee as part of the adoption process.

## **6. Options**

- 6.1 To approve the revised Braintree District Council Statement of Licensing Policy for Sex Establishments (with amendments deemed appropriate by Members) and to seek approval for consultation.

## **7. Financial Implications**

- 7.1 The principle behind modifying the policy is to minimise any risk of a judicial review from an aggrieved applicant.

## **8. Legal Implications**

- 8.1 It is important that the Statement of Licensing Policy provides an open and transparent policy regarding the Council's functions. The Statement of Licensing Policy forms an essential part of the decision making process for licensing applications.
- 8.2 In accordance with Article 8.3 of the Constitution, it is a function of the Licensing Committee to deal with all matters which are the responsibility of the Council under the Local Government (Miscellaneous Provisions) Act 1982 for the licensing of sex establishments and to approve operational policies in relation to functions which fall within its duties and functions.

## **9. Other Implications**

- 9.1 There are no other issues arising from this report

## **10. Equality and Diversity Implications**

- 10.1 Section 149 of the Equality Act 2010 creates the public sector equality duty which requires that when the Council makes decisions it must have regard to the need to:
- (a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act
  - (b) Advance equality of opportunity between people who share a protected characteristic and those who do not
  - (c) Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.
- 10.2 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, gender and sexual orientation. The Act states that 'marriage and civil partnership' is not a relevant protected characteristic for (b) or (c) although it is relevant for (a).
- 10.3 The Equality Impact Assessment indicates that the proposals in this report will not have a disproportionately adverse impact on any people with a particular characteristic.

## **11. Appendices**

- Braintree District Council Draft Statement of Licensing Policy for Sex Establishments 2022 (Appendix 1)

## **12. Background Papers**

- Braintree District Council Statement of Licensing Policy for Sex Establishments 2014
- Equality Impact Assessment

# **Braintree District Council**

## **Statement of Licensing Policy for Sex Establishments (including Sex Shops, Sexual Entertainment Venues and Sex Cinemas)**

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

The policy is intended as a guide to applicants, licence holders, objectors and members of the licensing committee and provides information on what the Council expects to see in relation to an application. The advice and guidance contained in the appendices attached to the policy are intended only to assist applicants and other parties and should not be interpreted as legal advice. All parties are advised to seek their own legal advice if they are unsure of any of the requirements of the legislation in so far as they relate to the licensing of sexual entertainment venues. It should be noted that the Council, as Licensing Authority, is required to implement the licensing regime in accordance with the law and not in accordance with any moral codes.

Any comments on this policy should be sent to:-

Braintree District Council  
Licensing Team  
Food, Health & Safety and Licensing  
Causeway House  
Bocking End  
Braintree  
Essex  
CM7 9HB

Or by e-mailing [licensing@braintree.gov.uk](mailto:licensing@braintree.gov.uk) or by telephoning 01376 557790

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Appendix G - Standard Conditions

## **1. Introduction**

- 1.1 This policy provides Braintree District Council's approach to the regulation of sex establishments as set out in the 1982 Act and gives guidance to the Licensing Authority when considering and making decisions on applications.
- 1.2 Each application will be determined on its individual merits and this policy should not be regarded or interpreted as an indication that any requirement of the relevant law may be overridden.
- 1.3 The Council may depart from this policy if, in the interests of the promotion of the objectives, the individual circumstances of any case merit such a decision. Full reasons will be given for departing from the policy.
- 1.4 Braintree District Council resolved to adopt Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 on 14 October 1982. This provided the Council with the ability to licence sex establishments. The Policing and Crime Act 2009 amended the Miscellaneous Provisions Act, in so far as it related to the licensing of sex establishments, by adding the new category of "sexual entertainment venue".
- 1.5 On 13 October 2011 the Council resolved to re-adopt Schedule 3 of the Miscellaneous Provisions Act, as amended by the Policing and Crime Act 2009, thereby requiring all premises operating as sex establishments in the Council's area to be licensed. The definition of sex establishments now includes sexual entertainment venues. Adoption of Schedule 3 also allows the Council to set terms, conditions and fees for the grant, renewal, transfer and variation of such licences and the number of licences that may be issued in the area. The provisions of the Act came into effect, after advertisement, in the Braintree District area on 31 January 2012.
- 1.6 In carrying out our licensing functions, Braintree District Council will have regard to the following:
  - The Local Government (Miscellaneous Provisions) Act 1982
  - Any supporting regulations
  - Guidance issued by Central Government
  - This statement of licensing policy

Braintree District Council must also fulfil its obligations under S.17 of the Crime and Disorder Act 1998, to do all that can be reasonably done to prevent crime and disorder in Braintree.

- 1.7 The Policy should be read in conjunction with, and without prejudice to, other existing national, including the Human Rights Act 1998, the Equality Act 2010, The Provision of Services Regulations 2009, and the Regulators' Code 2014 (as set out under the Legislative and Regulatory Reform Act 2006).
- 1.8 The Equality Act 2010 places a legal obligation on public authorities to have due regard to the need to eliminate unlawful discrimination, harassment and victimization; to advance equality of opportunity and to foster good relations between persons with different protected characteristics.
- 1.9 In carrying out our licensing functions we will have regard to equality and will expect an applicant to meet their statutory obligations in this area and not unlawfully discriminate refuse service on grounds of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation or display discriminatory signs.
- 1.10 We do not take a moral stand in adopting this policy. We recognise that Parliament has made it lawful to operate a sex establishment and that such businesses are a legitimate part of the retail and leisure industries. It is our role as the Licensing Authority to administer the licensing regime in accordance with the law.
- 1.11 Readers are strongly advised to seek their own legal advice if they are unsure of the requirements of the Act or schedules issued under the Act.

## **2. Consultation**

- 2.1 In preparing this policy statement we have consulted with the following:
- the Chief Officer of Police for Essex
  - the Chief Officer of the Essex Fire and Rescue Service
  - persons/bodies representative of local holders of premises licences
  - persons/bodies representative of local holders of club premises certificates
  - the child protection agency
  - other organisations as appear to the Licensing Authority to be affected, including councillors, local community, cultural, educational and entertainment organisations.
- 2.2 The Council will consider the views of all those consulted prior to the policy being published.

### 3. Definition of 'Sex Establishment'

- 3.1 A 'sex establishment' is defined under the Act as a 'sex shop', a 'sex cinema' or a 'sexual entertainment venue'. Full definitions of those terms can be found in **Appendix A** to this policy.

#### **Sexual Entertainment Venue**

- 3.2 A Sexual entertainment venue is defined as:

*'any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer.'*

- 3.2 In deciding whether entertainment is "relevant entertainment" We will judge each case on its' individual merits, however we would expect that the following forms of entertainment as they are commonly understood will be "relevant entertainment":

- Lap dancing
- Pole dancing
- Table dancing
- Strip shows
- Peep shows
- Live sex shows
- Topless Bars
- Premises where private entertainment booths are present

This list is not exhaustive and as the understanding of the exact nature of these descriptions may vary, should be treated as indicative only. Ultimately, decisions as to whether entertainment is "relevant entertainment" will depend on the content of the entertainment and not the name it is given.

#### **Sex shops and sex cinemas**

- 3.2 Sex Establishment Licences are required for "sex cinemas" and "sex shops".

A "Sex shop" is defined as any premises, vehicle, vessel or stall that is used for a business which consists to a "significant degree" of selling, hiring, exchanging, lending, displaying or demonstrating:

sex articles; or

other things intended for use in connection with, or for the purpose of stimulating or encouraging-

- i) sexual activity
- ii) acts of force or restraint which are associated with sexual activity

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

consider:

- the ratio of sex articles to other aspects of the business
- the absolute quantity of sales
- the character of the remainder of the business
- the nature of the displays in the business
- turnover
- other factors which appear to be materially relevant

3.4 A “sex cinema” is defined as any premises, vehicle, vessel or stall used to a significant degree for the exhibition of moving pictures, by whatever means produced, which:

are concerned primarily with the portrayal of, or primarily deal with or relate to, or are intended to stimulate or encourage-

- i) sexual activity,
- ii) acts of force or restraint which are associated with sexual activity; or are concerned primarily with the portrayal of, or primarily deal with or relate to, genital organs or urinary or excretory functions

3.5 This does not include a dwelling house to which the public are not admitted.

## **4. Existing Premises**

4.1 The District currently has one licensed sex shop and no sex cinemas or sexual entertainment venues. To date the Council has not imposed a restriction on the number of sex establishment licences that can be issued.

## **5. Location of Licensed Premises**

5.1 The Council has a discretion to refuse to grant or renew licences for sex establishments on the grounds that the licence would be inappropriate having regard to the character of the locality or the use of premises in the vicinity. Without prejudice to other elements of the policy, and whilst treating each new application on its own merits, the Council's policy is ordinarily to refuse licences on these grounds for premises that are in close proximity to;

- (a) residential accommodation;
- (b) schools, nurseries and other premises used by children and vulnerable persons;
- (c) parks or other recreational areas used by children and other vulnerable persons;
- (d) religious centres and places of religious worship;
- (e) youth, community and leisure centres;
- (f) access routes to and from premises listed above;
- (g) historic buildings or visitor attractions;
- (h) an area designated either as an area under regeneration, or due to be regenerated.

5.2 In addition, we will consider public safety issues when determining whether an area is appropriate; for example, areas that attract a high percentage of female, elderly or young users may be considered to be inappropriate. Where we receive an application, which we consider to be within close proximity to those areas or premises identified in paragraph 5.1, the application will not be automatically refused. Applications presenting genuinely exceptional circumstances may be granted.

5.3 The Council, in considering whether the discretionary grounds for refusal apply and whether the licence should be refused on such grounds, will take into account the following, where it is relevant to do so:

- (a) the type of activity, the duration of the licence and the proposed hours of operation;
- (b) the layout and condition of the premises;
- (c) any cumulative and adverse impact of existing sexually related licensable activities in the same locality as the proposed premises;
- (c) crime and disorder issues;
- (d) any evidence relating to actual or likely noise or disturbance caused by the premises;
- (e) the character of the locality;
- (f) the use of other premises in the vicinity.

## **6. Suitability of the Applicant**

6.1 The Council, in considering whether the applicant or applicants are fit and proper to hold a licence will take into account the following, where it is relevant to do so:

- (a) the operation of existing or previous licences held by the applicant, including their track record of compliance;

- (b) their experience and knowledge of the type of sex establishment they are applying to run;
- (c) their ability to comply with the licensing requirements and minimise the impact of the business on local residents and businesses;
- (d) any reports concerning the applicant received from the Police or any other source;
- (e) the honesty of the applicant(s);
- (f) whether the applicant(s) intend to operate the premises or employ other people to do so;
- (g) whether the management proposed will deliver compliance with operating conditions through managerial competence; presence; a credible management structure including individuals experienced in running premises of this nature; enforcement of rules internally through training, monitoring and the publication of rates for performers and customers; a viable business plan;
- (h) whether management can be relied upon to act in the best interests of the performers;
- (i) whether there is a written welfare policy for performers and how this is to be enforced;
- (j) what system is in place to ensure that performers are adults and entitled to live and work in the UK;
- (k) whether management can be relied upon to protect the public by, for example, transparent charging and freedom from solicitation.

## 7. Applications

- 7.1 An application for the grant, renewal, transfer or variation of a licence must be made in writing to the Council in accordance with the requirements shown in **Appendix B** of this policy document.
- 7.2 A specimen example of the Council's application form and also a notice for the newspaper and public advertisements of the application are attached as **Appendix C and also Appendix E** of this policy document.
- 7.3 An application can be served on the Council as follows:-
  - by post to Licensing Team, Braintree District Council, Causeway House, Bocking End, Braintree, Essex, CM7 9HB.
  - on-line via Gov.uk at <https://www.gov.uk/apply-for-a-licence/sex-shop-and-cinema-licence/braintree/apply-1>
- 7.4 The Council encourages applicants to serve their applications and other notices electronically. In line with the Provision of Service Regulations 2009, where an application for the grant, renewal or transfer of a licence is submitted electronically, the Council will send a copy of the application to the Chief Officer of Police not later than 7 days after the date that the application is received. In all other cases, it

will still be the responsibility of the applicant to serve a copy to the Police within 7 days of submitting an application to the Council.

- 7.5 The Council expects that any premises for which a licence is required should have either planning consent or lawful use under planning legislation for the intended use and hours of operation. The Council will not treat licensing applications as a re-run of a planning application however, and it will not seek to impose licensing conditions which duplicate conditions that have been imposed on a planning consent.
- 7.6 The Council will notify relevant Ward Councillors of an application in their area.

## **8. Fees**

- 8.1 The licence fees for all sex establishments including sexual entertainment venues have been reviewed and set at a level that is reasonable and proportionate to the effective cost of processing the application and making compliance checks throughout the period of the licence.
- 8.2 The power to set fees has been passed to individual authorities so that any fees levied in each local area is set by reference to the actual costs to each authority. The fee charged cannot exceed the costs of providing the service.
- 8.3 The authority must be mindful of the principles of the EU Services Directive (Directive 2006/123/EC of The European Parliament and of the Council of 12 December 2006 on services in the internal market) which states “a Licence fee can only be used to pay for the cost associated with the licensing process. In effect, the authority must ensure that the income from fees does not exceed the costs of the administration and issue of the Licence.
- 8.4 Guidance issued states that the cost of the Licence should reflect the time spent on:
- All steps required in processing and granting a Licence such as considering applications and assessing the suitability of the applicant.
  - The costs of staff associated with supporting the service, including senior staff with managerial responsibility for the service.
  - Support provided by other parts of the authority to the Licensing Team such as legal services and any other general charges, recharges there might be for rooms, heating and lighting etc.
  - The cost of providing advice and guidance to applicants on what will be a new process.

- Carrying out inspections and ensuring compliance with the law.
- Training for staff and councillors in the requirements of the new legislation.
- Costs associated with consulting other agencies and bodies when considering if an applicant is a suitable person.
- Working with partners in ensuring compliance.
- Making and reviewing any policies in relation to the operation of the new licensing regime.
- Issuing the Licence.
- Hearings

8.5 The authority must be aware of case law, of which the Court of Appeal case of R (Hemming (t/a Simply Pleasure Ltd) and others) v Westminster City Council [2013] EWCA Civ 591; [2013] WLR (D) 203 is especially relevant.

8.6 The application process involves paying a non-returnable application fee. The fees will be reviewed annually by the Council and the current schedule of fees is shown at **Appendix D**. No further fees will be applied by the Council in the event that objections are received to an application and a hearing is required to determine the application. However, should the application be subsequently refused, a proportion of the fee will be refunded.

## **9. Advice and Guidance**

9.1 The Council will seek to liaise with applicants and, wherever possible and necessary, mediate between applicants and objectors in order to achieve a satisfactory outcome for all stakeholders. Applicants are advised to discuss their proposals with the Council and any interested parties prior to an application being made.

## **10. Grant, renewal or transfer of licences**

10.1 The Council may grant to any applicant and renew a licence for the use of any premises as a 'sex establishment' on such terms and conditions as specified by the Council which are shown in **Appendix G** of this policy document.

10.2 A licence once granted will usually remain in force 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 to the Council at least 28 days prior to the expiry of the existing licence.

10.3 An application to transfer a licence to any other person may be made.

- 10.4 Where an application for renewal or transfer of a licence is made at least 28 days before the expiry of the existing licence, the licence shall remain in force until such time as the application has been determined.

## **11. Objections**

- 11.1 Anyone wishing to object to an application must do so in writing within 28 days of the application being made to the Council. Representations can be made via-

- (a) post to Licensing Team, Food, Health & Safety and Licensing, Causeway House, Bocking End, Braintree, Essex, CM7 9HB;
- (b) personal service to Licensing Team, Food, Health & Safety and Licensing, Causeway House, Bocking End, Braintree, Essex, CM7 9HB;
- (c) e-mail to [licensing@braintree.gov.uk](mailto:licensing@braintree.gov.uk);

The objection must state the grounds on which it is made.

- 11.2 A person making a representation must state their full name and address and their grounds for objecting to the application and indicate whether or not they consent to have their name and address revealed to the applicant. The Council will not consider objections that are frivolous, vexatious or relate to moral grounds. Moral objections cannot be made under the terms of the Act.
- 11.3 The Council has the discretion to consider representations made after the 28 day consultation period. The Council's acceptance of late representations will be assessed on a case by case basis having regard to the length of delay, the mitigating reason or circumstances that caused the delay and the amount of time before the hearing date that the applicant has to consider the representation.
- 11.4 Where written objections are made the Council will provide copies to the applicant. However, the Council will not divulge the identity of the objector/s to the applicant without their permission to do so.
- 11.5 Where objections are made and are not withdrawn, a hearing before the Licensing Committee or Licensing Sub Committee will normally be held within 20 working days of the end of the objection period, unless all parties agree in writing beforehand that a hearing is no longer necessary. The Council may, under certain circumstances need to hold a hearing later than 20 working days after the end of the objection period and may do so at its discretion.
- 11.6 There is no explicit provision in the legislation for objectors to be heard at a Licensing Committee or Sub Committee hearing. However it is

likely that in most cases the Council will use its discretion to allow objectors or their representative to put their case at a hearing. The Council must be notified in writing by the objector, prior to the hearing, if they wish someone else to speak on their behalf.

## **12. Determining applications**

12.1 The Council reserves the right to consider each application in its own right and on its own merit.

12.2 When considering applications, the Council will have regard to:

- (a) the Local Government (Miscellaneous Provisions) Act 1982
- (b) the Human Rights Act 1998
- (c) the Provision of Services Regulations 2009
- (d) Section 19 of the Crime and Disorder Act 1998
- (e) the Equality Act 2010
- (f) any supporting or accompanying regulations;
- (g) this Statement of Licensing Policy.

12.3 When determining applications, the Council will take account of any written objections, comments or observations made by the Chief Officer of Police and any objections made by other persons or interested parties such as statutory agencies or authorities.

## **13. Conditions**

13.1 No condition will be imposed by the Council that cannot be shown to be necessary, reasonable and proportionate to the application that has been submitted.

13.2 In the event that conditions are attached to the grant of a licence they will be adapted to the operating circumstances and requirements of the individual premises and may also take into account any objections, comments or observations received, particularly where they have been received from the Chief Officer of Police.

13.3 The Council will attach those conditions shown in **Appendix G** which are relevant to the activities granted to the sex establishment licence applied for. These conditions are not exhaustive however and further conditions may be attached on the advice of a responsible authority such as the Police for example, or may be attached by the Council's Licensing Committee or Licensing Sub-Committee as they believe necessary, reasonable and proportionate at any licensing hearing that the Council has had to convene to consider relevant objections to an application submitted for a sex establishment licence.

## **14. Refusal of Licences**

- 14.1 Except where the Council is prohibited from granting, renewing, varying or transferring a licence, it will not refuse a licence without first;
- notifying the applicant or holder of the licence in writing of the reasons;
  - giving the applicant or holder of the licence the opportunity of appearing and making representations before a Licensing Committee or Sub Committee as may be determined by the Council.
- 14.2 The circumstances in which the council must or may refuse a licence are shown in **Appendix F** of this policy document.

## **15. Appeals**

- 15.1 In all cases for the grant, renewal or transfer of a sex establishment licence, applicants that are aggrieved by a decision of the Council relating to a refusal on mandatory issues are entitled to appeal to the Magistrates' Court. Appeals against refusals on discretionary grounds are not permissible unless they relate to the suitability of persons involved in the business. Under certain circumstances that are set out under paragraph 12(3)(c) or (d) Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 an applicant or objector can challenge a refusal of an application by way of seeking a judicial review of the Council's decision.

## **16. Revocation of Licences**

- 16.1 The Council may revoke a licence;
- on any of the grounds specified in paragraph 1 of **Appendix F** of this policy document;
  - on either of the grounds specified in paragraph 3(a) and (b) of **Appendix F** of this policy document.
- 16.2 The Council will not revoke a licence without first giving the holder of the licence the opportunity of appearing and making representations before a Licensing Committee or Sub-Committee.

## **17. Cancellation of Licences**

- 17.1 The licence-holder may surrender the licence at any time and may request the Council in writing to cancel the licence.

- 17.2 Where the Council is satisfied that it is necessary for the purpose of winding up the estate of the deceased licence-holder, it may extend or further extend the period for which the licence remains in force.

## **18. Complaints**

- 18.1 Wherever possible and appropriate the Council will give early warning to licence holders of any concerns which have been identified at premises and of the need for any improvements to the way that the premises is operated. It is hoped and expected that licence holders will actively participate in such dialogue.

## **19. Enforcement**

- 19.1 The Council is responsible for the administration and enforcement of the licensing regime and will carry out its regulatory functions in a fair, open and consistent manner.
- 19.2 Specifically, the Council is committed to:
- (a) be proportionate – to only intervene when necessary and when remedies will be appropriate to the risk posed;
  - (b) be accountable – to justify decisions, be subject to public scrutiny and allow opportunities to resolve differences before enforcement action is taken, unless immediate action is needed;
  - (c) be consistent – to implement rules and standards fairly;
  - (d) be transparent – to be open and to provide clear explanations of what is needed, by when and the rights of appeal.
  - (e) target its regulatory action at cases in which action is needed.
- 19.3 The Council recognises and acknowledges the interests of residents, visitors and businesses and will actively work closely with its partners to assist licence holders to comply with the law and the conditions attached to their licence.
- 19.4 Necessary, reasonable and proportionate enforcement action will be taken by the Council against those who commit serious offences or consistently break the law or breach the conditions of their licence.
- 19.5 The Council has set clear standards of service and performance that the public and businesses can expect. In particular, an enforcement policy has been adopted that explains how the Council will undertake its role and how the principles of effective enforcement will be achieved.

- 19.6 This policy is freely available from the Council, as are details of its corporate complaints procedures, both of which can also be viewed on the Council's website; [www.braintree.gov.uk/Licensing](http://www.braintree.gov.uk/Licensing)

## **20. Human Rights**

- 20.1 When considering transitional applications or new applications, the Council will take into account rights that the applicant has under Article 1, Protocol 1 of the European Convention of Human Rights (peaceful enjoyment of possessions) and Article 10 (freedom of expression). The Council also acknowledges that 'freedom of expression' extends to the right to use particular premises as a sexual entertainment venue in line with the judgment in *Belfast City Council v Miss Behavin' Ltd* in 2007.

## **21. Updates to this policy document**

- 21.1 The Council may update this policy document with any changes that have been made by legislation or accompanying guidance, or to the Council's own terms and conditions. The policy will be reviewed every five years in line with good practice and falls in line with other licensing regimes which have statutory time frames. Minor amendments to this policy document will be made at the Council's discretion and will not be subject to any public consultation or comment.

## Appendix A

### Definitions

- **The Act** – refers to the Local Government (Miscellaneous Provisions) Act 1982
  - **Authorised Officer** - any Officer of the Council authorised under the Council's Scheme of Delegation as detailed within the Council's Constitution
  - **The Council** - refers to Braintree District Council
  - **Licence Holder** - a person or persons who holds a sex establishment licence under the Act
  - **This Policy** - refers to Braintree District 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. It includes any vessel, vehicle or stall but does not include any private dwelling to which the public is not admitted.
  - **Sex Establishment** - as defined in section 2 of Schedule 3 of the Act A Sex Establishment means a sexual entertainment venue, a sex shop or a sex cinema as defined below in extracts from the Act.
  - **Sexual Entertainment Venue** - as defined by Paragraph 2A of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as inserted by Section 27 of the Policing & Crime Act 2009.
  - **Relevant National Authority** – in relation to England means the Secretary of State.
- (1) In this Schedule “**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. (An audience can consist of just one person).

The organiser means any person who is responsible for the organisation or management of the relevant entertainment or the premises at which the relevant entertainment is provided. While in most instances this is likely to refer to the manager of the premises, it could also mean a person who is responsible for organising the entertainment on behalf of persons responsible for the management of the premises. This will therefore mean that the organiser must be a person who is in a position of responsibility over the provision of the

relevant entertainment and will not be interpreted as meaning a member of staff employed to work during the provision of relevant entertainment).

(2) In this paragraph “**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 verbally or other means).

Paragraph 2A(14) of Schedule 3 defines a “**display of nudity**” as being in the case of a woman, it means the exposure of her nipples, pubic area, genitals or anus and in the case of a man; it means exposure of his pubic area, genitals or anus.

However, a display of nudity included in for example a part of a theatre or drama performance, will not require a sex establishment licence unless it is being provided solely or principally for the purpose of sexually stimulating any member of the audience (whether verbally or other means).

(3) The following are not sexual entertainment venues for the purposes of this Schedule-

(a) sex cinemas and sex shops;

(b) premises which the provision of relevant entertainment as mentioned in sub-paragraph (1) is such that, at the time in question and including any relevant entertainment which is being provided at that time-

(i) there have not been more than eleven occasions on which relevant entertainment has been so provided which fall (wholly or partly) within the period of 12 months ending with that time;

(ii) no such occasion has lasted for more than 24 hours; and

(iii) no such occasion has begun within the period of one month beginning with the end of any previous occasion on which relevant entertainment has been so provided (whether or not that previous occasion falls within the 12 month period mentioned in sub-paragraph (i));

- (c) premises specified or described in an order made by the relevant national authority.

Spontaneous entertainment - Where activities take place at a premises that would ordinarily be considered as relevant entertainment but are not provided for financial gain of the organiser or entertainer such as a spontaneous display of nudity or a lap dance by a customer or guest, the premises will not be considered as a sexual entertainment venue by virtue of those circumstances alone.

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

- (1) In this Schedule, “**sex cinema**” means any premises, 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.

- (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 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.

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 are associated with sexual activity.

(2) 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.

Some general propositions which might be taken into account when deciding on what constitutes a “**Sex Shop**”:

- Proportionality is not the only test – a large display in a department store might suffice, even though it represents only a small proportion of overall sales of the store.
- The degree of sex articles compared to non-sex articles.
- Character of the business
- The nature of the display
- The nature of the articles themselves

(3) In this Schedule “**sex article**” means-

(a) 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

(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 B**

### **Requirements for applying for grant, variation, transfer or renewal of a sex establishment licence**

#### **Grant of a licence**

- 1) To apply for the grant of a sex establishment licence an applicant must: -
  - a) send the Council: -
    - i) a completed application
    - ii) a plan to the scale of 1:100 of the premises to which the application relates;
    - iii) an application fee ;
  - b) display a notice on or near the premises;
  - c) advertise the application in a local newspaper;
  - d) send a copy of the application and plan to the Chief Officer of Police, Essex Police, Licensing Unit, Blyths Meadow, Braintree, Essex, CM7 9HB within 7 days of making the application to the Council.

#### **Plan requirements**

- 2) The plan shall show:
  - a) the extent of the boundary of the building, if relevant, and any external and internal walls of the building and, if different, the perimeter of the premises;
  - b) the location of points of access to and egress from the premises;
  - c) the location of escape routes from the premises;
  - d) in a case where the premises is to be used for more than one licensable activity, the area within the premises used for each activity;

- e) fixed structures (including furniture) or similar objects temporarily in a fixed location (but not furniture) which may impact on the ability of individuals on the premises to use exits or escape routes without impediment;
  - f) in a case where the premises includes a stage or raised area, the location and height of each stage or area relative to the floor;
  - g) in a case where the premises includes any steps, stairs, elevators or lifts, the location of the steps, stairs, elevators or lifts;
  - h) in the case where the premises includes any room or rooms containing public conveniences, the location of the room or rooms;
  - i) the location and type of any fire safety and any other safety equipment including, if applicable, marine safety equipment; and
  - j) the location of a kitchen, if any, on the premises.
- 3) The plan may include a legend through which the matters mentioned or referred to above are sufficiently illustrated by the use of symbols on the plan.

## **Public Notices**

- 4) A notice must be displayed at or on the premises to which the application relates for a period of not less than 28 consecutive days from the day following the day the application was given to the Council, where it can be conveniently read from the exterior of the premises.
- 5) Where the premises frontage extends for more than 50 metres, a further identical notice must be displayed every 50 metres along the external perimeter of the premises abutting any highway.
- 6) The notice must be on pale blue paper sized A4 or larger and printed legibly in black ink or typed in black in a font size equal to or larger than 16.
- 7) The notice must state: -
  - a) details of the application and activities that it is proposed will be carried on or from the premises,

- b) the full name of the applicant,
  - c) the postal address of the premises, or in the case where there is no postal address, a description of the premises sufficient to enable the location and extent of the premises to be identified,
  - d) the date, being 28 days after that on which the application is given to the council, by which representations may be made to the Council and that representations should be made in writing,
  - e) that it is an offence knowingly or recklessly to make a false statement in connection with an application and the maximum fine (£5000) for which a person is liable on summary conviction for the offence.
- 8) A similar notice must be published in a local newspaper or similar publication within 7 days of giving the application to the Council.

### **Variation of a licence**

- 9) The holder of a licence may apply at any time for any variation of the terms, conditions or restrictions on, or subject to which, the licence is held.
- 10) The process of applying for a variation is the same as that for applying for an initial grant except that a plan of the premises is not required unless the application involves structural alterations to the premises.

### **Renewal of a licence**

- 11) The holder of a licence may apply for renewal of the licence. In order for the licence to continue to have effect during the renewal process, a valid application together with the appropriate fee must be submitted 28 days before the current licence expires.
- 12) The process of applying for renewal of a licence is the same as that for applying for an initial grant except that a plan of the premises is not required.

### **Transfer of a licence**

- 13) A person may apply for transfer of a licence at any time.

- 14) The process of applying for transfer of a licence is the same as that for applying for an initial grant except that a plan of the premises is not required.

For details on how the Council intends to process applications, including those to which objections are made, please see Section 7 of this policy document entitled '**Applications**'.

## Appendix C



### Braintree District Council

#### Application for Grant or Renewal of Licence for Sex Establishment

#### Local Government (Miscellaneous Provisions) Act 1982

**1. If the application is made on behalf of an individual, please state:-**

Full Name: .....

Permanent Address: .....

.....

.....

.....

Date of Birth..... Place of Birth.....

**2. If the application is made on behalf of a corporate or unincorporated body, please state:-**

Full name of body: .....

Address of registered .....

or principal office .....

.....

.....

**3. Give full names and private addresses of all directors or other persons responsible for management of the establishment:**

i) Name & Address .....

.....

.....

Date of Birth..... Place of Birth.....

ii) Name & Address .....

.....

.....

Date of Birth..... Place of Birth.....

- 4. Have you any convictions recorded against you? Or, if a corporate or unincorporated body, has that body or any of its directors or other persons responsible for its management? If so please detail below. Please note that all convictions (other than spent convictions) must be disclosed.**

Person/Body Convicted	Date of Conviction	Offence	Sentence (including suspended sentence)

5. Have you been resident in the United Kingdom throughout a period of six months immediately preceding the date of this application? **YES/NO**

6. If the application is made on behalf of a corporate body is that body incorporated in the United Kingdom? **YES/NO**

7. Full address of premises proposed for use as a Sex Establishment
- .....
- .....

8. On which days do you wish to trade?
- .....

9. During which hours do you wish to trade?
- .....

10. Are the premises to be used as a sex shop? **YES/NO**  
Are the premises to be used as a sex cinema? **YES/NO**

Are the premises to be used as a sex encounter establishment? **YES/NO**

11. Have you ever been refused a licence for a Sex Establishment? **YES/NO**

If YES, please give details:

.....  
.....

12. Have you ever held a licence for a Sex Establishment? **YES/NO**

If YES, please give details:

.....  
.....

I hereby certify that the details given in this application are correct to the best of my knowledge and belief. This application is accompanied by the prescribed fee.

Signed.....

Status (e.g. Director, Manager).....

Date.....

#### Notes

1. This application must be accompanied by the prescribed fee
2. Please return the completed application form to Licensing Services Manager,  
Braintree District Council, Causeway House, Bocking End, Braintree,  
Essex CM7 9HB

## **Appendix D**

### **Fees**

***Grant***            ***£1164***

***Renewal***        ***£441***

***Transfer***        ***£199***

## Appendix E

### Example of Newspaper Advert and Site Notice

#### **BRAINTREE DISTRICT COUNCIL Sex Establishment Licence Application**

#### **Notice of application for the grant/renewal/transfer (delete as applicable) of a sex establishment licence pursuant to Schedule 3 of the Local Government (Miscellaneous Provisions) Act, 1982**

TAKE NOTICE that on (date) (name of applicant(s) applied to Braintree District Council for the grant/renewal/transfer (delete as applicable) of a sex establishment licence

NAME AND ADDRESS OF PREMISES/LOCATION OF  
VEHICLE/VESSEL/STALL (delete as applicable):

(Please note that the precise address or location, sufficient to identify the location and extent of the premises, must be given)

DAYS AND HOURS OF OPERATION:

ACTIVITY; Sex Shop/sex cinema/ sexual encounter venue (delete as applicable)

INSPECTING THE APPLICATION: The application may be inspected at the offices of Braintree District Council Licensing Team, Food, Health & Safety and Licensing, Causeway House, Bocking End, Braintree, Essex CM7 9HB

OBJECTIONS: Any person wishing to support or object to this application should do so in writing to the Braintree District Council Licensing Team Food, Health & Safety and Licensing, Causeway House, Bocking End, Braintree, Essex CM7 9HB

or by email to [licensing@braintree.gov.uk](mailto:licensing@braintree.gov.uk) The grounds for objection must be stated in general terms and received by the Council by no later than (date – insert 28 days after the date of the application)\*)

Please note that any written representations received in response to this application may be required to be made available for public inspection in accordance with the Local Government (Access to Information) Act 1985.

Signed

Name

Organisation

Address

Date

**Please note that for site notices the notice must be printed on pale blue A4 paper in a black font.**

## **Appendix F**

### **Refusals and revocations of licences**

1. The council must refuse to grant or transfer a licence to: -
  - (a) a person under the age of 18;
  - (b) a person who is for the time being disqualified from holding a licence;
  - (c) a person who is not resident in the United Kingdom or was not so resident throughout the period of 6 months immediately preceding the date upon which the application was made;
  - (d) a body corporate which is not incorporated in the United Kingdom;
  - (e) a person who has, within the period of 12 months immediately preceding the date upon which 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.
2. The Council may refuse-
  - (a) an application for grant or renewal of a licence on one or more of the grounds shown in paragraph 3 below;
  - (b) an application for transfer of a licence on either or both of the grounds shown in paragraph 3 (a) and (b) below.
3. The grounds for refusal are-
  - (a) That the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason;
  - (b) That 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) That the number of sex establishments in the relevant locality that the application is made is equal to or exceeds the number which the Council considers is appropriate for that locality;
  - (d) That the grant or renewal of the licence would be inappropriate having regard to:-
    - i. The character of the relevant locality;
    - 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.
3. Nil may be an appropriate number for the purposes of paragraph (3)(c) above.

## **4. Appendix G**

### **Standard Conditions applicable to Licences for Sex Establishments**

#### **Notes**

- (i) Except where the context demands otherwise the singular includes the plural and the masculine includes the feminine.
- (ii) Nothing in these conditions shall be construed as interfering with (i) the discretion of the licensee or his representative regarding the admission of any person or (ii) the need to strictly comply with all relevant statutory requirements.
- (iii) These conditions are divided as follows-
  - Part 1 General
  - Part 2 Conditions which apply to all premises
  - Part 3 Conditions which apply to sex shops
  - Part 4 Conditions which apply to sex cinemas
  - Part 5 Conditions which apply to sexual entertainment venues
- (iv) In these rules all references to the British Standard (BS) shall be deemed to refer to the current standard.
- (v) A premises licence may also be required for the operation of a sex cinema.

#### **Part 1 General**

1. In the event of a conflict between these conditions and any special conditions contained in a licence relating to a sex establishment the special conditions shall prevail.
2. The grant 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.

## **Part 2 Conditions which apply to all premises**

### **Exhibition of Licence**

1. The copy of the licence and these Regulations which are required to be exhibited 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 required to be displayed as aforesaid shall be suitably framed and exhibited in a position that it can easily be seen by all persons using the premises. The copy of these Regulations shall be retained in a clean and legible condition.

### **Responsibility of Licensee**

2. The licensee shall take all reasonable precautions for the safety of the public and employees and, except with the consent of the Council, shall retain control over all areas of the premises.
3. The premises shall not be used for regulated entertainment, exhibition or display of any kind unless the Council's consent has been first obtained and any necessary licence granted.

### **Conduct and Management of the Premises**

4. The licensee, or a responsible person over 18 years of age and 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. Such written nomination shall be continuously available for inspection by an officer authorised in writing by the Council. The person in charge shall not be engaged on any duties which will prevent him from exercising general supervision and he shall be assisted as necessary by suitable adult persons to ensure adequate supervision. The person in charge shall be conversant with these rules, a copy of which shall be held on the premises.
5. The licensee, or the responsible person approved under Regulation 4, shall maintain a daily register to be kept on the premises in which he shall 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 to be completed each day within 30 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.

6. 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 bearing a photograph of the employee and indicating his name and that he is an employee.
7. A notice showing the name of the person responsible for the management of a sex establishment shall be prominently displayed within the sex establishment throughout the period during which he is responsible for its conduct.
8. Where the licensee is a body corporate or an unincorporated body any change of director, company secretary or other person responsible for the management of the body is to notified in writing to the Council within 14 days of such change and such written details as the Council may require in respect of any new director, secretary or manager are to be furnished within 14 days of a request in writing from the Council.
9. The licensee shall ensure that no part of the premises is used by prostitutes (male or female) for the purposes of soliciting or any other immoral purpose.
10. 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.
11. Neither the licensee nor any employee or other person shall seek to obtain custom by means of personal solicitation outside or in the vicinity of the premises.
12. No person under the age of 18 shall be admitted to the premises or employed in the business of the sex establishment.

### **External Appearance**

13. No display, advertisement, word, letter, model, sign, light, placard, board, notice, device, representation, drawing, writing or any other matter or thing (whether illuminated or not) shall be exhibited so as to be visible from outside the premises except;
  - (i) 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 condition of a licence granted by the Council.
  - (ii) Such display, advertisement, word, letter, model, sign, light, placard, board, notice, device, representation,

drawing, writing, or any matter or thing as shall have been approved by the Council.

14. The entrances, windows and openings to the premises shall be of a material or covered with a material which will render the interior of the premises invisible to passers-by.

**State, Condition and layout of the premises**

15. The premises shall be maintained in good repair and condition.
16. The number, size and position of the doors or openings provided for the purposes of the ingress and egress of the public shall be to the satisfaction of 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 opening other than exits 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".
  - (iii) No access shall be permitted through the premises to any other premises adjoining or adjacent except in the case of emergency.
17. The external doors to the premises shall be fitted with a device to provide for their automatic closure and such devices shall be maintained in good working order. The external door shall only be opened at such times as person(s) require access and egress to the interior of the premises.
18. The licensee shall make provision in the means of access both to and within the premises for the needs of members of the public visiting the premises who are disabled.
19. 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.
20. All parts of the premises shall be kept in a clean and wholesome condition to the satisfaction of the Council.

## **Maintenance of the means of Escape**

- 21. The means of escape provided for all persons on the premises shall be maintained unobstructed, immediately available and clearly identifiable in accordance with the approved arrangements.
- 22. All fire resisting and smoke stop doors shall be maintained, self-closing and shall not be secured open.

## **Fire Appliances**

- 23. The premises shall be provided with fire appliances suitable to the fire risks on the premises, and such fire appliances shall be maintained in proper working order and shall be available for instant use.
- 24. The licensee shall comply with any fire precautions and safety measures that may be required of him by the Fire Authority.
- 25. Portable fire appliances shall be examined at least once a year and periodically tested in accordance with the current British Standard by a competent person and the date of such test shall be clearly marked on the appropriate extinguishers or on stout tabs securely attached to them. Extinguishers which incorporate an anti-freeze agent shall be examined and recharged in compliance with the manufacturer's instructions.

## **Lighting**

- 26. The licensee or any other person concerned in the conduct or management of the licensed sex establishment shall, in the absence of adequate daylight, ensure that adequate lighting is maintained to the satisfaction of the Council in all parts of the premises to which the public and staff have access and is in operation continuously during the whole time the premises are open to the public.
- 27. The normal lighting levels and the lighting to 'EXIT' notices shall be maintained at all times and shall not in any circumstances be extinguished or dimmed while the public are on the premises provided that, so long as there is sufficient daylight in any part of the premises, artificial light need not be used in any part.

## **Electrical Installations**

- 28. The electrical installation for the premises shall be maintained in a safe working condition, as prescribed in the current edition of the Regulations for electrical installations issued by the Institute of Electrical Engineers.

29. Unless the Council decides otherwise an inspection certificate, as prescribed in the current edition of the Regulations for electrical installations issued by the Institute of Electrical Engineers, for the electrical installation associated with the premises shall be submitted to the Council at least once every five years or such other time specified on the certificate. The certificate shall be signed by a qualified engineer.

### **Change of Use**

30. No change of use of any portion of the premises from that approved by the Council shall be made until the consent of the Council and the Police has been obtained.
31. The Licensing Authority and Essex Police must be informed should the licensee seek to change the use of the establishment to another form of sex establishment.

### **Sale of goods**

32. Neither sex articles nor 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 be displayed, sold, hired, exchanged, loaned or demonstrated in a sex cinema or a sexual entertainment venue.

### **Admission of Authorised Officers**

33. Officers of the Council, Police, and other authorised agencies who are furnished with authorities which they will produce on request, shall be admitted immediately at all reasonable times and at any time the premises are open for business to all parts of the premises.

## **Part 3 Conditions which apply to Sex Shops**

1. It is permitted to play music or words either via national or local radio stations or any pre-recorded means, but no material whatsoever of an adult theme or nature can be played or broadcast, whether by means of sound or moving picture.

### **Goods available in Sex Establishments**

2. All sex articles and other things displayed for sale, hire, exchange or loan within a sex shop shall be clearly marked to show persons who are inside the sex shop the respective prices being charged.
3. All printed matter offered for sale, hire, exchange or loan shall be available for inspection prior to purchase, hire, exchange or loan

and a notice to this effect is to be prominently displayed within the sex establishment.

4. No film or video film shall be exhibited, sold or supplied unless it has been passed by the British Board of Film Censors, and bears a certificate to that effect, or approved by the Council and is a reproduction authorised by the owner of the copyright of the film or video film so certified.

## **Part 4 Conditions which apply to Sex Cinemas**

### **Film Categories**

1. The categories U, PG, 12, 15, 18 and RESTRICTED 18 have the following effect:

U	Universal – Suitable for all
PG	Parental Guidance. Some scenes may be unsuitable for young children.
12	Passed only for persons of 12 years and over.
15	Passed only for persons of 15 years and over.
18	Passed only for persons of 18 years or over
RESTRICTED (18)	Passed only for persons of 18 or over who are members (or their guests) of a properly constituted club.

### **Exhibition of Films**

2. 'Film exhibition' means film exhibitions as defined in the Cinemas Act 1985, i.e. any exhibition of moving pictures which is produced otherwise than by the simultaneous reception and exhibition of (a) television programmes, broadcast by the British Broadcasting Corporation or the Independent Broadcasting Authority or (b)

programmes included in a cable programme service which is or does not require to be licensed under Section 4 of the Cable and Broadcasting Act 1984.

3. No film shall be exhibited at the premises unless:
  - (a) it is a current news reel; or
  - (b) it has been passed by the British Board of Film Classification as a U, PG, 12, 15, 18, or RESTRICTED (18) film
  - (c) it has been passed by the Council as a U, PG, 12, 15, 18, or RESTRICTED (18) film.

### **Restricted (18) films**

4. Films in the RESTRICTED (18) category may be shown at the premises only with the Council's prior written consent and in accordance with the terms of any such consent.

### **Unclassified Films**

5. Not less than twenty-eight days' notice in writing shall be given to the Council of any proposal to exhibit any other film which has not been classified as specified above. Such a film may only be exhibited if the Council's written consent has been obtained and in accordance with the terms of any such consent.

### **"Persons under 18" Notice**

6. No person appearing to be under the age of 18 shall be admitted to any part of the programme and the licensee shall display in a conspicuous position at the entrance to the premises a notice in clear letters in the following terms:

PERSONS UNDER 18 CANNOT BE ADMITTED TO THIS CINEMA  
FOR ANY PART OF THE PROGRAMME

### **Category Notices**

7. A representation or written statement of the terms of any certificates given by the British Board of Film Censors or the British Board of Film Classification shall be shown on the screen immediately before the showing of any film to which it relates and the representation or statement shall be shown for long enough and in a form large enough for it to be read from any seat in the auditorium.

## **Timetable of Films**

8. The licensee shall display in a conspicuous position, to the satisfaction of the Council, at each entrance to the premises, during the whole time the public are being admitted to the premises and so as to be easily seen and read by the public, a timetable of the films on exhibition.

## **Advertisements**

9. No advertisement displayed at the premises of a film to be exhibited at the premises shall depict as a scene or incident in the film any scene or incident which is not included in the film as certified by the British Board of Film Censors or the British Board of Film Classification or approved for exhibition by the licensing authority, as the case may be.
10. Where the licensing authority has given notice in writing to the licensee of the premises objecting to an advertisement on the ground that, if displayed, it would offend against good taste or decency or be likely to encourage or incite crime or lead to disorder or be offensive to public feeling, that advertisement shall not be displayed at the premises without the prior consent in writing of the licensing authority.

## **Objection to exhibition of film**

11. Where the licensing authority has given notice in writing to the licensee of the premises prohibiting the exhibition of a film on the ground that it contains material which, if exhibited, would offend against good taste or decency or would be likely to encourage or incite to crime or to lead to disorder or to be offensive to public feeling, that film shall not be exhibited in the premises except with the prior consent in writing of the licensing authority.

## **Additional conditions for 'Club' cinemas showing films in the restricted classification**

12.
  - (i) No club showing films in the 'restricted 18' category may operate in a multi-screen complex whilst persons under 18 are being admitted to any performance in the complex unless the Council's written consent has first been obtained.
  - (ii) When the programme includes a film in the 'restricted 18, category the licensee shall display in a conspicuous position at the entrance to the premises a notice in clear letters in the following terms:  
  
"CINEMA CLUB – MEMBERS AND GUESTS ONLY.  
PERSONS UNDER 18 CANNOT BE ADMITTED TO  
THIS CINEMA FOR ANY PART OF THE PROGRAMME"

(In the case of a multi-screen complex where consent has been granted the notice shall specify the particular part of the premises in which films in the 'restricted 18' category are being exhibited).

- (iii) The timetable of films required by rule 52 shall include the following addition to the categories shown;

"Category RESTRICTED 18" passed only for persons of 18 years and over who are either members of the cinema club or who are guests of a member".

- (iv) All registers of members and their guests shall be available for immediate inspection by the Council's officers during any performance, or at any other reasonable time.
- (v) Tickets shall in no circumstances be sold to persons other than members.
- (vi) No persons under 18 years of age shall be employed in any capacity at licensed premises which are operating as cinema clubs.
- (vii) Subject to prior written consent by the Council, a subscription may entitle the club member to attend other clubs under the same management.
- (viii) Membership rules for these club cinemas shall include the following –
  - (a) The club rules must be submitted to the Council 14 days before the club commences operations and notice of all rule changes shall be given to the Council within 14 days of the change.
  - (b) Only members and their guests shall attend exhibitions of moving pictures classified in a restricted classification.
  - (c) Membership shall be open to persons of both sexes of not less than 18 years of age. Applications for membership, including both name and address, shall be in writing, signed by the applicant, and if deemed necessary such applicants shall provide satisfactory references and proof of age.
  - (d) No person shall be admitted to membership until the expiration of at least 24 hours after such written application has been approved by the licensed proprietors.

- (e) New members shall be supplied with a personal copy of the club rules before being admitted to membership and be given a copy of any rule changes within 14 days of the change.
- (f) An annual subscription shall be fixed for the club and shall run for 12 months from the date of registration. Membership may be renewed annually at the subscription for the time being in force, but the licensed proprietors may refuse to renew any membership without assigning reason for such refusal.
- (g) Members shall be entitled on any day to bring not more than one guest to accompany the member, and the name of the guest shall be entered in the visitors' book and counter-signed by the member.
- (h) On admission a member and his guest shall be bound by the rules of the club and by any by-laws and regulations made thereunder.
- (i) Tickets shall be sold only to members on the production of a membership card and members shall, if required, sign an acknowledgement for the ticket or tickets issued.
- (j) Membership cards shall be personal to the member and shall not be transferable to any other person.
- (k) Neither membership tickets nor guest tickets shall be transferable.
- (l) No member shall introduce as a guest any persons under the age of 18 or any persons whose application for membership had been refused. The proprietors will reserve the right to refuse admission to any person.
- (m) Proof of identity, or of age, or of any particulars of any guest shall be produced by any member or guest if demanded by the licensed proprietors.
- (n) Members shall undertake to behave in a proper and orderly manner. Any member or guest acting in a manner which is offensive, or a nuisance or annoyance to others may be refused admission or expelled from the premises. A member may also be deprived of membership.

## **Sale of Sex Article**

13. Neither sex articles nor 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 be displayed, sold, hired, exchanged, loaned or demonstrated in a 'sex cinema'.

## **Part 5 Conditions which apply to Sexual Entertainment Venues**

### **Performances of Relevant Entertainment**

1. The performance of relevant entertainment within the premises shall not be visible from any area outside of the premises at any time.

### **Age Restrictions**

2. A prominent clear notice shall be displayed at each entrance to the premises advising customers that no person under 18 will be admitted and they may be asked to produce evidence of their age.
3. Members of staff at the premises shall seek "credible photographic proof of evidence" from any person who appears to be under the age of 25 years and who is seeking access to the premises. Such credible evidence, which shall include a photograph of the customer, will either be a passport, photographic driving licence, or Proof of Age card carrying a "PASS" logo.

### **Club Rules**

4. The premises must provide a copy of its Club Rules to the Council and to Essex Police for consideration and approval.
5. All performers and staff shall be aware of the Club Rules.
6. All dancers, staff and door supervisors shall read a copy of the rules relating to operating relevant entertainment. They shall sign and date a copy which shall be retained by the premises as part of their due diligence.

### **Management Operation Manual**

7. A management operation manual detailing all aspects of procedure when the premises are operating relevant entertainment shall be produced and approved by the Council. This document shall be reviewed annually and the manual as reviewed shall be submitted

for approval of the Council together with the application for renewal of the licence.

## **Performers**

8. Performers shall be aged not less than 18 years and the “Challenge 25” scheme will be used to manage this.
9. All performers shall be aware of the management operation manual.
10. A log book shall be maintained on the premises detailing the names and start and finish times of individual performers involved in all forms of adult entertainment.
11. At all times during the performance, performers shall have direct access to a dressing room without passing through, or in close proximity to, the audience.
12. On leaving the premises performers, who wish to be, shall be escorted by staff member to their vehicle or other safe location.

## **Performances**

13. Whilst dancers are performing in any public area there shall be a minimum distance of one metre maintained between the dancer and the seated customers. Prominent, clear notices shall be displayed at each table stating this requirement.
14. There shall be no physical contact between customers and the dancers except for the placing of money or tokens in a garter or into the hands of the dancer at the beginning or conclusion of a performance. A “touch and go” policy will operate i.e. any person/customer touching dancers will be ejected from the premises and barred from those premises.
15. No performances shall include any sex act with any other performer, persons in the audience or with the use of any object.
16. No audience participation shall be permitted.
17. Signs displaying the rules on the performance of relevant entertainment will be displayed throughout the premises and be clearly visible to patrons. This will include any private individual booth area.
18. In the event of the relevant entertainment being performed for private viewing, the patron shall be informed of the duration and

price of the relevant entertainment, and the details shall be specified in a clearly visible notice in each area designated for private relevant entertainment. Each such area shall be capable of being continually monitored by a member of staff.

19. No performer or member of staff shall sit on, straddle, stroke, fondle or make any form of sexual contact with a customer at any time.

### **Door Supervisors**

20. One SIA registered door supervisor per 75 customers shall be on duty on the premises whilst relevant entertainment takes place plus there shall be at least one door supervisor on each entrance in each separate part of the premises and on the door to the dressing room.
21. The door supervisors shall be on duty at the premises at all times when the premises provide relevant entertainment.
22. The premises shall be a member of the Pub/Townlink Radio scheme.

### **Closed Circuit Television (CCTV)**

23. A high quality CCTV system shall be installed to cover all entrances and exits to the premises and areas where relevant entertainment will take place, with the exception of the performers' changing area. This system must be installed and fully operational before the premises opens for the licensable activity applied for. All cameras shall continually record whilst the premises are open to the public and video recording shall be kept available for a minimum of 31 consecutive days with date and time stamping.
24. At the time of installation or upgrading of any CCTV system it shall comply with the current and relevant Police guidelines for Standard Minimum closed circuit television requirements. To obtain a clear head and shoulders image of every person entering the premises on the CCTV System, persons entering the premises should be asked to remove headwear, unless worn as part of religious observance.
25. A member of staff who is fully trained in the use of the system shall be on duty at all times when the premises are open until the premises are clear of customers, cleared of staff and closed.
26. Within 24 hours of a request made by Essex Police or the Licensing Authority, the premises will provide the CCTV footage requested.

### **Crime Survey**

27. Upon completion of a crime survey by Essex Police, the licence holder shall act accordingly with all recommendations of the survey in so far as they relate to licensable activities.

### **Layout of premises**

28. The approved activities shall take place only in the areas designated by the Licensing Authority.
29. All dance booths are to be equipped with a panic alarm for safety.
30. Arrangements shall be put in place to restrict access to the dressing room at all times when the relevant entertainment is taking place, and until such time as all performers have vacated it. The performers' dressing rooms will be off-limits to all non-employees.
31. The layout within the areas used by customers shall not undergo substantial change without the prior written consent of the Licensing Authority.

### **Sale of goods**

32. Neither sex articles nor 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 be displayed, sold, hired, exchanged, loaned or demonstrated in a 'Sexual Entertainment Venue'.

### **Door Policy**

33. No entry to be permitted to any customer who is considered by the management or door staff to be incapable of controlled or acceptable behaviour, especially those who may be showing signs of having been intoxicated through alcohol or drugs.
34. The rules for the venue will be explained to all customers before entry is permitted.
35. One member of door staff will be present at the entrance to the venue at all times during opening hours.
36. Door staff will carry two-way radios at all times.
37. Dress code will be smart at all times; no sportswear will be permitted.

### **Operation of the Venue**

- 38. A copy of the house customer rules will be on display at the entrance to the venue and in the bar area.
- 39. Waitresses/Waiters and bar staff must remain fully clothed at all times.

### **Supervision of Performers**

- 40. Proof of citizenship or working permits must be provided.
- 41. No working auditions will be permitted; a cooling off period of three days is enforced at all times.
- 42. All performers and staff must complete an emergency contact form before working within the venue.
- 43. Performers must sign a 'contract' before working stating that they have read, understood and will abide by the performer rules and rules of the house while working in the venue.
- 44. A member of staff will be in the private dance area at all times whilst private dances are taking place.
- 45. No dances will be permitted without supervision from a member of staff.
- 46. Performers must be provided with a full briefing on the Club rules.

### **Customer and Performer Conduct**

There should be published rules on customer conduct and performer conduct and the rules should contain as a minimum the following requirements, and the licensee shall ensure that the rules are enforced.

- 47. Any customer who is offensive either by language or action towards the performer will be ejected from the venue. They will also be barred from entry on any future occasion.
- 48. Strictly no photographing or videoing of performances or performers before, during or after the performance will be allowed. All customers' mobile phones will be switched off whilst on the premises. Anyone found breaching this condition will be ejected from the venue and barred from entry on any future occasion.
- 49. Any customer found in possession of drugs, attempting to consume drugs or selling drugs will be detained by the security staff and the Police will be called. They will also be barred from entry on any future occasion.

- 50. Throwing of money at performers will not be permitted before, during or after the performance, nor will the giving of any other gift. Anyone breaching this condition will be ejected from the venue and barred from entry on any future occasion.
- 51. Customers will not be allowed to pass on personal details such as business cards or telephone numbers to performers before, during or after a performance.
- 52. Payment must be made to the performer only and strictly in advance of the performance taking place.

### **Performer Conduct**

- 53. No performer will be allowed to carry or use any sex toy, sex aid or other paraphernalia.
- 54. No performer will be allowed to wear bondage or sadomasochist clothing or paraphernalia. No accessories such as sex toys or aids are to be carried or used by the performers.
- 55. No handing out of cards, telephone numbers or personal contact information to customers or any other persons by performers.
- 56. Performers must not encourage customers to touch them in any way before, during or after a performance.
- 57. Performers found in possession, using or attempting to sell drugs or under the influence of drugs before, during or after a performance will be immediately dismissed and the Police notified.
- 58. Performers will instruct all customers to keep their hands by their sides at all times during a private dance.
- 59. Any approach by a customer to make personal contact with a performer must be immediately reported to the management or security.
- 60. Performers will not be permitted to enter any part of the venue other than the private dance area and dressing room areas while fully nude.

<b>Report Title: HACKNEY CARRIAGE PROPRIETOR LICENCE ALLOCATION</b>	
<b>Report to: LICENSING COMMITTEE</b>	
<b>Date: 20th July 2022</b>	<b>For: Decision</b>
<b>Key Decision: No</b>	<b>Decision Planner Ref No: N/A</b>
<b>Report Presented by: John Meddings, Principal Licensing Officer</b>	
<b>Enquiries to: John Meddings, Principal Licensing Officer</b>	

## **1. Purpose of the Report**

- 1.1 Braintree District Council is the Licensing Authority for Hackney Carriage Proprietors' Licences.
- 1.2 The Council currently limits the number of Hackney Carriage Proprietors' Licences it issues to 84. Licences returned to the Council are required to be allocated in accordance with the Council's Hackney Carriage Proprietors' Licences Allocation Policy.
- 1.3 The Council's policy provides for the allocation of a Licence by random ballot. This report sets out how the ballot will be conducted to allocate the single Hackney Carriage Proprietors' Licence currently held by Braintree District Council.

## **2. Recommendations**

- 2.1 To issue the Hackney Carriage Proprietors' Licence by random ballot in accordance with the Hackney Carriage Proprietors' Licences Allocation Policy.

## **3. Summary of Issues**

- 3.1 The Council currently limits the number of Hackney Carriage Proprietors' Licences it issues to 84. The limitation of numbers creates a demand amongst prospective licence holders and an artificial value to holding a Hackney Carriage Proprietors' Licence.
- 3.2 The Policy for the allocation of Hackney Carriage Proprietors' Licences was introduced by the Licensing Committee on 14th February 2014 to ensure that the allocation of future licences is handled in a fair, open and transparent way.

## **4. Consultation**

- 4.1 Expression of interest were invited from all licensed drivers. Private Hire Operators were also notified of the availability of a Hackney Carriage Proprietor's Licence.

- 4.2 The submission of expressions of interest were invited over a four week period from 7th June 2022 to 1st July 2022.
- 4.3 During the expression of interest period the Council received 17 responses.

## **5. Expressions of Interest**

- 5.1 The following is a list of all the expressions received. The numbers attached to each individual will be the identifiers used in the ballot.

- 1 Sharaf Mohamed Ali
- 2 Taha Patel
- 3 Kamran Sabir
- 4 Tarek Laaouad
- 5 Osman Arslan
- 6 Cetin Ustabas
- 7 Andrew Keen
- 8 Ramazan Gorgulu
- 9 Bircan Ay
- 10 Matin Shah
- 11 Yasir Mehmood
- 12 Mohamed Trissia
- 13 Hussain Ahmed
- 14 Kunabalasingam Mauran
- 15 Muhammad Khan
- 16 Syed Shah
- 17 Moulay Garnaoui

## **6. Ballot**

- 6.1 The Hackney Carriage Proprietor's Licence will be issued by a random ballot in accordance with Braintree District Council's Hackney Carriage Proprietors' Licence Allocation Policy.
- 6.2 Individuals who are entered into the ballot will be invited to the draw so that they are able to follow the ballot 'live'. The ballot will be conducted openly and transparently with Members and viewers guided through the process.
- 6.3 The ballot will use a web-based number generator, [Calculator.net](https://www.calculator.net) to draw the required lots. This is an independent system and has no affiliation with Braintree District Council and is a publicly accessible website. The operation of the number generator and the drawing of lots will be controlled by a member of the Council's Governance and Members Team. This process will be projected onto a screen so that all present can watch the draw.
- 6.4 The number range entered will be 1 to 17 to correlate with the expressions of interest received, as detailed in paragraph 5.1.
- 6.5 The website will then generate random numbers in the range on request.

- 6.6 Lots will be drawn for the single Hackney Carriage Proprietor's Licence available. Then a reserve will be drawn to allow for a potential unsuccessful application and to avoid the need for another ballot to allocate the Licence in the future.
- 6.7 The first number generated will be the successful applicant for the Hackney Carriage Proprietor's Licence and they will be given the opportunity to complete an application within the next 28 days, or in accordance with a revised agreed timetable.
- 6.8 The second number generated will be the reserve for the available Hackney Carriage Proprietor's Licence. If the first lot drawn fails to complete an application within the agreed timeframe, the second lot drawn will be given the opportunity to complete an application in a required timeframe.
- 6.9 If any number generated is a duplicate of a previously generated number it will be considered void and a new number will be generated.

## **7. Successful Applicants**

- 7.1 The successful applicant will need to licence a wheelchair accessible vehicle within 28 days of the ballot in accordance with the Council's vehicle criteria.
- 7.2 The applicant will be required to undertake a declaration that the Licence will not be sold or transferred for a period of five years.
- 7.3 Should the successful applicant already be an existing Hackney Carriage Proprietor, they will also be required to undertake a declaration not to sell or transfer any existing Licence.

## **8. Options**

- 8.1 To issue a Hackney Carriage Proprietor's Licence by random ballot in accordance with the Hackney Carriage Proprietors' Licences Allocation Policy.

## **9. Financial Implications**

- 9.1 There are no issues arising from this report. However, should the Licence be issued the Council will receive a fee for any subsequent application received.

## **10. Legal Implications**

- 10.1 No issues arising from this report.
- 10.2 The Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976 place on Braintree District Council, as the Licensing Authority, the duty to carry out its licensing functions in respect of Hackney Carriages and Private Hire Vehicles.

## **11. Other Implications**

- 11.1 There are no other issues arising from this report

## **12. Equality and Diversity Implications**

- 12.1 Section 149 of the Equality Act 2010 creates the public sector equality duty which requires that when the Council makes decisions it must have regard to the need to:
- (a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act
  - (b) Advance equality of opportunity between people who share a protected characteristic and those who do not
  - (c) Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.
- 12.2 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, gender and sexual orientation. The Act states that 'marriage and civil partnership' is not a relevant protected characteristic for (b) or (c) although it is relevant for (a).
- 12.3 The Equality Impact Assessment indicates that the proposals in this report will not have a disproportionately adverse impact on any people with a particular characteristic.

## **13. Background Papers**

- 13.1 Hackney Carriage Proprietors' Licences Allocation Policy.
- 13.2 17 Expressions of interest (17 valid and 0 invalid)
- 13.3 Equality Impact Assessment of 15th April 2014.

<b>Report Title: LICENSING COMMITTEE UPDATE</b>	
<b>Report to: LICENSING COMMITTEE</b>	
<b>Date: 20th July 2022</b>	<b>For: Noting</b>
<b>Key Decision: No</b>	<b>Decision Planner Ref No: N/A</b>
<b>Report Presented by: John Meddings, Principal Licensing Officer</b>	
<b>Enquiries to: John Meddings, Principal Licensing Officer</b>	

## **1. Purpose of the Report**

- 1.1 Members have requested regular updates on applications determined at Licensing Sub-Committee and Drivers' Panel meetings. This report summarises all applications determined since the last report submitted to the Committee on 16th March 2022.
- 1.2 The report will also highlight other significant issues relevant to licensing.

## **2. Recommendations**

- 2.1 The report is for information only and Members are only required to note the content.

## **3. Updates**

- 3.1 A Licensing Sub-Committee considered an application on 24th May 2022 for the grant of a Premises Licence with respect to the Golfing Hub, Unit 10A Top Yard, Middleton Hall Farm, Middleton Road, Middleton, Essex, CO10 7LL following the receipt of objections to the application during the statutory consultation period. After consideration, the Sub-Committee granted the application for a Premises Licence as applied for.
- 3.2 A Drivers' Panel considered a report on 20th April 2022 with respect to the continuing status of a driver following the declaration of a health issue. The driver's licence had initially been suspended by the Chairman of the Licensing Committee on 4th March 2022 with immediate effect. The Drivers' Panel confirmed the suspension of the driver's licence in accordance with S.61(b) of the Local Government (Miscellaneous Provisions) Act 1976. The licence remains suspended.
- 3.3 A Drivers' Panel considered a report on 7th June 2022 regarding an application which had been received from a licensed Private Hire Operator with respect to a Private Hire Vehicle Licence and an exemption from displaying Private Hire Vehicle plates and external livery. The vehicle did not meet the age requirements for a Private Hire Vehicle generally, nor the

vehicle age requirement for not displaying plates and external livery. The Panel granted the licence on the basis that whilst the vehicle was five years and nine months old, it was considered to be of a standard suitable for a Private Hire Vehicle Licence and an exemption from displaying Private Hire Vehicle plates and external livery.

- 3.4 A Drivers' Panel considered a report on 7th June 2022 regarding an application which had been received from a licensed Private Hire Operator with respect to a Private Hire Vehicle Licence. The vehicle did not meet the age requirement specified by the Council. The Panel agreed to issue a licence on the basis that whilst the vehicle was six years old, it was of a standard suitable for a Private Hire Vehicle Licence.
- 3.5 A Drivers' Panel considered a report on 16th June 2022 concerning a licensed driver who had received six points on their DVLA issued driver's licence. The driver attended the meeting of the Panel and provided an explanation regarding the circumstances which had led to six penalty points being endorsed on their DVLA driving licence relating to two offences. The driver also answered questions put to them by Members of the Panel. After careful consideration, the Panel decided to take no action in this case. However, the licence holder was reminded that their driving record in both a public and private capacity had a bearing on their role as a licensed 'taxi' driver and that they should be aware of this at all times.
- 3.6 The Licensing Team processed 640 applications and notices between 1st April 2022 and 30th June 2022 (Quarter 1). When comparing this to previous years, the Licensing Team processed 213 applications and notices in the same quarter in 2021/22, 106 in 2020/21, 445 in 2019/20 and 415 in 2018/19. The Licensing Team processed 195 more applications and notices compared to the next highest equivalent period of 2019/20.
- 3.7 The following table shows the number of applications and notices processed by the Licensing Team in the first three months of 2022/23. The Authority processed 98 Temporary Events Notices (TENS) in May 2022, the highest number ever in a single month since the Licensing Act 2003 was introduced. At least half of the notices received were connected to the Queen's Platinum Jubilee Events which took place between Thursday 2nd and Sunday 5th June 2022.

<b>Application Type</b>	<b>April</b>	<b>May</b>	<b>June</b>	<b>Total</b>
Licensing Act 2003	63	118	68	<b>249</b>
Drivers (New)	29	28	64	<b>121</b>
Drivers (Renewal)	6	8	7	<b>21</b>
Vehicles (New)	10	48	65	<b>123</b>
Vehicles (Renewal)	1	9	24	<b>34</b>
Other	27	22	43	<b>92</b>
<b>Total</b>	<b>136</b>	<b>233</b>	<b>271</b>	<b>640</b>

**Table 1 applications processed in quarter 1 2022/23**

- 3.8 The Licensing Team processed 271 applications and notices in June 2022 which is the single largest number received in a month since comprehensive records were started in 2018/19. The Authority continues to receive a higher than average number of Temporary Event Notices and the Authority processed 68 other Licensing Act applications. The Authority continues to receive a higher than average number of applications for driver and vehicle licences. A total of 57 applications for new driver licences were received in April and May, whereas 64 applications (the most driver applications ever received in a single month) were received by the Authority in June 2022.
- 3.9 The Authority received 58 applications for new vehicle licences in April and May combined and 65 vehicle applications, again the highest number in a single month, in June.
- 3.10 The Authority currently has 416 licensed drivers and a further 116 pending applications being processed. The Authority licences 316 vehicles including a further 90 pending applications.
- 3.11 The Licensing Team processed four applications in quarter 1 for the grant of a Premises Licence, five applications for the variation of a Premises Licence, three applications for a minor variation, seven applications to transfer a Licence and 16 applications to vary a Licence to specify a Designated Premises Supervisor.

#### **4. Gambling Act 2005 – Statement of Licensing Policy**

- 4.1 The Council's Statement of Gambling Policy was approved by the Council on 20th June 2022. The Council will now advertise, for a period of four weeks, that it intends to introduce the policy and the policy will commence on 1st August 2022.

#### **5. Taxis**

- 5.1 A report proposing an increase to the existing taxi fare tariff was presented to Cabinet in May 2022 and, following a period of public consultation, the increase was approved by Full Council in June 2022. The new fare tariff came into effect on 1st July 2022 once the fleet's taxi meters had been altered.
- 5.2 Tax conditionality was introduced on 4th April 2022 and the Licensing Team made preparations in advance of this date to ensure that applicants and licence holders were prepared for the changes. The changes were now in place and most applicants had managed to navigate the requirements.
- 5.3 The Licensing Team are continuing with a review of Taxi and Private Hire Vehicle Policy with a view of producing a first working draft. The Authority is however aware that the Department for Transport produced the [Taxi and Private Hire Vehicle Licensing Best Practice Guidance for Licensing Authorities in England](#) in March 2022 as a consultation document. The consultation has closed and the guidance is likely to be introduced at some

point in 2023. The Authority will need to consider this guidance as part of the process, which may delay the outcome of the policy review.

- 5.4 The Taxis and Private Hire Vehicles (Safeguarding and Road Safety) Act 2022 was introduced on 31st March 2022 and aimed to resolve an issue whereby Licensing Authorities might revoke the licences of drivers for wrongdoing, only for the driver to obtain a licence from another Authority and then be able to continue working, potentially in the former Licensing Authorities areas.
- 5.5 The Act aimed to address this problem in two ways. First, it would mandate Local Licensing Authorities to record taxi licence refusals, revocations and suspensions on a National Database which other Local Licensing Authorities would be required to consult before making licence decisions about the same driver. This would create a statutory footing for the 'National Register of Taxi and Private Hire Licence Revocations and Refusals' (NR3), which was commissioned by the Local Government Association and introduced in July 2018 and is already used by many Licensing Authorities on a voluntary basis. Braintree District Council is not currently using the (NR3) database, but is considering the implications of use at this time. The Department for Transport is actively encouraging all Licensing Authorities to adopt the use of the (NR3) database.
- 5.6 Second, it would allow Local Authority Enforcement Teams to report instances of wrongdoing by a taxi driver to the Authority at which the offender is licensed. The Licensing Authority must then have regard to such a report and respond to it.
- 5.7 On 28th June 2022, the Taxis and Private Hire Vehicles (Disabled Persons) Act 2022 took effect. The legislation amended the Equality Act 2010 to introduce new and amend existing duties for Local Authorities and taxi and private hire vehicle (PHV) drivers and operators.
- 5.8 The 2022 Act aims to ensure that disabled people can use taxi and PHV services with confidence that they will not be discriminated against.
- 5.9 From this date, the Authority must publish and maintain a list of all licensed taxis and PHVs designated as being wheelchair accessible. This list will identify those vehicles where drivers are subject to the duties at section 165 of the Equality Act 2010 in providing assistance to wheelchair users and refraining from charging extra for this.
- 5.10 The Authority has identified 31 wheelchair accessible vehicles in total, 17 taxis and 14 private hire vehicles. The list including information about the requirement can be found at:  
  
<https://www.braintree.gov.uk/licensing/wheelchair-accessible-taxis-private-hire/2>
- 5.11 Publishing the list in accordance with the requirements of the Act does not create a list which will make it easier for the public to be able to source a wheelchair accessible vehicle. Although compliant with the requirement, the

Authority intends to go further by adding a further section to the list which provides the driver/operator of each vehicle the opportunity to supply extra information such as contact details, information regarding what type of wheelchairs can be conveyed and the days and hours of the week that vehicles are available. The updated list will be available in due course.

- 5.12 The existing legislation requires drivers of designated wheelchair accessible vehicles to accept the carriage of wheelchair users, provide them with reasonable mobility assistance, and refrain from charging them more than other passengers. From 28th June 2022 all taxi and PHV drivers and operators, regardless of whether the vehicle is wheelchair accessible, will be subject to duties under the Equality Act 2010. The main changes are set out below.
- 5.13 Taxi and PHV drivers will be required to accept the carriage of any disabled person, provide them with reasonable mobility assistance, and carry their mobility aids, all without charging any more than they would for a non-disabled passenger.
- 5.14 Provide any disabled passenger who requests it with assistance to identify the vehicle, at no extra charge.
- 5.15 PHV operators will be required to accept bookings for, or on behalf of, any disabled person if they have a suitable vehicle available.
- 5.16 Letters have been sent to 30 plus affected vehicle operators explaining the requirements with respect to the designated list. A further letter has been sent to all drivers, proprietors and operators explaining their general duties.
- 5.17 Drivers of designated vehicles may apply for an exemption certificate on medical grounds, or where their physical condition makes it impossible or unreasonably difficult for them to perform their duties under section 165 of the Act.
- 5.18 The Council has produced a medical exemption policy which can be found at [www.braintree.gov.uk/drivermedicalexemption](http://www.braintree.gov.uk/drivermedicalexemption). The policy details what a driver will need to be exempt from the requirements.
- 5.19 Exemptions are currently granted from all the duties at section 165 of the Equality Act 2010. As a result of the new Act, from 28th June 2022:
- 5.20 All taxi and PHV drivers may apply for an exemption certificate and notice on medical grounds or where their physical condition prevents them from performing the mobility assistance duties at sections 164a and 165 (as added/amended by the 2022 Act).
- 5.21 Both existing and new exemption notices, when displayed correctly, will exempt a driver **only** from the **mobility assistance** duties at sections 164a and 165 – meaning, for example, that a driver's medical condition can no longer be used as a justification for charging a disabled person more than a non-disabled person.

- 5.22 Where a driver does not agree with a decision not to issue an exemption certificate, they can contact the Licensing Team as soon as possible to discuss the concern and explore options. If the Authority does not change its decision, Section 172 of the Act enables drivers to appeal against the decision of the Authority not to issue an exemption certificate. That appeal should be made to the Magistrates' Court and must be made within 28 days beginning with the date of the refusal.

## **6. Alcohol and Entertainment**

- 6.1 The Licensing Team attended pub watches in Braintree, Witham and Halstead. The regular meetings allow communication between the licensed trade, the Council and the Police.
- 6.2 The Licensing Team had Officers available to respond to issues with licensed premises over the Jubilee weekend. Feedback from event organisers and key partners highlighted that the majority of events were well organised and went without incident.
- 6.3 It is understood that the relaxation afforded to licensed premises as a result of the pandemic to allow off-sales to those that already hold an on-sales licence is likely to expire on 30th September 2022.
- 6.4 The House of Commons Committee report on drink spiking has been reported with recommendations to Government.
- 6.4.1 Amongst other things, the report found that:
- 6.4.2 *"Licensing Authorities: Councils play an important role in regulating the night-time economy. Licensing Authorities have a range of powers to tackle premises causing problems under the Anti-social Behaviour, Crime and Policing Act 2014.*
- 6.4.3 *Conditions: As well as mandatory conditions set out in the Licensing Act, authorities can add 'voluntary' conditions to a licence, such as installation of CCTV or imposition of noise limits.*
- 6.4.4 *Licence reviews: Where there is a failure to respond to warnings or where concerns are particularly serious, Licensing Authorities can modify or add conditions, remove the Designated Premises Supervisor, suspend all or any of the licensable activities for up to three months, or revoke the licence. Closure powers: These may be sought where necessary to prevent disorder."*
- 6.4.5 It went on to say however that:
- 6.4.6 *"There is limited data on the extent to which Licensing Authorities use these options. The Home Office collect statistics on reviews and revocations, but not on use of conditions, and the data are out of date as they have been paused during the Covid pandemic.*
- 6.4.7 *Available statistics show that reviews are rare. In the year to 31 March 2018 (the latest for which statistics are available), there were 212,800 premises*

*licences in England and Wales and 600 licensing reviews were carried out. Where action was taken following a completed review, 212 licenses were revoked, or a club premises certificate withdrawn. In specific relation to spiking, in November 2021, Tunbridge Wells Borough Council suspended the licence of one local premises after the police shared evidence of multiple drink spiking reports at the venue."*

6.4.8 The Select Committee also said:

6.4.9 *"We are concerned that the Government is not doing enough to monitor Licensing Authorities' use of powers to regulate the night-time economy, both with specific regard to spiking incidents and more generally in relation to violence against women and girls. Within three months the Government should:*

*(i) collect data on Local Licensing Authorities' use of their powers to impose conditions or revoke premises licenses, where venues do not take sufficient measures to protect and provide support to customers in spiking incidents*

*(ii) work with Local Authorities to develop an anti-spiking strategy which encourages Local Licensing Authorities to make better use of these powers; and*

*(iii) as part of this, review guidance issued under section 182 of the Licensing Act 2003 with a view to requiring Licensing Authorities to consider the prevalence, prevention and reporting of sexual harassment and misconduct and gender-based violence in statements of local licensing policy."*

6.4.10 Other recommendations include all staff working at music festivals, including vendors, to be given compulsory safeguarding training, and this be a requirement that Licensing Authorities consider when approving events. This might be done along lines similar to training provided in voluntary schemes in other licensed premises, such as Ask Angela or the licensing security and vulnerability initiative (Licensing SAVI).

6.4.11 The Home Office should give the Committee a written update six months from the date of publication of this Report on progress towards creating a separate criminal offence of spiking.

6.4.12 As part of its national communications campaign to say "Enough" to violence against women and girls, the Government should engage with the night-time industry, the education sector, and the health sector to produce a national anti-spiking communications campaign.

6.4.13 As part of its wider VAWG strategy, the Government should consider a support package for night-time industries to boost security measures including the recruitment and training of additional door security staff, particularly female staff.

## **7. Proactive Enforcement**

- 7.1 Licensing Officers undertook proactive checks of licensed premises with Essex Police over the course of two evenings in March and May 2022. Eleven visits were made over both nights of action and a number of issues were identified with a small number of premises. The Licensing Team are working with the Premises Licence Holders to comply with the terms of their licence and attached conditions.
- 7.2 Licensing Officers undertook proactive checks of Hackney Carriages and Private Hire Vehicles with Essex Police over the course of a Saturday night in June in Braintree and Witham. Ten vehicles were checked and the operation highlighted that the majority of vehicles and drivers were compliant. The Licensing Team is undertaking further enquiries with respect to one driver of a licensed vehicle.

## **8. Pavement Licences**

- 8.1 The Government has tabled the Levelling-up and Regeneration Bill (The 'Bill') in the House of Commons.
- 8.2 The Bill proposes to make the regime for Pavement Licences issued under the Business and Planning Act permanent.
- 8.3 The Business and Planning Act was initially brought in as an emergency piece of legislation in July 2020 in response to the COVID pandemic and permitted a quicker, cheaper, and streamlined service for licensed premises to apply to place tables and chairs outside their premises. The Business and Planning Act is currently expiring on 30th September 2022.
- 8.4 The Bill proposes to make amendments to the current provisions, which are summarised as follows:
  - 8.4.1 Amend the fee Councils can charge applicants, increasing it from £100 to £350 for premises which already hold a pavement licence, and £500 for new applicants.
  - 8.4.2 Extend the public consultation period and Council determination period from 7 days to 14 days.
  - 8.4.3 Extend the maximum duration of pavement licences from 1 year to 2 years. The length of a licence is however at the discretion of the Local Authority.
  - 8.4.4 Provide that pavement licences can also be amended by the Local Authority with the consent of the licence holder if it is considered that the conditions on the licence are not being met.
  - 8.4.5 Prohibit a Local Authority from granting a tables and chairs licence under the old regime (Highways Act 1980) if a pavement permit is capable of being granted under this Bill.

- 8.4.6 Insert a new Enforcement schedule providing powers to the Local Authority to remove furniture if a premise is not abiding by its pavement conditions and hours.
- 8.5 Any pavement licence that has been granted under the Business and Planning Act and has no limit on its duration will expire 2 years after the date that the Bill becomes law.
- 8.6 Any pavement licences which have a current expiry date of 30th September 2022, or earlier, will still expire on that date and a renewal will be needed before its expiration to continue providing tables and chairs outside.