

# **Draft Sexual Entertainment Venue Policy**

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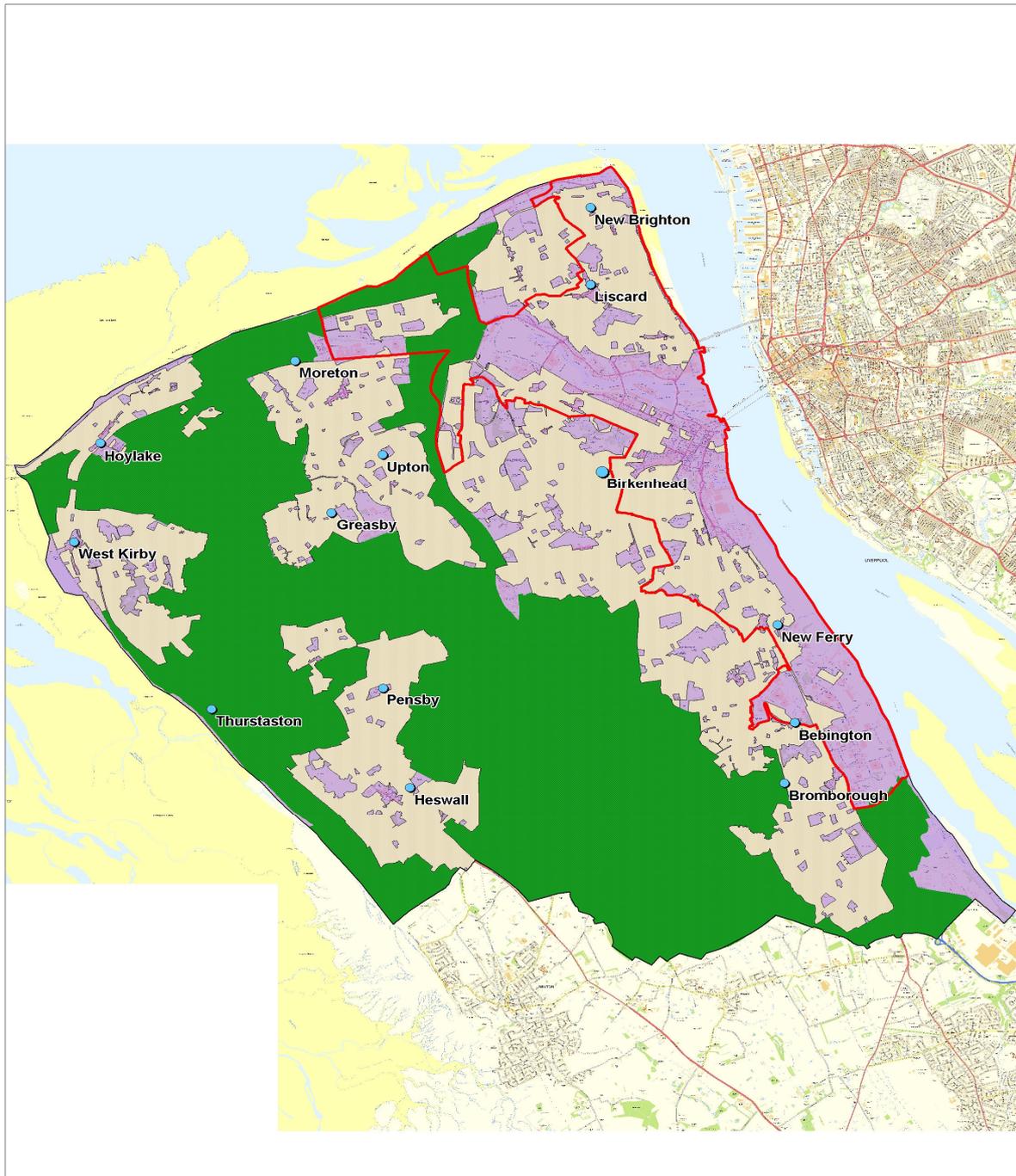
## CONTENTS

	Page No.
1. Background	1
2. Preface	2
3. Definitions	3 - 4
4. Making an Application	4 - 5
5. Fees	5
6. Making Objections to Applications	5 - 6
7. Determination of an Application	6 - 7
8. Unsuitability of an Applicant	7 - 8
9. Number of Sexual Entertainment Venues	8
10. Relevant Locality	8 - 9
11. Licence Conditions	9
12. Duration of Licences	9
13. Waivers	9



# 1. BACKGROUND

1.1 Wirral Borough Council is situated in the County of Merseyside, which contains no district Councils, but 5 metropolitan councils: Knowsley, Liverpool, Sefton, St Helens and Wirral. The Council area has a population of 310,200 (ONS 2007 midyear population estimates) making it the second largest after Liverpool in the County in terms of population. In terms of area it is the largest in Merseyside, covering 60.1 square miles. The Borough is mainly urban in outlook, with 32.85 square miles (54.66% of the borough) covered in Residential, Industrial or Commercial buildings. The key provided identifies the urban / rural areas as well as regeneration priority areas.



- Regeneration Priority Area
- Primarily Residential Areas
- Rural/Greenbelt Areas
- Other Urban/Developed Areas

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## 2. PREFACE

- 2.1 Wirral Council has adopted Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 (as amended by section 27 of the Policing and Crime Act 2009) so that sex shops, sex cinemas, and sexual entertainment venues in the Borough can be licensed. In this policy, such premises are referred to as “sex establishments” unless stated otherwise.
- 2.2 The 1982 Act and the 2009 Act can be viewed at [www.opsi.gov.uk](http://www.opsi.gov.uk).
- 2.3 Consultation on this policy will be carried out between 21 March 2011 and 21 May 2011.
- 2.4 Consultation was conducted with local residents; existing and future potential holders of sex establishment licences in the Borough; the statutory responsible authorities under the Licensing Act 2003; and holders of premises licences under the Licensing Act 2003 in the Borough.
- 2.5 In developing this policy, account was taken of the legal requirements of the 1982 Act and the duties under
  - (a) section 17 of the Crime and Disorder Act 1998 to take all reasonable steps to reduce crime and disorder within the Borough;
  - (b) the Regulators’ Compliance Code (set out under the Legislative and Regulatory Reform Act 2006) not to impede economic progress by the regulations we set out and to particularly consider the impact of regulations on small businesses; and
  - (c) the Provision of Services Regulations 2009 to ensure requirements are:
    - (i) non-discriminatory
    - (ii) justified by an overriding reason relating to the public interest
    - (iii) proportionate to that public interest objective
    - (iv) clear and unambiguous
    - (v) objective
    - (vi) made public in advance, and
    - (vii) transparent and accessible
- 2.6 This Statement of Licensing Policy sets out the Council’s requirements for premises to be licensed as sex establishments and sexual entertainment venues within the means of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (As Amended).

### **3. DEFINITIONS**

#### **3.1 Definition of Sex Shop**

A “sex shop” is defined as any premises, vehicle, vessel or stall used for 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.

#### **3.2 Definition of Sex Cinema**

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 –

- (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.

#### **3.3 Definition of Sexual Entertainment Venue**

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.

“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 be reasonably assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience (whether by verbal or other means).

The definition of relevant entertainment is expected to apply to the following terms of entertainment as they are commonly understood:

- Lap Dancing
- Pole Dancing
- Table Dancing
- Strip Shows
- Peep Shows

- Live Sex Shows

Relevant entertainment is not restricted to the above defined terms of entertainment and will be considered with regard to the nature of the entertainment, not the name it is given.

#### **4. MAKING AN APPLICATION**

- 4.1 Local Government (Miscellaneous Provisions) Act 1982 (As Amended) provides a maximum licence period of one year. The authority may grant a shorter licence if it thinks fit. A shorter period may be granted for example where a licensee wants a licence for a limited period for a trade exhibition or a show.
- 4.2 An application for the grant, variation, renewal or transfer of a licence must be made in writing to the Licensing Authority together with the application fee in accordance with the requirements set out below.
- 4.3 There are three separate notice requirements:
  1. The applicant must, within seven days after the date of the application, publish an advertisement in a local newspaper circulating in the local authority's area. A suggested form of advertisement is available on request from the Licensing Section.
  2. Where the application is in respect of premises the applicant must display a notice of the application on or near the premises where it can be conveniently read by the public. The notice must be displayed for 21 days starting with the date of application. Again a suggested form of notice is available on request.
  3. The applicant must send a copy of the application to the Chief Officer of Police no later than seven days after the date of the application. Where the application is made electronically it is for the Local Authority itself to send the copy within seven days of receipt of the application.
- 4.4 The application form can be used for grant, variation, transfer and renewal applications. Applicants must provide their name, address, age (where the applicant is an individual), the premises address and the proposed licensed name of the premises.
- 4.5 Applicants must, at the time of submission of a new grant or variation application, provide a scheme showing the exterior design for consideration by the Licensing Authority before the premises are opened for business in order to ensure that the exterior design of the premises shall be such that the interior of the premises is not visible to passers-by.
- 4.6 In addition applicants must, at the time of submission of a new grant or variation application, provide a plan showing the interior layout of the premises and where relevant entertainment will take place for consideration by the Licensing Authority.
- 4.7 Applicants for Sexual Entertainment Venues must also submit a copy of their "club rules". Such club rules must contain the required conduct of performers which shall include for example, no sex acts, no giving or taking phone numbers (including exchange of business cards).
- 4.8 Such club rules will form part of the licence (if granted) and may be subject to amendment by the Licensing Authority prior to approval.

- 4.9 Officers of the Licensing Service may, as part of the application process, visit the locality of the premises to establish whether there are any characteristics of the locality which may require consideration by the Licensing Health and Safety and General Purposes Committee.
- 4.10 With regards to online application tacit authorisation does not apply to new grant applications for Sexual Entertainment Venue licences. This means the applicant must wait for the Licensing Authority to determine the application before they can operate a Sexual Entertainment Venue.

## **5. FEES**

- 5.1 The Local Government (Miscellaneous Provisions) Act 1982 (As Amended) permits the authority to set a reasonable fee. The Council's Licensing Health and Safety and General Purposes Committee will set licensing fees in respect of sex shops and sex cinemas under the then 1982 Act to recover the costs of carrying out the licensing function under that Act namely: administration (including any hearings or appeals), inspection and enforcement.
- 5.2 The above process is also applicable to the function of licensing Sexual Entertainment Venues and the appropriate fees for applications will be available on the Council's website at: [www.wirral.gov.uk](http://www.wirral.gov.uk).
- 5.3 It must be noted that application fees must be paid in full at the time of submission of the application and that these fees will be reviewed annually during normal budgetary processes.

## **6. MAKING OBJECTIONS TO APPLICATIONS**

- 6.1 The Local Government (Miscellaneous Provisions) Act 1982 (As Amended) permits a wide range of persons to raise objections about the grant, renewal, variation or transfer of a Sexual Entertainment Venue licence. Objectors can include residents, resident associations, trade associations, businesses, Councillors (providing they do not sit on the Committee or Sub-Committee considering that particular application) or MPs. The Police are a statutory consultee for all applications.
- 6.2 Objections must be made in writing (email is acceptable) no later than 28 days after the date of the application to the Licensing Authority and should include the following:
- the name and address of the person or organisation making the objection
  - the premises to which the objection relates
  - the proximity of the premises to the person making the objection, a sketch map or plan may be helpful to show this
- 6.3 Objectors should limit their objection to matters which are relevant to the statutory grounds for refusal as set out in the 1982 Act. The grounds relevant to the majority of objectors are as follows:

That the grant or renewal of the licence would be inappropriate:

- having regard to the character of the relevant locality, or

- the use to which any premises in the vicinity of the premises, vehicle or vessel or stall in respect of which the application is made.

Any objections received by the Licensing Authority which do not relate to the grounds set out in the 1982 Act will be rejected by the Licensing Authority. Where objections are rejected the objector will be given written reasons.

- 6.4 The Licensing Authority will not consider objections that are frivolous or vexatious or which relate to moral grounds (as these are outside the scope of the 1982 Act). Decisions on whether objections are frivolous or vexatious will be made objectively by the Licensing Authority and where objections are rejected the objector will be given written reasons.
- 6.5 A vexatious objection is generally taken to be one which is repetitive, without foundation or made for some other reason such as malice. A frivolous objection is generally taken to be one that is lacking in seriousness.
- 6.6 Objections will be considered by the Licensing Health and Safety and General Purposes Committee determining the application. The applicant will be informed of any objections received in respect of their application and the objection(s) will become public documents. (However, objector's personal details such as name, address and telephone number will be removed.) A copy of the hearing procedure will be sent to the applicant and any objectors prior to the hearing.

## **7. DETERMINATION OF AN APPLICATION**

- 7.1 All applications for the grant of a Sexual Entertainment Venue licence will be determined by the Licensing Health and Safety and General Purposes Committee. Valid objections to any application will be considered by the Licensing Health and Safety and General Purposes Committee or delegated to a Licensing Sub Committee at the hearing to consider the application. Applicants and objectors will be given an equal opportunity to state their case in accordance with the Licensing Health and Safety and General Purposes Committee's procedure for hearings, which is available from the Licensing Service.
- 7.2 The Local Government (Miscellaneous Provisions) Act 1982 (As Amended) provides five mandatory grounds and four discretionary grounds for refusal of a Sexual Entertainment Venue licence. Each application for a Sexual Entertainment Venue will be decided upon its own merits and the Licensing Authority will give clear reasons for its decisions. Any decision to refuse a licence MUST be relevant to one or more of the following grounds:

### **7.3 Mandatory grounds for refusal**

Specific mandatory grounds for refusal of a licence are set out in paragraph 12(1)(a to e) of Schedule 3 in the 1982 Act. A licence cannot be granted:

- (a) to any person under the age of 18 years
- (b) to any person who is for the time being disqualified due to the person having had a previous licence revoked in the area of the appropriate authority within the last 12 months

- (c) to any person, other than a body corporate, who is not resident in an European Economic Area or was not so resident throughout the period of six months immediately preceding the date when the application was made; or
- (d) to a body corporate which is not incorporated in an European Economic Area; or
- (e) to any person who has, within a period of 12 months immediately preceding that date when the application was made, been refused that 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

#### 7.4 Discretionary grounds for refusal

The only discretionary grounds upon which the Council may refuse an application for the grant or renewal of a licence on one or more of the grounds specified in Schedule 3 paragraph 12(3) are that:

- (a) the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reasons
- (b) if the licence were to be granted, renewed or transferred the business to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant, renewal or transfer of such a licence if he/she made the application himself/herself
- (c) the number of sex establishments, in the relevant locality at the time the application is made is equal to or exceeds the number which the authority consider is appropriate for that locality
- (d) that the grant or renewal of the licence would be inappropriate, having regard:
  - (i) to the character of the relevant locality; or
  - (ii) to the use to which any premises in the vicinity are put; or
  - (iii) to the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made

7.5 If none of the above applies to the applicant and no objections have been received and there are no other statutory grounds for refusal, including that the application does not exceed any permitted numbers, the application will be granted by way of delegated authority.

### 8. UNSUITABILITY OF AN APPLICANT

8.1 In respect of 7.4(a) and (b) above with regard to the unsuitability of an applicant to hold a licence, the criteria for Members to consider are:

- that the Operator is honest
- that the Operator is qualified by experience to run the type of sex establishment in question
- that the Operator understands the general conditions
- that the Operator is proposing a management structure which delivers compliance with the operating conditions e.g. through managerial competence,

- presence, a credible management structure, enforcement of rules internally, a viable business plan and policies for welfare of performers
- that the Operator can be relied upon to act in the best interests of performers e.g. in how they are remunerated, the facilities they enjoy, how they are protected and how and by whom their physical and psychological welfare is monitored
  - that the Operator can be relied upon to protect the public e.g. transparent charging, freedom from solicitation
  - that the Operator can show a track record of management of compliant premises, or that he/she will employ individuals who have such a track record

## **9. NUMBER OF SEXUAL ENTERTAINMENT VENUES**

- 9.1 As set out within paragraph 7.4(c) above, paragraph 12 of Schedule 3 provides that a Local Authority may refuse an application if it is satisfied that the number of sex establishments or of a particular kind in the relevant locality at the time the application is made is equal to or exceeds the number which the authority consider is appropriate for that locality. The Council is able to determine that the appropriate number for a locality is nil.
- 9.2 The Council may choose to set a guidance upper limit on the number of Sexual Entertainment Venues which it considers appropriate in any locality within the Council's administrative area but each application will be considered on its merits.

## **10. RELEVANT LOCALITY**

- 10.1 With reference to paragraph 7.4(d) 'relevant locality' for the purposes of paragraph 12 of Schedule 3 of the Act means:
- (i) in relation to the premises, the locality where they are situated, and
  - (ii) in relation to a vehicle, vessel or stall, any locality where it is desired to use it as a sex establishment.
- 10.2 In considering if the grant, renewal or variation of the licence would be inappropriate, having regard to the character of the relevant locality or to the use of which any premises in the vicinity are put, the Licensing Authority shall consider, among other considerations, whether the grant of the application would be inappropriate, having regard to:
- (a) the fact that the premises are sited in a residential area
  - (b) the premises are sited near shops used by or directed to families or children, or no frontages frequently passed by the same
  - (c) the premises are sited near properties which are sensitive for religious purposes e.g. synagogues, churches, mosques, temples
  - (d) the premises are sited near premises or areas which are sensitive because they are frequented by children, young persons or families, including but not limited to educational establishments, leisure facilities such as parks, libraries or swimming pools, markets and covered markets
  - (e) places and or buildings of historical/cultural interest, tourist attractions

- 10.3 The Council will consider the extent of the locality on a case by case basis taking into account the particular circumstances of each case. However, the Council will not seek to define locality as the whole of the Council's administrative area or an entire town.
- 10.4 When hearing an application for the grant of a Sexual Entertainment Venue licence, the Committee shall have regard to the guidelines set out above but subject to the overriding principle that each application will be determined on its merits.
- 10.5 The Council would (normally) expect that applications for Sexual Entertainment Venue licences for permanent commercial premises should be from businesses with planning consent for the property concerned.

## **11. LICENCE CONDITIONS**

- 11.1 The Council intends to adopt standard conditions in respect of sex shops and sexual entertainment venues, which will apply to all respective licences granted, unless such conditions have been expressly excluded or varied. These proposed standard conditions will be provided separately.
- 11.2 However, following a hearing, the Licensing Health and Safety and General Purposes Committee may attach further conditions to a licence, considered necessary and proportionate in the public interest including, but not limited to, the interest of public policy, public security, public health or the protection of the environment. This could include conditions restricting the opening and closing times of the premises.

## **12. DURATION OF LICENCES**

- 12.1 Unless a shorter period is specifically stated, all licences will be granted for one year, which shall be the maximum duration of any licence.

## **13. WAIVERS**

- 13.1 The Council will not normally grant a waiver for a sex establishment licence but will consider applications on their individual merits. Applicants will be expected to demonstrate exceptional circumstances in justifying why the licensing requirement should be waived.
- 13.2 Applications will be considered by the Licensing Health and Safety and General Purposes Committee, or delegated Sub-Committee thereof, and reasons shall be given of the decision taken.