

## LICENSING AND SAFETY COMMITTEE

28 OCTOBER 2015

### LICENSING ACT 2003 SEV POLICY CONSIDERATIONS

Report from: Perry Holmes - Assistant Director (Legal & Corporate Services)

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#### Summary

The purpose of this report is to inform members of the Licensing and Safety Committee of the outcome of checks carried out by officers on the need or not to update the SEV Policy.

#### 1. Budget and Policy Framework

1.1 The Council approved the existing statement of policy in respect of sexual entertainment venues for use on 18 October 2012. This statement of policy is used when dealing with applications for sexual entertainment venues.

#### 2. Background

2.1 Section 27 of the Policing and Crime Act 2009 extended the provisions of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 by introducing a new category of sex establishment called "sexual entertainment venues". The purpose of this amendment was to give Local Authorities greater control over venues, currently licensed under the Licensing Act 2003, that provide some form of sexual entertainment. In order to implement these amendments we have adopted the legislation. The provisions of which came into effect on 6 April 2010.

2.2 A sexual entertainment venue is defined as "any premises at which relevant entertainment is provided before a live audience for financial gain of the organiser or the entertainer".

2.3 The meaning of "relevant entertainment" is any live performance or live display of nudity, which is of such a nature that it must reasonably be assumed to be provided solely, or principally for the purpose of sexually stimulating any member of an audience (whether by verbal or

other means). An audience can consist of just one person (e.g. where the entertainment takes place in private booths).

- 2.4 A decision was taken at the Licensing and Safety Committee held on 24 March 2015 (Minute 870) for officers to investigate the need to update and if required to consult and report back to this committee.
- 2.5 This work has been completed and the officer recommendation is to continue with the current policy, as shown at **Appendix A** for the time being and to keep under review for any changes in legislation, case law and/or circumstances.

### **3. Risk Management**

- 3.1 Putting in place a statement of policy in respect of sex establishments has aided transparency and consistency of approach. Any changes to the policy would need to be subject to wide consultation with stakeholders in order to be meaningful and thus need some months to be developed.
- 3.2 The EU Services Directive (2006/123/EC) requires that no local legislation or policy should apply so as to create a barrier to service provision. In order to comply with the Directive the previous council policy of 27 November 2002, which restricted the numbers of sex establishments in Medway to two in number, was removed by Full Council on 13 January 2011.
- 3.3 However, paragraph 12(3)(c) of Schedule 3 to the 1982 Act does allow a local authority to refuse an application for a sex establishment licence on the grounds that the number of sex establishments or sex establishments of a particular kind exceeds the number which the authority considers is appropriate for a locality.
- 3.4 Careful consideration needs to be given to any changes in content, particularly any numerical limits being set, to ensure that they can be legitimately justified. If it is considered that a particular locality should have a limit, the geographical area will then need to be defined and the limit set. Due to the urban model of the Medway Towns, problems can arise in setting demographic areas and the setting of numbers for an area where licences have already been granted (particularly below the level of existing licences) could be open to challenge.
- 3.5 Even if a limit is not specified in the policy the Council can still refuse an application on the basis of the number already in a particular area or vicinity of an application, on a case-by-case basis.
- 3.6 The Secretary of State's guidance states that a licensing policy can be used to indicate how many sex establishments, or sex establishments of a particular kind, they consider to be appropriate for a particular locality. It also states that it may be appropriate to reflect distinctions between the different types of venue or licences (e.g. an authority may consider that an area is suitable for a sex shop but not for a sexual entertainment venue or vice versa).
- 3.7 The guidance states that it is potentially useful to future applicants for a local authority to decide in advance of receiving any applications that

certain areas are, or are not, appropriate locations for a sex establishment, but is clear that regardless of whether a policy sets a level, all applications must be considered on their individual merits. It would not therefore be possible not to entertain an application merely because it exceeds a level set in the policy.

#### **4. Financial and legal implications**

- 4.1 There are no direct financial implications for Medway Council concerning this matter at present. However, if at any time in the future the policy was subject to legal challenge, there could be costs associated with this process. Having such a policy assists with consistency and fair decision-making and provides justification in the event of legal challenge. In making decisions regarding applications, Licensing Officers and Committees should have regard to all the circumstances of a particular and not follow policies slavishly, but are entitled to have due regard to a policy.

#### **5. Recommendations**

- 5.1 To agree that there be no change to the existing policy.
- 5.2 To agree that the Assistant Director (Legal and Corporate Services) keep the policy under review and report back to the Committee should there be a need to consult on proposed amendments in light of changes in legislation, case law or for any other reason.

#### **Lead officer contact**

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#### **Appendices**

Appendix A – Current SEV Policy.

#### **Background papers**

None





# Statement of Policy in respect of Sex Establishments

Under the Local Government  
(Miscellaneous Provisions) Act 1982  
as amended by  
Policing and Crime Act 2009

Licensing Unit  
Gun Wharf  
Dock Road  
Chatham  
Kent ME4 4TR

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## **DEFINITIONS**

**Licensing Authority: -**

Medway Council  
Officers  
Members  
Committee / Panel / Hearing

**Agenda Papers: -**

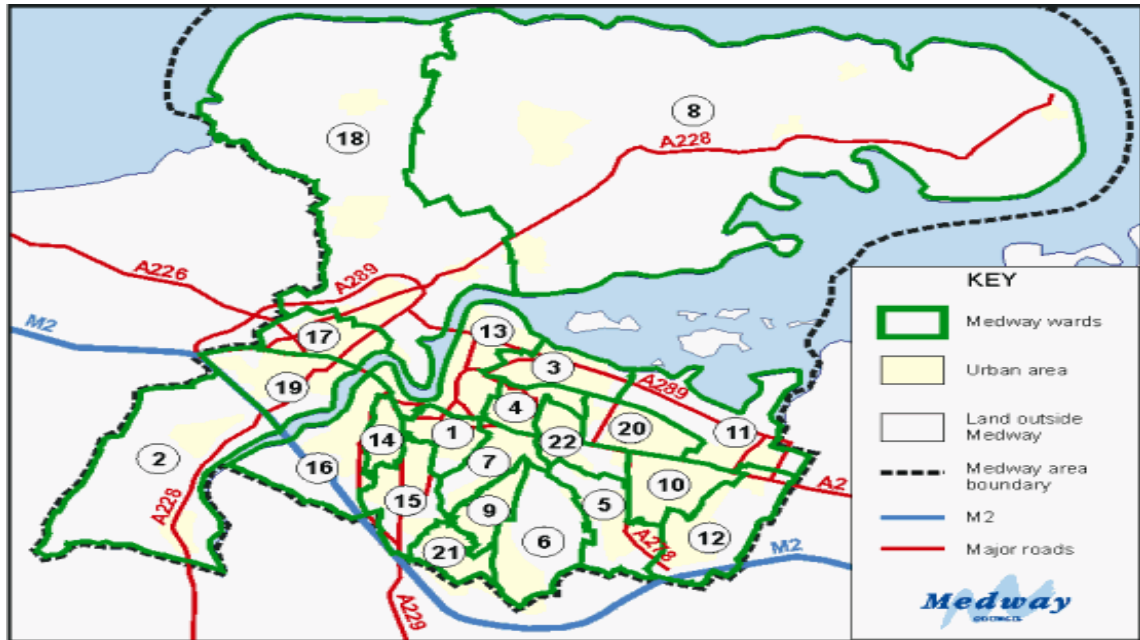
Documents circulated to member and interested parties prior to the Committee / Panel / Hearing taking place

**Responsible Authorities: -**

Police  
Fire Authority  
Medway Council Development Control (Planning & Building Control)  
Medway Safeguarding Children Board  
UK Border Agency  
Medway Council Environmental Health (Environmental Protection & Food and Safety)

## 1. Introduction

1.1 Medway Council is a Unitary Authority in North Kent, providing all local government services for a quarter of a million people in Medway, including the towns of Rochester, Strood, Chatham, Gillingham and Rainham and rural areas such as the Hoo Peninsula. In terms of areas it covers 80 square miles and is shown on the map below.



- |                           |                                 |                    |
|---------------------------|---------------------------------|--------------------|
| 1. Chatham Central        | 9. Princes Park                 | 16. Rochester West |
| 2. Cuxton and Halling     | 10. Rainham Central             | 17. Strood North   |
| 3. Gillingham North       | 11. Rainham North               | 18. Strood Rural   |
| 4. Gillingham South       | 12. Rainham South               | 19. Strood South   |
| 5. Hempstead and Wigmore  | 13. River                       | 20. Twydall        |
| 6. Lordswood and Capstone | 14. Rochester East              | 21. Walderslade    |
| 7. Luton and Wayfield     | 15. Rochester South and Horsted | 22. Watling        |
| 8. Peninsula              |                                 |                    |

## 2. Overview

2.1 This policy forms the basis of Medway Council's regulation of Sex Establishments and in particular Sexual Entertainment Venues (SEV) as a result of its decision to adopt the amended Schedule 3 of The Local Government (Miscellaneous Provisions) Act 1982.

2.2 Medway Council adopted Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 on the 19 July 2000 with an effective date of 1 September 2000 and the amendment under Section 27 of the Policing and Crime Act 2009 on the 13 January 2011.

2.3 By adopting Schedule 3, Medway Council (the Licensing Authority) is able to regulate Licensing in relation to the following: -

- sexual entertainment venues



- sex shops
- sex cinemas

- 2.4 The Local Government (Miscellaneous Provisions) Act 1982 (as amended by Section 27, Policing and Crime Act 2009) provides that a local authority may, by resolution, adopt Schedule 3 to that Act.
- 2.5 Schedule 7 to the Policing and Crime Act 2009 amends the Licensing Act 2003 to ensure that premises for which a sexual entertainment venue licence is required or held (or for which the requirement has been waived under paragraph 7 of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 do not also require a premises licence, club premises certificate or temporary event notice in order to provide relevant entertainment (*see section 7 on page 6*). This is because such entertainment is expressly excluded from the definition of regulated entertainment found in the Licensing Act 2003. However, if the premises also carries on other licensable activities (e.g. the sale of alcohol or the provision of regulated entertainment then this is not a provision of relevant entertainment), they will nevertheless continue to require a premises licence, club premises certificate or temporary events notice under the Licensing Act 2003 for those other activities, subject to any exceptions contained in that Act.
- 2.6 In practice this will mean that the vast majority of lap dancing clubs and similar venues will require both a sexual entertainment venue licence for the provision of relevant entertainment and a premises licence or club premises certificate for the sale of alcohol or provision of other types of regulated entertainment not covered by the definition of relevant entertainment.
- 2.7 Live music or the playing of recorded music which is integral to the provision of relevant entertainment, such as lap dancing, for which a sexual entertainment licence is required, is specifically excluded from the definition of regulated entertainment in the Licensing Act 2003. Therefore, a sexual entertainment venue will not require a premises licence or club premises certificate just because it plays recorded music for a performer to dance nor will providing entertainment facilities for the purposes of the provisions of relevant entertainment be regulated entertainment under the Licensing Act 2003.
- 2.8 The Licensing Authority has also taken into consideration the provisions of Section 17 Crime and Disorder Act 1998, which requires Responsible Authorities to consider crime and disorder (including antisocial behaviour and other behaviour adversely affecting the local environment) and the misuse of drugs, alcohol and other substances in the exercise of all their duties, activities and decision-making. This means that in all policies, strategies and service delivery there is a need to consider the likely impact on crime and disorder.

### **3. Policy**

- 3.1 The objective is to have a policy that sets out clear and concise guidance, procedures and principles for the benefit of the Licensing Authority, the community, applicants and other relevant organisations.

- 3.2 This will enable anyone with an interest in such establishments to understand the constraints, which the Licensing Authority must operate within when regulating Sex Establishments, the boundaries within which these premises must conduct themselves and the extent to which the community may comment in relation to applications.
- 3.3 Notwithstanding this policy, each application will be assessed on its individual merit and granted or refused purely on these merits. Whilst this policy will set out the broad scope of expectations, it should not be seen as restricting or predetermining the outcome or any application or representation in respect of the licensing of any premises.
- 3.4 The policy will be regularly reviewed and monitored to ensure that it is effective, up to date and continues to achieve what it sets out to do. This will be achieved by monitoring the outcome of hearings, appeals through Magistrates Court, developments in legislation, having regard to stated cases, local needs and economic impacts.
- 3.5 The adoption or any amendment of the policy will be communicated to the community by way of press release and on the Council's website. Persons having an active involvement in any consultation on the policy will be notified directly.

#### **4. Functions**

- 4.1 Under section 101 of the Local Government Act 1972, local authorities may arrange for the discharge of these responsibilities by a committee or sub-committee of the appropriate authority.
- 4.2 The Licensing Authority may delegate its functions to those who sit on a committee that has been set up to discharge licensing functions under the Licensing Act 2003. However, when dealing with an application in relation to sex shops, sex cinemas and sexual entertainment venues, the members of the committee would only be exercising their functions under Schedule 3.

#### **5 Consultations**

- 5.1 The Policing and Crime Act 2009 is not prescriptive about how licensing authorities should consult with local people. The Licensing Authority has extensive experience of engaging with local people and will utilise that knowledge to ensure that any consultation exercise carried out under this duty will be fair and meaningful. The Licensing Authority will seek to make any relevant information available to local people in order to inform them of the legislation, criteria and outcomes of the consultation.
- 5.2 For the purpose of this consultation process 'local people' are defined as anyone who lives or works in the Licensing Authority's administrative area.
- 5.3 The Licensing Authority will seek to consult with
- those premises that currently hold relevant entertainment, sell sex articles or show films of sexual activity.
  - persons or companies who may consider holding activities in the future.

- a number of enforcement agencies such as the Police and Fire Authority.
- local people and businesses in Medway who are near to existing premises.

## **6 Venues that require licensing (sex establishments)**

6.1 For the purpose of this policy the following definitions will apply: -

### **6.2 Sex Shop**

Any premises, vehicle, vessel or stall used for a business which consists to a significant degree of selling, hiring, exchanging, lending, displaying or demonstrating sex articles (e.g. anything for use in connection with or for stimulating or encouraging sexual activity or acts of force or restraint which are associated with sexual activity) or other things intended for use in connection with, or for the purpose of stimulating or encouraging sexual activity or acts of force or restraint which are associated with sexual activity.

### **6.3 Sex Cinema**

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 sexual activity, 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 but does not include a dwelling to which the public is not admitted.

### **6.4 Sex Entertainment Venue**

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

## **7 Relevant Entertainment**

7.1 Any live performance or 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 by verbal or other means).

7.2 Home Office guidance states relevant entertainment would therefore apply to the following forms of entertainment, as they are commonly understood: -

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

7.3 However, this list is not exhaustive and the Licensing Authority will judge each case on its merits. Decisions will be based on the content of the entertainment provided and not the name given to it.

## **8 Exemptions from being a sexual entertainment venue**

8.1 The following are not sexual entertainment venues for the purpose of this policy: -

- (a) sex cinemas and sex shops
- (b) premises at which the provision of relevant entertainment is such that, at the time in question and including any relevant entertainment which is being so provided at that time
  - (i) there have not been more than eleven occasions on which relevant entertainment has been 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 subparagraph (i)).

8.2 Premises, which fall under this exemption created for infrequent entertainment, do not require a sexual entertainment licence but will instead need an appropriate authorisation under the Licensing Act 2003. For example, to cover the performance of dance.

8.3 Operators are encouraged to maintain written records of any relevant entertainment that falls within the exemption. This will assist the Licensing Authority to prove or refute any allegation of unlicensed events and/or holding events in breach of the exemptions.

8.4 Any records should contain information of the date, times of the event and those persons who have participated in the relevant entertainment, which includes performers, security, management and bar staff. If tickets are sold then details of the number of tickets sold at each event.

## **9 Nudity**

9.1 Schedule 3 sets out the definition of a display of nudity:

- In the case of a woman, it means 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

## **10 Spontaneous Entertainment**

10.1 Where activities that would otherwise be considered to involve the provision of Relevant Entertainment (as defined in section 7) take place, but are not provided for the 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 a sexual entertainment venue by virtue of those circumstances alone. This is because the relevant entertainment must be provided for the financial gain of the organiser or entertainer. However, it should be noted that an organiser might be considered to have provided the entertainment where he has permitted the activity to take place, whether expressly or impliedly.

## **11 The Organiser**

- 11.1 Any person who is responsible for the organisation or management of the relevant entertainment at a premises at which Relevant Entertainment is provided. In most circumstances, this will refer to the manager of the premises, but could also refer to someone who is responsible for organising the Relevant Entertainment on behalf of the persons responsible for the management of the premises.
- 11.2 The Organiser must be someone who is in a position of responsibility over the provision of the relevant entertainment and should not be interpreted to mean a member of staff who is merely employed to work during the provision of relevant entertainment. It is only necessary for one person to hold a sexual entertainment venue licence for premises, even if there is more than one person who is responsible for the organisation or management of the relevant entertainment or the premises.

## **12 Planning**

- 12.1 The Licensing Authority will not normally undertake action where another, more appropriate, regime exists to resolve matters. Failure to obtain planning permission is not a ground for refusal of the grant of an application under the Local Government (Miscellaneous Provisions) Act 1982 and such a failure to obtain planning permission will normally be dealt with as part of the normal planning process.
- 12.2 Applicants are advised to seek independent professional advice in relation to both planning and licensing prior to making any application under Schedule 3 Local Government (Miscellaneous Provisions) Act 1982

## **13. European Convention on Human Rights**

- 13.1 The Licensing Authority fully supports the European Convention on Human Rights. When determining applications for licences under this policy the Licensing Authority will have consideration to any rights an existing operator may have under Article 1, Protocol 1 of the European Convention on Human Rights (ECHR) which entitles every person to the peaceful enjoyment of their possessions and Article 10 (freedom of expression).
- 13.2 The Secretary of State has certified that the Policing and Crime Act 2009 is covered by Section 19, Human Rights Act 1998 as being in compliance with the ECHR.
- 13.3 Whilst the rights under Article 1 and 10 may be activated the weight to be accorded to these rights in this context is low level. The right of freedom of expression to participate in the activities of sex shops, sex cinemas and sexual entertainment venues is not prohibited but may be controlled by licensing. Similarly the right to possession of an existing licence is proportionally protected subject to a fair balance of the rights of the holder and the public interest.

## **14 Locality, Character and Layout**

- 14.1 Paragraphs 12 (3) (c) and 12 (3) (d) of Schedule 3 allow the Licensing Authority to refuse applications on grounds related to an assessment of the relevant locality. A licence can be refused if either, at the time the application is determined the number of sex establishments or sex establishments of a particular kind, in the relevant

locality is equal to or exceeds the number that the authority considers appropriate for that locality; or that a sex establishment would be inappropriate having regard to

- the character of the relevant locality
- the use to which any premises in the vicinity are put or
- the layout, character or condition of the premises.

14.2 Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 does not define 'relevant locality' further than to say that:

- In relation to premises, it is the locality where they are situated
- In relation to a vehicle, vessel or stall, any locality where it is desired to use it as a sex establishment.

14.3 Once the Licensing Authority has determined the relevant locality, it should seek to make an assessment of the 'character' of the relevant locality and how many, if any, sex establishments, or sex establishments of a particular kind, it considers appropriate for that relevant locality. The Licensing Authority may consider a particular locality is suitable for a sex shop but is not suitable for a sexual entertainment venue or vice versa.

14.4 Case law has indicated however that in defining the relevant locality the local authority should not seek to specify wide areas.

14.5 Although a ward area could be considered as a relevant locality it is determined that certain wards are substantial in size and would cover a wide area. It could also raise a problem with borders of other wards where there could be a cluster of sex establishments.

14.6 The Licensing Authority has determined that the appropriate number of sexual entertainment venues for the area surrounding the historic part of Rochester High Street is two. In this context the historic part of Rochester High Street means the area shown outline in red on the attached plan. The Council has set this limit having regard to the character of the locality, in particular the fact that the area is designated as the Historic Rochester Conservation Area and in the vicinity of the tourist attractions of Rochester Castle and Rochester Cathedral and other attractions on and near Rochester High Street. In addition there are numerous residential properties on and bordering Rochester High Street. While the Licensing Authority acknowledge that there are numerous venues licensed under the Licensing Act 2003 within this area, it considers that the character of the area is such that more than two sexual entertainment venues would adversely affect both the tourist appeal of the area and the residential amenity of the area.

The Licensing Authority has determined not at this stage to set relevant localities or limits in respect of the remainder of the local authority area, or to set a limit on other types of sex establishments in the historic part of Rochester High Street.

The above decision will be reviewed from time to time by the Licensing Authority to take into account changing circumstances and experience of the impact of existing premises.

14.7 In licensing sex entertainment venues the Licensing Authority will consider the impact of such premises and their operation on the vicinity. This would include: -

- The likely effects of any increased footfall or vehicular traffic
- Any advertising or displays of an erotic or pseudo-erotic nature
- The type of location (residential, commercial, industrial)
- The vicinity of establishments whose patrons are likely to be effected by the operation of the premises
- The proximity of residential premises, including any sheltered housing and accommodation for vulnerable people
- The proximity of educational establishments to the premises
- The proximity of places of worship to the premises
- 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 (this list is not exhaustive)
- The proximity to historic buildings and tourist attractions
- Localities where the cumulative impact of the venue, taken with other licensed premises or commercial interests, is likely to have an adverse effect on crime and disorder and public nuisance
- The nature and concerns of any objections received from residents or businesses
- Any evidence of complaints about noise and/or disturbance caused by the premises
- The proximity of other sex establishments

14.8 When considering an application for the grant, renewal, variation or transfer of a licence the Licensing Authority will also take into account the following

- The type of activity to which the application relates
- The duration of the proposed licence
- The days and hours of operation of the activity
- The layout and condition of the premises
- The use to which other premises in the vicinity are put
- The levels of crime and disorder in the area.

14.9 Organisers are advised that the layout of the premises should be such as to ensure that at no time will any of the activities be visible to passers by on retail thoroughfares. In more sensitive locations applicants may consider it more appropriate to locate such premises at basement level or locate entrances away from retail thoroughfares or busy pedestrian routes.

## **15 Waivers**

15.1 The amendments to Schedule 3, Local Government (Miscellaneous Provisions) Act 1982 allow for the Licensing Authority to waive the need for a Sex Establishment licence under certain circumstances.

- 15.2 An applicant can apply for a waiver either as part of the application for a licence or separately. The Licensing Authority can grant a waiver if it considers that to require a licence would be unreasonable or inappropriate. Where a waiver is granted the Licensing Authority should inform the applicant that a waiver has been granted. The waiver may last for such a period that the Licensing Authority think fit, but can be terminated by the Licensing Authority at any time with 28 days notice.
- 15.3 The Licensing Authority will consider applications for such waiving of the need for licences on an individual basis. However, it is felt that unless clear and unambiguous evidence can be produced to support such a waiving of licence, the default position will be that a licence will be required.

## **16 Application Process**

- 16.1 In determining any application the Licensing Authority is aware of its ability to impose restrictions on the licence or to place conditions on the licence. Where such restrictions or conditions are applied, the Licensing Authority will ensure that they are necessary, reasonable and proportionate to achieve the objectives of any primary legislation, in particular the Local Government (Miscellaneous Provisions) Act 1982 (as amended) and any subsequent, relevant legislation.
- 16.2 The Licensing Authority will consider all of the following factors especially but not exclusively,
- The locality, character and layout of the premises
  - The times of operation
  - The suitability of the applicant
  - The cumulative impact of the premises when taken together with other licensed premises in the locality.
  - The management procedure in place to ensure the premises is operated in a way conducive to the area.
- 16.3 Applications for licences for Sex Establishments must be made on the prescribed form and accompanied by the relevant fee Applications will not be accepted unless accompanied by full payment.

Information relating to forms and fees may be obtained from the Licensing Authority.

- 16.4 A site plan of a radius of  $\frac{1}{4}$  of a mile (scale 1:500) clearly outlining where the sex establishment is to be situated must be included in the application. The plan should clearly identify the proposed sex establishment marking the site/premises boundary with a red line and define other types of businesses and residential properties around the site as listed at 14.6.
- 16.5 A plan of the premises (scale 1:100) showing the part(s) of the premises that it is proposed to licence as a Sex Establishment. All areas requiring to be licensed should be outlined in red on the plan. If a part of the premises is within a licensed premises under the licensing act 2003 which will have a dual purpose then the plan should show the site where facilities for the public are shared such as toilets and bar.



- 16.6 The plan of the premises submitted must show the position of all existing and/or proposed CCTV cameras following discussions by the applicant with the Police and be in accordance with the CCTV code of practice.
- 16.7 Plans may be considered in other scales with prior agreement with the Licensing Authority.
- 16.8 Applicants must give public notice of the application by publishing an advertisement in a local newspaper that is circulated in the local authority area no later than 7 days after the date the application is made.
- 16.9 Applicants must display a notice of the application on or near the premises in a place where members of the public can conveniently read it. The notice should be displayed for a period of 21 days beginning with the date the application was made.
- 16.10 All notices should be in the form prescribed and identify the premises or, if the application relates to a vehicle, vessel or stall, specify where it will be used as a sex establishment.
- 16.11 The applicant must serve the application on Chief Officer of Police at Medway Police Station no later than seven days after the date of application.
- 16.12 On determining an application the Licensing Authority shall have regard to all relevant considerations, including any comments made by:
- Police
  - Fire Authority
  - Medway Council Development Control (Planning and Building Control)
  - Medway Safeguarding Children Board
  - UK Border Agency
  - Medway Council Environmental Health (Environmental Protection and Food and Safety)
  - Ward Councillors
  - Interested Parties (local residents/businesses)
- (Or their successors in title).
- 16.13 Officers from any of the(se) authorities may inspect the premises to ensure that the required technical standards are met under a variety of legislation.
- 16.14 The Licensing Authority will not determine an application for the grant of a licence, unless, the applicant allows an authorised officer a reasonable opportunity to enter the proposed Sex Establishment to make such examination and enquiries as may be necessary to determine the suitability of the applicant and the premises.

## **17 Objections / Representations to an application**

- 17.1 Any person can object to an application. This includes residents/tenants, associations, community associations and trade associations. Councillors and MPs may also raise objections. Elected councillors may represent interested parties, providing they do not also sit on the panel/ committee hearing the application.

- 17.2 The Licensing Authority will not consider objections that are frivolous or vexatious, or which relate to moral/religious grounds or values. Any objections on this basis will be rejected or disregarded in part. Where objections are rejected or disregarded the objector will be informed in writing indicating the general grounds and what part of the objection is rejected or disregarded.
- 17.3 A vexatious objection is generally taken to be one that 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.
- 17.4 Objections to the application must be made in writing and be received by the Licensing Authority within 28 days of the application being made. The objection must contain: -

- 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
- The general terms of the objection.

The Licensing Authority may only consider petitions that include the following: -

- An outline of the main issues of concern at the top of each page
- Each persons name, address, signature, date and personal concerns/reason for objection.
- One person on the petition to be the nominated contact.

- 17.5 The general terms of any objection must be provided to the applicant prior to the determination of the application.
- 17.6 The report to the relevant panel/committee may have full details of the objectors and their objection, it will include any actions/undertaking proposed by the applicant to address the matters raised in the objections.

## **18 Conditions**

- 18.1 The Local Government (Miscellaneous Provisions) Act 1982 allows the Licensing Authority to attach conditions to a licence. The Licensing Authority has formulated a pool of conditions in respect of each type of licensed premises. The latest version of which is available from the Licensing Authority. These conditions form the basis for promoting the efficient operation of premises or sex establishments.
- 18.2 Some of the conditions will be placed on the particular type of establishment as mandatory conditions and others may be applied only where a perceived necessity exists. This would be done in a manner that is both proportionate and reasonable to promote a safe and well-managed venue. Each case will be dealt with on its individual merits.
- 18.3 Whilst conditions may be prescribed on any licence it is likely that the following considerations will attract the attachment of conditions:
- Hours of opening and closing
  - Visibility of the interior of the premises
  - Displays or advertisements

- Any change to the type of premises
- Nature of performance (between audience and performers)
- The control of access to changing room facilities
- The control of private viewings

18.4 The Licensing Authority may impose other conditions specific to individual premises dependant on the type of activity undertaken. The Licensing Authority is not limited to those listed in the pool of conditions.

## **19 Hearings / Decision making process**

19.1 Under paragraph 10 (19) of Schedule 3, before refusing an application, renewal or application to transfer a licence all applicants will be given the opportunity to appear before and be heard by the relevant panel/committee that is responsible for determining the application.

19.2 Whilst Schedule 3 does not make explicit provision for objectors to be heard, this Licensing Authority would normally permit this. Although a local authority is under a duty to consider any objection made within 28 days of the application, it has discretion to hear later objections provided the applicant is given the opportunity to deal with those objections.

19.3 Persons making written objections will also be informed of the date and time of the panel/committee hearing where they will be invited to address the committee and ask questions relating to the application.

19.4 All objectors and applicants are reminded that they can if they wish be legally represented at their own expense at the hearing. Alternatively they may if they wish ask a Councillor to represent them.

19.5 In determining an application the panel/committee will consider the applicants presentation, the Licensing Authority's authorised officer report and representation/objections.

19.6 All parties may use witnesses and supporting documentation however, copies of documents and details of witnesses must be submitted to the Licensing Manager a minimum of one working day prior to the hearing. In special circumstances, with approval of all parties, this may be done at the hearing.

19.7 If one of the parties wishes to show video/dvd evidence at the hearing they must inform the Licensing Authority 14 days prior to the hearing taking place and where possible provide copies to the Licensing Authority a minimum of 7 days prior to the hearing to avoid any unnecessary delays

19.8 Officers may view the evidence prior to the hearing and advise the chairman of any sensitive images and will establish whether any party objects to the video/dvd being shown. If an objection is raised then the parties concerned should give their reasons for and against the proposed showing.

19.9 The Licensing Authority will consider all the evidence presented to it during the hearing and members may ask questions of officers, applicant and objectors. After

the evidence has been presented, all parties will be asked to leave the room to allow for the Licensing Authority to come to a decision on the application.

19.10 When a decision is reached the Licensing Authority will at the Hearing inform the applicant and relevant parties of their decision and the reasons for coming to that particular decision.

19.11 The decision of the Licensing Authority will be confirmed, in writing, to the applicant and objectors attending the Hearing within five working days of the meeting at which the application was considered, giving reasons for the decision.

## **20 Refusal of a Licence**

20.1 Paragraph 12 of Schedule 3 sets out the grounds for refusing an application for the grant, renewal or transfer of a licence. A licence must not be granted:

- To a person under the age of 18
- To a person who is for the time being disqualified due to the person having had a previous licence revoked in the area of the Licensing Authority within the last 12 months
- To a person other than a body corporate who is not resident in an European Economic Area (EEA) State or was not so resident throughout the period of six months immediately preceding the date when the application was made or
- To a body corporate which is not incorporated in an EEA State or
- To a person who has within a period of 12 months immediately preceding the date when the application was made, been refused the grant or renewal of a licence for the premises, vehicle, vessel or stall in respect of which the application is made, unless the refusal has been reversed on appeal.

20.2 A licence may be refused where

- The applicant is unsuitable to hold the licence
- 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
- The number of sex establishments or of sex establishments of a particular kind, in the relevant locality at the time the application is determined is equal to or exceeds the number which the authority considers is appropriate for that locality
- That the grant or renewal of the licence would be inappropriate, having regard to the character of the relevant locality or to the use to which any premises in the vicinity are put or to the layout, character of the premises, vehicle, vessel or stall in respect of which the application is made.

20.3 In making any determination to refuse an application, renewal or transfer the Licensing Authority will give consideration to:

### **a) Unsuitability of applicant**

In determining the suitability or otherwise of an applicant the Licensing Authority will consider

- previous knowledge and experience of the applicant

- any evidence of the operation of any existing/previous licence held by the applicant, including any licence held in any other local authority area
- any report about the applicant and management of the premises received from objectors and officers.
- any previous convictions and in particular those that have been imposed in respect of offences involving violence, dishonesty, or a breach of the requirements of the legislation covering the type of establishment in respect of which the application is made.

**a) Business carried out on behalf of a person who would be refused**

The Licensing Authority takes a serious view of any application that seeks to subvert the underlying principles of the Act. Where it is considered that the applicant is effectively operating the business on behalf of a person who would, for whatever reason be refused or disqualified from the grant of a licence due to the mandatory or discretionary grounds for refusal there will be a presumption towards refusal unless overwhelming reasons are accepted for the contrary decision to be made.

**b) The application exceeds the limit set on the number of the specific type sex establishment in an area**

The Licensing Authority has set a limit of two for the number of sexual entertainment venues within the Historic Rochester Conservation Area as shown on the attached plan.

**c) The grant of the licence would be inappropriate**

In deciding whether the granting of a licence is appropriate the Licensing Authority will consider the type of area in which it is intended to site the premises and the hours during which it is intended to operate.

The authority is also likely to consider:

- The proximity as per the list at 14.7
- Whether the area is predominantly residential rather than commercial in nature and premises may cause disturbance to local community.
- Management systems are not suitable to take into account the safety of its performers, customers and staff.
- Any nuisance associated with the premises or the activities undertaken thereon
- The possibility of children or other vulnerable persons being harmed or exploited by the provision of sexual entertainment or the operation of sex shops or sex cinemas
- The potential of the activities associated with the operation of the premises being a source of crime and disorder, being associated with crime or being used to support crime.
- Any other reason including the existence of a police caution, representations from the police or by other enforcement agencies in relation to crime and disorder.

## **21 Duration of Licences**

21.1 Licences for sex establishments will be granted for up to one year.

## **22 Renewal of Licence**

22.1 It will be the applicant's responsibility to apply for the renewal of the licence. In order for the licence to continue to have effect during the renewal process, a valid application form together with the appropriate fee must be submitted before the current licence expires. Failure to apply prior to the expiry will result in the requirement to stop the activity under this type of licence until a new licence is granted. The Licensing Authority recommends applications to renew are submitted a minimum of 8 weeks prior to the expiry of the existing licence.

## **23 Appeals Process**

23.1 The Local Government (Miscellaneous Provisions) Act 1982, Paragraph 27, Schedule 3 permits appeals against the decision of the Council in relation to Sex Establishments. The Magistrates Court will hear appeals in the first instance. An appeal must be made within 21 days of the decision of the Licensing Authority to the Magistrates Court.

23.2 An appeal can be made in the following circumstances: -

- Refusal of an application for grant, renewal or transfer of a licence
- Refusal of an application to vary terms, conditions or restrictions on or subject to which any licence is held
- A grievance relating to any term, condition or restriction on or subject to which a licence is held
- Revocation of a licence

23.3 A person wishing to appeal against the Licensing Authorities decision is advised to seek independent legal advice.

## **24 Enforcement**

24.1 The Licensing Authority delivers a wide range of enforcement services in accordance with various policies, aimed at safeguarding the environment and the community and at providing a 'level playing field' on which businesses can fairly trade. The administration and enforcement of the licensing regime is one of these services. The Licensing Authority fully supports the principles of the Government's Enforcement Concordat designed to ensure effective and efficient public protection services. Specifically, the Licensing Authority is committed to accord with the principles of good enforcement practice by carrying out its regulatory functions in a fair, open and consistent manner.

24.2 The Enforcement Concordat is based on the principles that businesses should:

- Receive clear explanations from enforcers of what they need to do and by when
- Have opportunities to resolve differences before enforcement action is taken, unless immediate action is needed; and
- Receive an explanation of their rights of appeal

24.3 The Licensing Authority recognises the interests of both individual citizens and the requirements of businesses and will work closely with partners to assist licence holders to comply with the law. However, proportionate but firm action will be taken against those who commit serious offences or persistently break the law.

- 24.4 The Licensing Authority has established protocols with a number of enforcement agencies. These protocols provide for the targeting of resources towards premises and activities that require greater attention, while providing a lighter touch in respect of premises that are well operated.
- 24.5 Authorised officers may make regular visits to premises to check that conditions are being complied with and that the premises is operating as stated in their application.
- 24.6 Any breaches found in existing licensed premises may affect the renewal of the licence.
- 24.7 Authorised officers may make visits to premises advertising relevant entertainment to determine if they fall within the exemptions, hold a waiver issued by the council to determine that no breaches of the legislation is taking place.
- 24.8 Any breaches found in relation to holding activities that require a licence may have enforcement action taken, which may include prosecution.

## 25 Exchange of Information

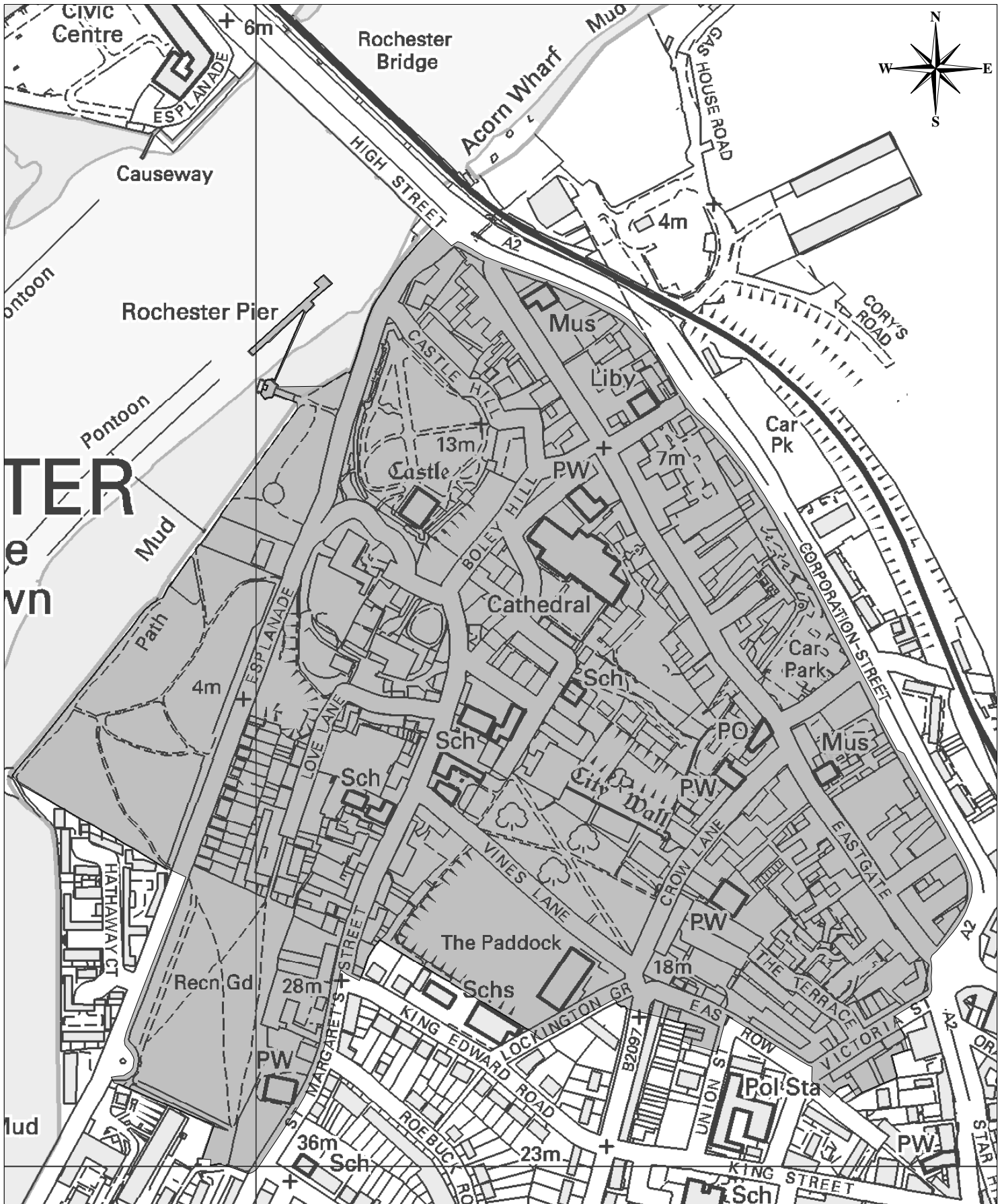
- 25.1 The Licensing Authority may from time to time exercise its power under section 115 of the Crime and Disorder Act 1998 to exchange data and information with the police and other partners to fulfil its statutory objective of reducing crime in the area.

## 26 Table of Delegations of Licensing Function in respect of Sexual entertainment Venues

MATTER TO BE DEALT WITH	FULL COUNCIL	SUB-COMMITTEE OF LICENSING & SAFETY COMMITTEE	<u>OFFICERS</u>
Final approval of SEV policies	X		
Fee Setting	X		
Determination of Application for a licence		Relevant representations received. Conditions proposed by officers not accepted by applicant	No relevant representations received. Suitable conditions agreed by applicant
Review of a licence		X	







## 5 - Historic Rochester Conservation Area. Designated 7/9/76

Note : This Conservation Area was previously known as Rochester City Centre Conservation Area. It was extended to include The Esplanade, Victoria Street and Churchfields Conservation Area In September 2010

