



Monday, 28 February 2022

Dear Sir/Madam

A meeting of the Licensing and Appeals Committee will be held on Tuesday, 8 March 2022 in the Council Chamber, Council Offices, Foster Avenue, Beeston NG9 1AB, commencing at 10.00 am.

Should you require advice on declaring an interest in any item on the agenda, please contact the Monitoring Officer at your earliest convenience.

Yours faithfully

Chief Executive

To Councillors:	D Bagshaw (Chair)	R D MacRae
	D Grindell (Vice-Chair)	J C Patrick
	E H Atherton	D D Pringle
	E Cubley	M Radulovic MBE
	T A Cullen	P D Simpson
	R I Jackson	I L Tyler

AGENDA

1. APOLOGIES

To receive apologies and to be notified of the attendance of substitutes.

2. DECLARATIONS OF INTEREST

Members are requested to declare the existence and nature of any disclosable pecuniary interest and/or other interest in any item on the agenda.

3. MINUTES

(Pages 3 - 4)

The Committee is asked to confirm as a correct record the minutes of the meeting held on 3 November 2021.

4. REVIEW OF THE SEX ESTABLISHMENT POLICY

(Pages 5 - 40)

To propose that the Council's Sex Establishment Policy be retained and reviewed in 2027 unless circumstances require an earlier review.

LICENSING AND APPEALS COMMITTEE

WEDNESDAY, 3 NOVEMBER 2021

Present: Councillor D Grindell, Vice Chair in the Chair

Councillors: E Cubley
T A Cullen
R I Jackson
R D MacRae
J C Patrick
D D Pringle
P D Simpson
I L Tyler

Apologies for absence were received from Councillors D Bagshaw, E H Atherton and M Radulovic MBE.

14 DECLARATIONS OF INTEREST

There were no declarations of interest.

15 MINUTES

The minutes of the meeting on 7 September 2021 were confirmed and signed as a correct record.

16 EXCLUSION OF PUBLIC AND PRESS

RESOLVED that, under Section 100A of the Local Government Act, 1972, the public and press be excluded from the meeting for the following items of business on the grounds that they involve the likely disclosure of exempt information as defined in paragraphs 1, 2, 3 and 7 of Schedule 12A of the Act.

17 LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976 HACKNEY CARRIAGE/PRIVATE HIRE DRIVER'S LICENCE

The meeting procedure was noted. Members considered the report which sought a decision as to whether the applicant was a fit and proper person to hold a hackney carriage/private driver's licence. Members considered the representations made by the applicant, who appeared in person, the Council's representative, the relevant legislation and the Council's Licensing Policy.

RESOLVED that the applicant is a fit and proper person to hold a hackney carriage/private driver's licence and the application be granted subject to the satisfactory completion of the full application process.

18 LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976 HACKNEY CARRIAGE/PRIVATE HIRE DRIVER'S LICENCE

Members noted the hearing procedure. The Committee considered the representations made by the applicant, the Council's representative, the relevant legislation and the Council's Licensing Policy. Members could not be satisfied, on the balance of probabilities that the applicant was a fit and proper person to hold a licence and the Committee found no reason to depart from the adopted Policy. The applicant was advised of his rights of appeal against the decision.

RESOLVED that the applicant is not a fit and proper person to hold a hackney carriage/private hire driver's licence and the licence should not be granted to the applicant.

After the vote, Councillor R I Jackson left the meeting and took no further part in proceedings.

19 LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976 HACKNEY CARRIAGE/PRIVATE HIRE DRIVER'S LICENCE

The Committee noted the procedure. Members considered the report which sought a decision as to whether the applicant was a fit and proper person to hold a hackney carriage/private driver's licence. Members considered the representations made by the applicant and their solicitor, the Council's representative, the relevant legislation and the Council's Licensing Policy.

RESOLVED that the applicant was a fit and proper person to hold a hackney carriage/private driver's licence, but that the licence be granted for a period of two years rather than three to ensure that the high standards expected from the Council were maintained.

Councillor T A Cullen left the meeting after the vote, but prior to the decision being given to the applicant.

Report of the Chief Executive

REVIEW OF THE SEX ESTABLISHMENT POLICY1. Purpose of report

To propose that the Council's Sex Establishment Policy (SEP) be retained and reviewed in 2027 unless circumstances require an earlier review.

2. Background

In 1982 the Local Government (Miscellaneous Provisions) Act introduced a discretionary licensing regime for Sex Shops and Sex Cinemas. These provisions were adopted by Broxtowe Borough Council on 14 February 1983.

The Licensing Act 2003 introduced a new licensing regime which amalgamated several pieces of old legislation under the heading of "Regulated Entertainment". Entertainment of an adult nature such as lap dancing, pole dancing and striptease etc. fell under this heading

The Policing and Crime Act 2009 introduced provisions creating a new category of Sex Establishment known as a Sexual Entertainment Venue (SEV) to enable local authorities to require venues such as lap dancing establishments to be licensed as Sex Establishments. These provisions are also discretionary but the Council adopted them with effect from 26 July 2010. The legislation has not changed since that date.

There are no licensed sex establishments within the borough and there have been no applications for one since the Act has been adopted.

3. Detail

All applications for a sex establishment licence will be heard before the Licensing and Appeals Committee.

Following the review of the policy in 2022, there have been no legislative changes which would affect the current policy. No changes have been made to the policy

An Equality Impact Assessment is attached at appendix 1 and the policy is attached at appendix 2.

Recommendation

The Committee is asked to RESOLVE that the Council's Sex Establishments Policy document be retained and reviewed in 2027 be approved.

Background papers

Nil.

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Equality Impact Assessment

The Equality Act 2010 replaces the previous anti-discrimination laws with a single Act. It simplifies the law, removing inconsistencies and making it easier for people to understand and comply with it. It also strengthens the law in important ways, to help tackle discrimination and equality. The majority of the Act came into force on 1 October 2010.

Public bodies are required in it to have due regard to the need to:

- eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited under the Act
- advance equality of opportunity between people who share a protected characteristic and people who do not share it, and
- foster good relations between people who share a protected characteristic and people who do not share it.

The public sector Equality Duty came into force on 5 April 2011. The duty ensures that all public bodies play their part in making society fairer by tackling discrimination and providing equality of opportunity for all. It ensures that public bodies consider the needs of all individuals in their day to day work – in shaping policy, delivering services and in relation to their own employees.

The Equality Duty encourages public bodies to understand how different people will be affected by their activities so that policies and services are appropriate and accessible to all and meet different people's needs. By understanding the effect of their activities on different people, and how inclusive public services can support and open up people's opportunities, public bodies are better placed to deliver policies and services that are efficient and effective.

The new equality duty replaces the three previous public sector equality duties, for race, disability and gender. The new equality duty covers the following protected characteristics:

- age
- disability
- gender reassignment
- pregnancy and maternity
- race – this includes ethnic or national origins, colour or nationality
- religion or belief – including lack of belief

- sex
- sexual orientation.

It also applies to marriage and civil partnership, but only in respect of the requirement to have due regard to the need to eliminate discrimination.

Having due regard means consciously thinking about the three aims of the equality duty as part of the process of decision-making. This means that consideration of equality issues must influence the decisions reached by public bodies, including how they act as employers, how they develop, evaluate and review policies, how they design, deliver and evaluate services, and how they commission and procure from others.

Having due regard to the need to advance equality of opportunity involves considering the need to:

- remove or minimise disadvantages suffered by people due to their protected characteristics
- meet the needs of people with protected characteristics, and
- encourage people with protected characteristics to participate in public life or in other activities where their participation is low.

Fostering good relations involves tackling prejudice and promoting understanding between people who share a protected characteristic and others.

Complying with the equality duty may involve treating some people better than others, as far as this is allowed by discrimination law. For example, it may involve making use of an exception or the positive action provisions in order to provide a service in a way which is appropriate for people who share a protected characteristic.

The Equality Duty also explicitly recognises that disabled people's needs may be different from those of non-disabled people. Public bodies should therefore take account of disabled people's impairments when making decisions about policies or services. This might mean making reasonable adjustments or treating disabled people better than non-disabled people in order to meet their needs.

There is no explicit requirement to refer to the Equality Duty in recording the process of consideration but it is good practice to do so. Keeping a record of how decisions were reached will help public bodies demonstrate that they considered the aims of the Equality Duty. Keeping

a record of how decisions were reached will help public bodies show how they considered the Equality Duty. Producing an Equality Impact Assessment after a decision has been reached will not achieve compliance with the Equality Duty.

It is recommended that assessments are carried out in respect of new or revised policies and that a copy of the assessment is included as an appendix to the report provided to the decision makers at the relevant Cabinet, Committee or Scrutiny meeting.

Where it is clear from initial consideration that a policy will not have any effect on equality for any of the protected characteristics, no further analysis or action is necessary.

Public bodies should take a proportionate approach when complying with the Equality Duty. In practice, this means giving greater consideration to the Equality Duty where a policy or function has the potential to have a discriminatory effect or impact on equality of opportunity, and less consideration where the potential effect on equality is slight. The Equality Duty requires public bodies to think about people’s different needs and how these can be met.

EQUALITY IMPACT ASSESSMENT (EIA)

Directorate:	Chief Executive’s	Lead officer responsible for EIA	Suzanne Hickey
Name of the policy or function to be assessed:	Sex Establishments Policy		
Names of the officers undertaking the assessment:	John Miley		
Is this a new or an existing policy or function?	Existing		
<p>1. What are the aims and objectives of the policy or function?</p> <p>The policy aims to provide guidance for the Council, applicants and public in properly considering applications for sexual entertainment venues (SEV), ensuring that local communities are able to engage in the process of consideration of such applications.</p>			

The policy also sets out a number of conditions and requirements for applicants to undertake as part of the application process

2. What outcomes do you want to achieve from the policy or function?

The policy is intended to define how applications are made and dealt with under the relevant legislation. It also sets out matters that applicants must consider when making such applications and gives clear guidance on matters to be considered by the licensing authority when determining the applications.

3. Who is intended to benefit from the policy or function?

The beneficiaries of the policy will be:

- Applicants
- Premises staff and performers
- Police
- Public and local residents
- Licensing authority

4. Who are the main stakeholders in relation to the policy or function?

The main stakeholders in relation to the policy are:

- Operators of SEVs,
- Premises staff and performers
- Police,
- Public and local residents
- Licensing authority

5. What baseline quantitative data do you have about the policy or function relating to the different equality strands?

None. There have been no applications or premises in the Borough since well before the policy was approved and none since.

6. What baseline qualitative data do you have about the policy or function relating to the different equality strands?

The Licensing Authority, Nottinghamshire Police and the Nottinghamshire Authorities Licensing group (NALG) worked together to

develop the policy to address any potential impact any application may have.

The policy deals with:

- the Licensing Authorities grounds for refusal,
- the suitability of the applicant,
- the location of any proposed venue together with the layout, character and conditions relating to the venue.
-

The policy reminds applicants of their duty under the Equality Act 2010 to provide facilities to enable admission to disabled people.

The policy also requires applicants to risk assess operation of the premises on an annual basis.

It sets out operating conditions protecting both the staff and customers from exploitation, requiring “codes of conduct” for customers and dancers which must be displayed both internally and externally and clearly visible.

Persons under the age of 21 will not be allowed on the premises either as a customer or dancer.

7. What has stakeholder consultation, if carried out, revealed about the nature of the impact?

There has been no consultation in respect of the current policy. However should any revision to the policy be planned or undertaken a full and comprehensive consultation will be undertaken. The results of any such consultation will be presented to the Licensing and Appeals Committee for consideration prior to any revision taking place.

8. From the evidence available does the policy or function affect or have the potential to affect different equality groups in different ways?

In assessing whether the policy or function adversely affects any particular group or presents an opportunity for promoting equality, consider the questions below in relation to each equality group:

- **Does the policy or function target or exclude a specific equality group or community? Does it affect some equality**

groups or communities differently? If yes, can this be justified?

The policy does not target or exclude any particular body. It does however, set out a number of grounds for consideration which may affect particular groups or communities that may be impacted by an application. It would affect all these groups equally.

Every application for a sex establishment will undergo a robust consideration with all applications requiring a hearing by the Licensing Authority. Applications must be advertised in the Nottingham Evening Post and a notice displayed at or near the premises.

Any group who may feel targeted, excluded or disadvantaged by an application will have the opportunity to make a representation.

As there have been no applications before or since the policy was introduced, further information may become available for consideration

• Is the policy or function likely to be equally accessed by all equality groups or communities? If no, can this be justified?

The policy will apply equally across all groups and communities in the borough. Any affected party will have the ability to access and contribute to and decision made under the policy.

• Are there barriers that might make access difficult or stop different equality groups or communities accessing the policy or function?

There are no barriers in respect of the policy being accessed and utilised by any equality group or community. The policy is available for all to use.

• Could the policy or function promote or contribute to equality and good relations between different groups? If so, how?

There is no indication that the policy would contribute to equality and good relations between different groups. However there is potential for groups to unite to contribute to any decision made under the policy.

- **What further evidence is needed to understand the impact on equality?**

As there have been no applications affected by the policy to date, no evidence is available. Any applications or revisions of the policy may generate further evidence for consideration and this will be included in any report presented.

9. On the basis of the analysis above what actions, if any, will you need to take in respect of each of the equality strands?

Age:

The policy specifically notes that locations in particular areas are potentially sensitive to siting an SEV.

i.e. Schools, nurseries, play areas, sheltered housing, etc.

The policy also requires that under 21's may not access the premises as customers or dancers.

Disability:

No adverse impact has currently been identified. There has been no application or grant of premises licence to date. Should such an application be received, careful consideration will be given to any action that be identified as necessary.

Gender:

No adverse impact has currently been identified. There has been no application or grant of premises licence to date. Should such an application be received, careful consideration will be given to any action that be identified as necessary.

Gender Reassignment:

No adverse impact has currently been identified. There has been no application or grant of premises licence to date. Should such an application be received, careful consideration will be given to any action that be identified as necessary.

Marriage and Civil Partnership:

No adverse impact has currently been identified. There has been no application or grant of premises licence to date. Should such an application be received, careful consideration will be given to any action that be identified as necessary.

Pregnancy and Maternity:

No adverse impact has currently been identified. There has been no application or grant of premises licence to date. Should such an application be received, careful consideration will be given to any action that be identified as necessary.

Race:

No adverse impact has currently been identified. There has been no application or grant of premises licence to date. Should such an application be received, careful consideration will be given to any action that be identified as necessary.

Religion and Belief:

The policy specifically notes that locations in particular areas are potentially sensitive to siting an SEV.
i.e. places of worship

No adverse impact has currently been identified. There has been no application or grant of premises licence to date. Should such an application be received, careful consideration will be given to any action that be identified as necessary.

Sex:

No adverse impact has currently been identified. There has been no application or grant of premises licence to date. Should such an application be received, careful consideration will be given to any action that be identified as necessary.

However activities provided by premises licensed under the policy may impact upon certain gender specific groups. Such an impact would need to be considered during the application process.

Should any evidence emerge of an adverse impact, the policy may be reviewed to address the matter.

Sexual Orientation:

No adverse impact has currently been identified. There has been no application or grant of premises licence to date. Should such an application be received, careful consideration will be given to any action that be identified as necessary.

Head of Service:

I am satisfied with the results of this EIA. I undertake to review and monitor progress against the actions proposed in response to this impact assessment.

Signature of Head of Service: Suzanne Hickey

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Broxtowe
Borough
COUNCIL

SEX ESTABLISHMENTS POLICY

(Licensing and Appeals Committee 11 December 2018)
(Licensing and Appeals Committee 8 March 2022)

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1. INTRODUCTION AND DEFINITIONS

1.1 The Borough of Broxtowe lies to the west of the City of Nottingham and is bounded by the River Trent to the south and the River Erewash to the west. There are four main towns (Beeston, Stapleford, Kimberley and Eastwood) each with its own character and individuality. There is a wide choice of employment, housing amenities and countryside which makes Broxtowe a very pleasant place to live and work. Nearly two thirds of the land in Broxtowe is open countryside with a number of areas noted for their particular charm and preserved as conservation areas. Industry offers employment ranging from large national companies such as Boots and the Royal Mail to a substantial number of industrial and commercial businesses across a wide range of services.

1.2 Definitions

In this Policy the following phrases bear the following meanings:-

The Act

The Local Government (Miscellaneous Provisions) Act 1982 (as amended).

The Council

Broxtowe Borough Council

Display of nudity

This means:

- in the case of a woman: exposure of her nipples, pubic area, genitals or anus; and
- in the case of a man: exposure of his pubic area, genitals or anus.

The Licensed Premises

The premises, vessel, vehicle or stall licensed by the Council as a Sex Establishment.

The Licensing Act

The Licensing Act 2003

The Licensing Officer

The Council's Licensing Officer located at :
Broxtowe Borough Council
Licensing Department

Council Offices
Foster Avenue
Beeston
Nottingham
NG9 1AB
0115 917 3241

The Organiser

Any person who is responsible for the organisation or management of the relevant Entertainment or the Licensed Premises.

Permitted Hours

These are the hours of activity and operation that have been authorised under a Sex Establishment Licence.

The Policy

This document.

Relevant Entertainment

Entertainment as defined by Para 2A of Schedule 3 of the Act

Relevant Locality

This is the locality where premises are situated or where the vehicle, vessel or stall is going to be used. The locality and the area that this covers is a matter for the Council to decide and will be determined on a case by case basis for the purpose of decision making.

Sex Article

A sex article as defined by paragraph 4, schedule 3 of the Act.

Sex Cinema

A sex cinema as defined by paragraph 4, schedule 3 of the Act

Sex Establishment

A sex establishment as defined by paragraph 4, schedule 3 of the Act

Sex Shop

A sex shop as defined by paragraph 4, schedule 3 of the Act

Sexual Entertainment Venue (SEV)

A SEV as defined by paragraph 2A, schedule 3 of the Act

2. BACKGROUND

ORIGINS OF THE LEGISLATION

- 2.1 In 1982 the Local Government (Miscellaneous Provisions) Act introduced a discretionary licensing regime for Sex Shops and Sex Cinemas. These provisions were adopted by Broxtowe Borough Council on 14 February 1983. In addition, activities such as table dancing, lap dancing, pole dancing and all forms of entertainment, dancing, or displays that included nudity or sexual performances of any kind were prohibited under the Council's standard conditions attached to public entertainment licences.
- 2.2 In 2005 the Licensing Act 2003 introduced a new licensing regime which amalgamated several pieces of old legislation under the heading of "Regulated Entertainment". Entertainment of an adult nature such as lap dancing, pole dancing and striptease etc. fell under this heading. However, the power for the community to object to such applications was restricted as any objection needed to relate to the four specified licensing objectives. This made it difficult for local communities to have any control on the number and/or location of these types of venues.
- 2.3 In order to address these concerns the Policing and Crime Act 2009 introduced provisions creating a new category of Sex Establishment known as a Sexual Entertainment Venue (SEV) to enable local authorities to require venues such as lap dancing establishments to be licensed as Sex Establishments. These provisions are also discretionary but the Council adopted them with effect from 26 July 2010.

SEX ESTABLISHMENTS

- 2.4 The definitions contained within the Act are complex defining three types of sex establishments licensable by this Council:
- Sex Shop,
 - Sex Cinema,
 - SEV
- 2.5 In general

- A Sex Shop is any premises, vehicle, vessel or stall used to a significant degree for hiring, selling, exchanging, lending, displaying or demonstrating Sex Articles and/or other things intended for use in connection with, or for the purpose of stimulating, or encouraging sexual activity and/or acts of force or restraint associated with sexual activity. This includes adult films and magazines.
- A Sex Cinema is any premises, vehicle, vessel or stall used to a significant degree for the exhibition of moving pictures concerned primarily with the portrayal of or which stimulates or encourages sexual activity, acts of force or restraint associated with sexual activity, genital organs, or urinary or excretory functions (e.g. pornographic movies). However, dwelling houses and cinemas showing films covered by the Licensing Act (e.g. a film rated by British Board of Film Classification) are excluded from this definition.
- A SEV is any premises which allows the live display of nudity, or, any live performance, before a live audience directly or indirectly for the financial gain of the Organiser or entertainer. Such entertainment must be of a nature that can reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience (verbally or otherwise). Nudity is not a necessary element of such a performance and an audience can comprise one person. The term SEV is therefore likely to cover lap dancing, pole dancing, table dancing, strip shows, peep shows, live sex shows and potentially Burlesque.

2.6 This Policy applies to all forms of Sex Establishments unless otherwise stated. Whilst the Act allows applicants to apply to the Council for the requirement for a licence to be waived, the presumption is that such applications will be refused. Waivers will only be granted where applicants can establish that exceptional circumstances exist making it unreasonable or inappropriate for the premises to be licensed as a Sex Establishment.

3 MAKING AN APPLICATION

3.1 All applications relating to sex establishments **must**:-

- be made on the Council's prescribed form which is available from the licensing officer and
- where the application is for a new premises licence, be accompanied by a clearly legible layout plan. Further guidance is available from the Licensing Officer

- be accompanied by the relevant fee

3.2 Applicants **must**:

1. Serve a copy of their application on the Police at the address stated in the application form
2. Give public notice of the application in the form prescribed by the Council. A copy of this form is available from the licensing officer. Notice of the application must be given by publishing an advertisement in the Nottingham Evening Post circulating in Broxtowe not later than 7 days after the date of the application.
3. Where the application relates to premises, display a copy of the notice for 21 days beginning with the date of the application, on or near the premises and in a place where the notice can be conveniently read by the public.
4. Provide a copy of the notice, the relevant page of the newspaper containing the advertisement, and a certificate confirming that the application has been publicised and served in compliance with the legislation to the Licensing Officer

3.3 **Any failure to comply with the requirements of paragraphs 3.1 and 3.2 above may result in the application being deemed invalid and being rejected.**

3.4 Whilst applicants for variation are not legally obliged to advertise their applications and serve a copy on the police, it is the Council's policy that they should comply with paragraph 3.2 above.

3.5 Once an application has been received, the Licensing Officer will consult other relevant officers of the Council, local councillors and other relevant partners and stakeholders so as to gather appropriate information to be placed in the report to the Committee regarding the character of the relevant locality, the use to which any premises in the vicinity are put, and as to the layout, character, and condition of the premises.

3.6 Any person wishing to object to an application must do so in writing within 28 days of the date of the application stating the general terms of the objection. Objections received after this date may only be considered at the discretion of the Council if it feels that they are relevant.¹ In determining whether to exercise the

¹ Belfast City Council v Miss Behavin' Ltd Northern Ireland [2007] UKHL 19 [2007] LLR 312

discretion to take late representations into account, the Council will have regard to the following:

- How late the objection is
- Whether there is a good reason for the objection being late or whether the lateness was intentional
- Whether it introduces new grounds of objection or information or whether it merely repeats other objections which were made in time
- Whether consideration of the late objection would result in unfairness to the applicant or disrupt the committee's procedures

In appropriate circumstances the Council may defer determination of an application to allow the applicant time to respond to any late objections.

3.7 Applicants will be given notice of any objections that are received though the names and addresses of objectors will not be disclosed unless the objector gives the Council permission to do so.

3.8 With the exception of uncontested transfer applications, all applications relating to Sex Establishments will be heard by a meeting of the Council's Licensing and Appeals Committee and both applicants and objectors will be invited to attend. The hearing procedure is outlined in section 5 and appendix 3.

4. DETERMINATION OF APPLICATIONS

4.1 Each application will be determined on its own merits. However applications may only be refused on certain defined mandatory or discretionary grounds.

4.2 Mandatory grounds

The Council must refuse an application if:

- The applicant is under 18 years of age; or
- The applicant has been disqualified from holding a licence under schedule 3 paragraph (17)(3) of the Act following revocation of a previous licence; or
- The person applying is not a resident of the UK, or was not resident during the six month period preceding the date of the application; or
- Where a company is the applicant, it is not incorporated in the United Kingdom; or

- The applicant has been refused a licence for the same premises within the preceding 12 months unless the refusal has been reversed on appeal

4.3 **Discretionary grounds**

The Council may refuse an application for the grant or renewal of a licence if:

- The applicant is unsuitable to hold the licence by reason of conviction of an offence or for any other reason: or
- The business would be managed or carried on for the benefit of a person other than the applicant who would be refused the licence if they made the application themselves: or
- The number of sex establishments, or sex establishments of a particular type, in the relevant locality at the time the application is made is equal to or exceeds the number which the Council considers appropriate for that locality: or
- The grant or renewal of the licence would be inappropriate, having regard to:
 - (i) the character of the relevant locality, or
 - (ii) the use to which any premises in the vicinity are put, or
 - (ii) to the layout, character or condition of the premises to which the application applies.

The Council has a wide discretion with regard to variation applications and may refuse the application if it thinks fit. Transfer applications can only be refused if:

- The applicant is unsuitable to hold the licence by reason of conviction of an offence or for any other reason: or
- The business would be managed or carried on for the benefit of a person other than the applicant who would be refused the licence if they made the application themselves

4.4 **Suitability of the Applicant**

The applicant will be required to demonstrate that he/she is a suitable person to hold a licence. In determining suitability, the Council will normally take into account:

- previous knowledge and experience of the applicant;
- information relating to the operation of any existing/previous licence held by the applicant, including any licence held in any other local authority area;
- information about the applicant and their management of the premises received from objectors, council officers or the Police including any known

- criminal convictions or cautions the applicant, or officers of any corporate applicants may have;
- any other relevant information

The above factors are not an exhaustive list of considerations but are merely indicative of the types of factors which may be considered in dealing with an application. Similar considerations may also apply to persons whom it is alleged would benefit from the granting of the application but would be unsuitable to hold the licence themselves. In such cases the Council will also have regard to any evidence to show that the business would in fact be carried on for their benefit.

4.5 **Character of the Relevant Locality and use of other premises in the vicinity**

The Council will not grant or renew a licence for a Sex Establishment if, in the Council's opinion, it would be inappropriate to do so with regard to the character of the Relevant Locality or if the appropriate number of Sex Establishments (or of a particular type of Sex Establishment) in that locality would be exceeded. Whilst not intended to be an exclusive list, the Council will have particular regard to the following matters:

- the proximity of residential premises, including any sheltered housing and accommodation for vulnerable people;
- the proximity of educational establishments;
- the proximity of places of worship;
- access routes to and from schools, play areas, nurseries, children's centres or similar premises in proximity to the premises;
- the proximity to shopping centres;
- the proximity to community facilities/halls and public buildings such as swimming pools, leisure centres, public parks, youth centres/clubs, etc;
- any planned or proposed regeneration of the area;
- any relevant planning considerations such as whether the premises are in a Conservation Area or areas designated as primarily residential or prime retail frontage;
- any complaints or reports of nuisance, disturbance, crime and /or disorder caused by or associated with the premises
- the proximity of other Sex Establishments;

Many of these issues will also be relevant when considering the uses to which other premises within the vicinity are put.

4.6 **Layout, Character and Condition**

The Council will not grant or renew a licence for a Sex Establishment if, in the Council's opinion, it would be inappropriate having regard to the layout, character and condition of the proposed Sex Establishment. Whilst not intended to be an exclusive list, the Council will have particular regard to the following:

- the type of activity to which the application relates;
- the days and hours of operation of the activity;
- the layout and condition of the premises with particular concern for public safety, health and safety and the prevention of crime and disorder

4.7 **Disability Access**

Applicants are reminded of their duties under the Equality Act 2010 and should provide such facilities so as to enable the admission of disabled people.

4.8 Any licence granted by the Council, shall be subject to the relevant standard conditions outlined in appendix 2 (unless the Council determines to the contrary) and to any special conditions which the Council imposes.

5. **HEARINGS**

5.1 With the exception of uncontested transfer applications, all applications relating to Sex Establishments will be heard by a meeting of the Council's Licensing and Appeals Committee. It will be the general practice of the Council to invite the Police and/or others who have lodged objections to appear and be heard at any hearings in addition to the applicant. However, the Council has a discretion and can, as a result, decide not to invite the Police and/or other objectors to hearings. In deciding whether to exercise the discretion, the Council will consider the facts surrounding each particular application and will aim to act fairly at all times.

5.2 Officers will notify the applicant, police and objectors of the date and time of the hearing. These parties shall give notice to the Council stating:

- a. whether they will attend the hearing; and
- b. the names and addresses of any witnesses that they intend to call;
and
- c. a time estimate for their representations to the committee.

5.3 An agenda will be circulated prior to the hearing. This will include a copy of the application, a copy of any representations made by the Police and a summary in general terms of any objections received. The identity of the objector/s will not be

made known without their prior consent (although information as to the general vicinity in which the objector/s live may be included).

- 5.4 Whilst additional material in support of the application or representation may be taken into account at the hearing, such material should be provided to the Council as soon as possible and at least 5 working days before the hearing.
- 5.5 Where there has been a failure to adhere to paragraph 5.4 above, or where additional material is produced at the hearing, this will only be admitted at the discretion of the Committee. This will usually be allowed only in exceptional circumstances and if the late production does not prejudice any other party in being able to respond fully.
- 5.6 Late objections/representations will be dealt with in accordance with paragraph 3.6 above.
- 5.7 Where a party does not attend the hearing and is not represented, the Council may either adjourn the hearing or may continue with the hearing in the party's absence. If the latter option is followed, the committee will still consider any application, representation or notice submitted by the absent party in so far as it is relevant.
- 5.8 The hearing will concentrate on matters which are relevant to one or more of the grounds upon which a licence may be refused under the schedule 3 of the Act. (See section 4 above.)
- 5.9 The hearing will be inquisitorial and not adversarial. The procedure outlined in Appendix 3 will normally be followed.

6 APPEALS

- 6.1 Appeals against decisions of the Council are generally made to the Magistrates' Court and appeals against decisions of the Magistrates may be made to the Crown Court. However, not all decisions carry a right of appeal.
- 6.2 The only persons entitled to appeal are:
- An applicant for the grant, renewal, transfer of a licence whose application has been refused; or

- An applicant for the variation of the terms, conditions or restrictions of a licence whose application for variation has been refused; or
- A holder of a licence who is aggrieved by any terms, conditions or restriction on that licence; or
- A holder of a licence whose licence is revoked

However, even these persons do not have a right of appeal in every case.

6.3 There is no right of appeal for the following:

- Objectors
- An applicant who has been refused the grant/renewal or transfer of a licence on any one of the mandatory grounds unless he seeks to show that the ground for refusal does not apply to him
- An applicant who is refused a licence on the grounds:-
- That there are sufficient sex establishments in the locality, or
- That to grant the licence would be inappropriate having regard to the relevant locality, use to which premises in the vicinity are put, or the layout, character, or condition of the establishment

The only means of challenge available for such persons is by way of Judicial Review.

6.4 Any application for an appeal must be lodged within 21 days from the date that the applicant was notified in writing of the decision against which he is appealing. A fee will be payable and the relevant court will advise as to the amount.

7 ENFORCEMENT

7.1 All decisions, determinations, inspections and enforcement action taken by the Council will have regard to the relevant provisions of the Act, national guidance, relevant codes of practice and the enforcement policy of the Council

8 MONITORING AND REVIEW OF THIS POLICY

8.1 This Policy will be reviewed as and when appropriate. In preparing any succeeding Policy, regard will be had to data and information collated over the operating period of the current policy.

9 EQUALITY AND DIVERSITY

9.1 Broxtowe Borough Council is committed to promoting equal opportunities, valuing diversity and tackling social exclusion. The Council will aim to provide opportunities that meet the diverse needs of different people and groups of people by ensuring that services and employment opportunities are accessible to all. Everyone will be treated fairly and with respect. Diverse needs will be understood and valued. The Council will aim to eradicate all forms of discrimination.

Further information on the Council's policy can be viewed on the website at www.broxtowe.gov.uk

9.2 Advice and guidance will be made available in English which is the most common language of customers and stakeholders. Guidance documents issued by the Licensing Service will include advice about translation and access to information about services, however, it is recognised that local communities will normally have access to alternative translation and advice services. The Council will also signpost customers to other providers of guidance and information relevant to the regime but are not responsible for the accuracy of such information.

CONTACT DETAILS & FURTHER INFORMATION AVAILABLE FROM:

WEBSITE: www.broxtowe.gov.uk

EMAIL: licensing@broxtowe.gov.uk

APPENDIX 1

STANDARD CONDITIONS

SEX SHOPS & SEX CINEMAS

1. The Premises shall be maintained in accordance with the lay out plan attached to this Licence. Amendments to the layout of the premises and/or any structural or physical alteration must be approved by way of an application for variation of this licence unless otherwise agreed in writing by the Council.
2. No-one shall be admitted to the premises who is, or appears to be, under the age of 18.
3. No person under the age of 18 shall be employed on the premises.
4. The Licensee or some responsible person nominated by him in writing for the purpose shall be in charge of and present on the premises while they are open to the public.
5. No change may be made from a Sex Shop to a Sex Cinema, or Sexual Entertainment Venue or vice versa.
6. A window display shall be maintained to the satisfaction of the Council in all windows of the Licensed Premises. Such display shall not include any Sex Articles or other indecent matter.
7. No Sex Articles shall be displayed within the premises as to be visible to passers-by, whether the doors are open or closed.
8. For the purposes of these conditions:
 - The Council means Broxtowe Borough Council
 - Sex Article has the meaning assigned to it in paragraph 4 of schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982.
 - Sex Cinema has the meaning assigned to it in paragraph 3 of schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982.
 - Sex Shop has the meaning assigned to it in paragraph 4 of schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982.
 - Sexual Entertainment Venue has the meaning assigned to it in paragraph 2A of schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982

SEXUAL ENTERTAINMENT VENUES

1. Risk Assessments

- 1.1 Risk assessments will be carried out and documented to the reasonable satisfaction of the Police and shall be lodged with them prior to this licence being used. The assessments shall cover the following areas:
- The prevention of crime and disorder
 - safeguarding children;
 - areas designated for the performance of dance and entertainment; and,
 - levels of security at the premises
- 1.2 Any steps identified in such risk assessment. as being required to negate or lessen risks, are to be carried out by no later than 30 days from the date the Police indicates satisfaction with the said risk assessment, or such other date as the Police may agree.
- 1.3 The risk assessments are to be reviewed annually by the renewal date of this Licence. Copies of the reviewed documents shall be deposited with Nottinghamshire Police and shall clearly show the date of review, and any amendments made. All amendments must be agreed with the Police.
- 1.4 A risk assessment shall be conducted for all events involving outside promoters and this will be supplied to the Police 14 days prior to the event.

2. Age

- 2.1 No person under the age of 21 years shall be allowed in the premises.
- 2.2 A Challenge 21 scheme shall operate at the premises. Any person who appears to be under 21 years of age shall not be allowed entry unless they produce an acceptable form of identification (passport, driving licence or PASS accredited card).

3. Provision of Adult Entertainment

- 3.1 The Premises shall be maintained in accordance with the lay out plan attached to this Licence. Amendments to the layout of the premises and/or any structural or physical alteration must be approved by the Council by way of an application for variation of this licence unless otherwise agreed in writing by the Council.
- 3.2 No change may be made from a Sexual Entertainment Venue to a Sex Shop or Sex Cinema, or vice versa.
- 3.3 Admission to the premises shall be on payment of an admission fee.

- 3.4 Full nudity is not permitted. G-strings must be worn at all times and clothing shall not be transparent.
- 3.5 Performers shall not be less than 21 years old.
- 3.6 A record of the performer's name, address, national insurance number, photograph and date of birth will be retained in a bound register. The details relating to national insurance number, name, address, date of birth; and proof of identity provided, to be checked and verified by the Licence Holder against other forms of identity. The performer's details, as outlined above, shall be retained at the premises for at least 12 months and made immediately available to the Police and Authorised Officers of the Council upon request.
- 3.7 The entertainment provided at the venue will not be visible from the street.
- 3.8 Any person who can be observed from outside of the premises should be decently dressed and fully clothed.
- 3.9 The entertainment provided at the venue shall only be given by performers who are exclusively engaged for that purpose.
- 3.10 No performers shall be allowed to work at the premises if they are under the influence of intoxicating liquor or drugs.
- 3.11 There shall be no inappropriate contact or physical contact of a sexual nature between the performers and customers before, during, or after the performance. Customers may be led by the hand and escorted to an appropriate area for the dance and their hands may be placed on the seat or on their lap prior to the dance commencing. Payment may be made into the hand or a garter.
- 3.12 Risk assessments shall be carried out in relation to areas which are to be used for the performance of dance and entertainment in accordance with conditions 1.1 to 1.3.
- 3.13 Private dancing in secluded areas is prohibited. All dance areas shall be well lit.
- 3.14 The use of any types of marital aids, sex toys, animals or types of objects appearing to be such is expressly prohibited during the performance as is simulated sexual activity.
- 3.15 The entertainment provided shall be restricted to dancing and removal of clothes and there shall be no other form of sexual activity.
- 3.16 The Licence Holder and any other person concerned with the management or provision of entertainment at the premises shall not allow the audience to throw money or otherwise give gratuities to the performers, except as permitted by condition 3.11 above or 3.23 below.
- 3.17 Performers shall be provided with changing rooms that are located separately and apart from the public areas and facilities. Such changing rooms shall be fitted with security locks.

- 3.18 Only performers and staff authorised by the Licence Holder shall be permitted in to the changing rooms.
- 3.19 The contents of the House Rules for dance performances shall be agreed with the Police and the date indicated on those rules. A copy of the rules shall be deposited with the Police and the Council. These rules shall be adhered to and any amendments must be agreed to by the Police. In the event of any agreed amendments being made, an amended copy of the House Rules will be deposited with the Police and the Council with such document clearly showing the date of amendment.
- 3.20 Performers who are not performing shall not be in any public area in a state of undress (which includes the displaying of naked female breasts).
- 3.21 There shall be no advertising or display outside of the premises to the general public of photographs or other images displaying topless or nude dancers, or showing anything of a sexual nature.
- 3.22 A member of staff will be available to escort performers from the premises to their own/public transport or taxi at the end of their working day if requested to do so.
- 3.23 The Licence Holder will adhere to and enforce a **“Customer Code of Conduct** which will be clearly displayed for all customers to see and will include the following terms:
- (a) There shall be no inappropriate touching of the dancers at any time. Customers may however be escorted by the hand to an appropriate area for a dance and may make payment in the dancer’s hand or garter.
 - (b) No verbal abuse will be tolerated. Any customer being abusive will be ejected from the premises.
 - (c) No irresponsible behaviour by customers will be allowed. Any customer engaging in such behaviour will be ejected from the premises.
 - (d) Any customer behaving in any other unacceptable manner will be asked to leave the premises.
 - (e) No customer shall accept from or give to any performer or member of staff any telephone number, business card or note.
- 3.21 The Licence Holder will adhere to and enforce a **“Dancer’s Code of Conduct”** which will be clearly displayed for all performers and staff to see and will include the following terms:
- (a) Performers shall behave responsibly at all times and professionally perform appropriately choreographed dance routines.
 - (b) Performers will not remove any items of clothing otherwise than in accordance with the Sexual Entertainment Venue Licence. In particular full nudity is prohibited.

(c) No performer will accept from or give to a customer any telephone number, business card or note.

The Licence Holder shall ensure that all dancers/entertainers performing at the premises have signed a declaration to confirm that they are aware of, have understood and will abide by this Code. The Licence Holder shall retain this declaration until such time as the dancer/entertainer ceases to perform at the premises.

4. Records

4.1 A record shall be kept of anyone refused admission to the premises or refused service. Details contained in this record shall show:

- the basis for the refusal;
- the person making the decision to refuse; and,
- the date and time of the refusal

This record shall be retained at the premises for at least one year from the date of refusal and shall be made available for inspection and copying by the Police and Authorised Officers of the Council immediately upon request.

4.2 A bound and sequentially paginated incident/accident book shall be kept to record all instances of disorder, damage to property and personal injury at the premises. This book shall be made available for inspection and copying by the Police and Authorised Officers of the Council immediately upon request and all such books shall be retained at the premises for at least 2 years from the date of the last entry.

4.3 When the toilets have been checked for drugs use and supply, in accordance with condition 6.5 below, a record shall be kept of the result of the checks detailing how and when any illegal substance was found. The record shall be retained at the premises for at least 3 months from the date of the check and shall be made available for inspection and copying by the Police immediately upon request.

4.4 Any seizures of drugs, weapons or other property shall be recorded, together with the name and address of the person found with the article and details of how and where the article was seized. This record shall be kept in a bound and sequentially paginated book, which shall be retained at the premises for at least 2 years from the date of the last entry. This record shall be made available for inspection and copying by the Police immediately upon request.

4.5 A bound and sequentially paginated book shall be kept and updated daily, containing the names, addresses, dates of birth, Security Industry Authority (SIA) registration number and hours worked of door supervisors employed on each day that the premises operate. This book shall be kept at the premises for at least 12

months from the date of the last entry and shall be made available for inspection and copying by the Police immediately upon request.

5. Notices

- 5.1 Notices will be displayed at the entrance to the premises advising customers that random searches will be carried out and admission will be refused to customers who do not give their consent to being searched.
- 5.2 A copy of the current House Rules will be displayed at the entrance to the premises so as to be clearly visible to customers as they gain admission.
- 5.3 The current Customers' Code of Conduct, Dancers' Code of conduct; and House Rules shall be displayed on the exterior and interior of the premises at all times so as to be clearly visible.
- 5.4 A copy of the current conditions attached to the Sexual Entertainment Venue Licence and House Rules shall be exhibited at all times in or near the performers' changing rooms so that they can easily be read by performers. These documents shall be protected against theft and defacement.
- 5.5 A clear notice shall be displayed in a prominent position so that it can easily be read by persons entering the premises stating:

“No persons under 21 years of age permitted.”

6. Safety and Security

- 6.1 CCTV cameras shall be installed and maintained in the premises in accordance with Police recommendations and sufficient staff shall be trained to use the system. All cameras will record continuously during the time the premises are open to the public. Images shall be of evidential quality and shall be retained for at least 31 days. Recordings shall be made available immediately upon request to the Police and Authorised Officers of the Council.
- 6.2 At all times the premises are open to the public, all public areas shall be supervised by CCTV and all dance areas, private or otherwise, shall be constantly monitored by CCTV and staff.
- 6.3 The Licence Holder, or person nominated by him in writing to be in charge on any specified occasion, shall take all reasonable steps to ensure that patrons awaiting entry to the premises or leaving the premises do not cause annoyance or nuisance to any other person in the vicinity of the premises. A door supervisor shall act as a marshal to ensure that members of the public can freely pass by and gain access to other premises as necessary and shall supervise persons awaiting entry on the pavement.

- 6.4 Door staff will conduct random searches of customers prior to admission for drugs and weapons. Anyone refusing to be searched will be refused entry.
- 6.5 The toilets at the premises shall be checked for drugs use and evidence of drug supply taking place at least daily during the times that the premises are open to the public. Cocaine wipes shall be used when carrying out the checks. Records of such checks shall be kept in accordance with condition 4.3.
- 6.6 If drugs are found during a personal search, or whilst being used within the premises, the Licence Holder or Manager shall ensure, if safe and practicable, that a clear image of the person found in possession will be captured on CCTV. Following a risk assessment of the situation arising from the find, any person found using or in possession of drugs shall be detained, if it is safe and practicable to do so, and the Police shall be called immediately.
- 6.7 Any drugs or weapons found on the premises, either during a search of any person or otherwise, will be confiscated and stored in a secure container prior to being handed over to the Police, which must be done as soon as is practicable.
- 6.8 SIA registered door staff shall be employed at the premises, both inside and outside, at all times that the premises are open to the public. The number of door staff required shall be agreed with the Police. Appropriately trained staff shall supervise the admissions desk and all dance and entertainment areas at all times.
- 6.9 The Licence Holder, or person nominated by him in writing to be in charge on any specified occasion, will conduct a risk assessment to ensure that adequate levels of security are maintained, in accordance with conditions 1.1 to 1.3. Security at the front door of the premises shall not be compromised by the need for supervisors at locations within the premises.
- 6.10 The Licence Holder or person nominated by him in writing to be in charge on any specified occasion shall ensure that any door staff employed at the premises wear and clearly display their SIA registration badge at all times whilst on duty.
- 6.11 The Licence Holder and their staff shall liaise and co-operate closely with Nottinghamshire Police in respect of any initiative in relation to drugs, weapons or like matters.

7. Policies

- 7.1 The Licence Holder shall devise and agree the following policies with the Police prior to this licence being used:
- a Dispersal Policy,
 - an Accident and Incident Policy
 - a Drugs Policy
 - an Admission Control Door Supervision Policy

- an Age Admission Policy

The date that each policy is agreed with the Police shall be indicated on the policy and copies will be lodged with the Police and the Council. The terms of each policy will be adhered to with any amendments being agreed to by the Police. In the event of any agreed amendments being made, an amended copy will be deposited with the Police and the Council, such document clearly showing the date of amendment.

- 7.2 The Licence Holder shall ensure that all relevant staff (including SIA door staff) working at the premises have signed a declaration to confirm that they are aware of, have understood, and will abide by these policies. The Licence Holder shall retain each declaration until such time as the staff member ceases to work at the premises

APPENDIX 2

HEARINGS PROCEDURE

1. The following procedure will ordinarily be followed at the committee hearing:
 - i) The Chair will introduce him/herself, the other members and officers attending. The applicant, then the Police and objector/s (if invited and present) will introduce themselves and their witnesses. The Chair will outline the procedure to be followed and explain any time limits imposed on representations.
 - ii) The applicant will present his case and ask his witnesses to give their evidence. The applicant and each witness, after giving their evidence, may at the discretion of the Chair, be asked questions by the Police, the objector/s, the Committee members and the legal adviser.
 - iii) The Police and objector/s (if invited and present), in turn, will then be asked to make their representations following which they will be asked questions by the applicant, the committee and legal adviser.
 - iv) Once all parties have given their evidence and all questions have been asked, each party will be asked to sum up their case. The order of summing up will be the Police and the objector/s (if present) with the applicant last.
 - v) Hearings will normally be conducted in public, however the Committee does have powers of exclusion (which cover the public, the press, and even applicants, objectors and their representatives) in appropriate circumstances.
2. Whilst it will only hear representations which are relevant, the Committee is not restricted to considering any objections raised. In coming to a decision it will consider all relevant information, including observations by Council Officers, the Police and objectors (whether or not these parties are invited to speak at the hearing), representations by the parties at the hearing, as well as the local knowledge of the members of the committee.
3. Due to time constraints, applications for adjournments will only be granted when absolutely necessary, taking into account the following:

- i) Once a hearing date has been set it is for the parties to ensure that they can attend or are represented. Hearings may proceed in the absence of a party and their representations will be taken into account.
 - ii) If it is not possible for a party or their witnesses to attend the hearing, then the Council's preference will be for the hearing to proceed and the representation to be given by way of written evidence.
 - iii) Any party who wishes to make an application for an adjournment should seek the consent of all other parties to the application and notify the Council as soon as possible that an adjournment is being sought. If all parties agree the matter may be adjourned administratively.
 - iv) If an adjournment is not agreed administratively prior to the hearing, then the matter will remain listed, the application for the adjournment will be heard and the committee will decide whether to allow the adjournment or to proceed on written evidence.
 - v) The Council may adjourn proceedings of its own motion where it considers it necessary for consideration of any application or objection.
 - vi) Where an adjournment is granted, all parties will be notified soon as possible and notified of the new hearing date.
4. In coming to a decision the committee will have regard to any rights the applicant may have under the European Convention on Human Rights, Article 10 (right of freedom of expression) and Article 1 Protocol 1 (protection of property), as qualified, and will weigh them in the balance.
 5. At the end of the hearing the committee will retire to make their decision. In all cases the Committee will try to make their decision and to communicate this, with reasons, within a reasonable time of retiring. Where this is not possible the committee may:
 - i) announce their decision on the day with reasons to follow; or
 - ii) delay their decision and reasons for a set period.
 6. However the decision is delivered, it will always be followed up with written notification of the decision to all parties, including full reasons and information where relevant, about the appeals process.