

Epsom & Ewell Borough Council

Sexual entertainment venue and sex establishment policy

1. Introduction

1.1 Epsom and Ewell is a small and modern borough with a population of around 79,000. The borough's historical roots are noteworthy and its future solid. Surrounded by award winning green spaces but with easy access to the city life of London, the area has been recognised as one of the best places to live and work in the UK.

1.2 Epsom & Ewell Borough Council's vision is ' Making Epsom and Ewell an excellent place to live and work' and we have four key priorities that support our vision:

Supporting our community

Supporting businesses and our local economy

Keeping our borough clean and green

Managing our resources

2. Definition of sex establishments

2.1 The policy applies to sex shops, sex cinemas and sexual entertainment venues.

2.2 Sex shops are premises whose business consists of, to a significant degree, the selling, hiring, exchanging, lending, displaying or demonstrating of sex articles or other things intended for the use in connection with, or for the purpose of stimulating or encouraging sexual activity or acts of force or restraint associated with sexual activity.

2.3 Sex cinemas are premises (except dwelling houses) which, to a significant degree, are used for the exhibition of moving pictures concerned primarily with;

- a) the portrayal of/primarily deal with/relate to/intend to stimulate or encourage sexual activity or acts of force or restraint associated with sexual activity or
- b) the portrayal of/primarily deal with/relate to genital organs or urinary or excretory functions.

A premises shall not be treated as a sex cinema if the premises are used for the exhibition of films under the use and authorization of the Licensing Act 2003.

2.4 A Sexual Entertainment Venue (SEV) 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.

2.5 Relevant entertainment is "any live performance or live display of nudity which is of such nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purposes of sexually stimulating any member of an audience (whether by verbal or other means)". An audience can consist of just one person (eg where the entertainment takes place in private booths).

2.6 Epsom & Ewell Borough Council considers that the definition of relevant entertainment

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applies, although not exclusively, to the following forms of entertainment:

- lap dancing
- pole dancing
- table dancing
- strip shows
- peep shows
- live sex shows.

3. Premises that are not sexual entertainment venues

3.1 Paragraph 2A(3) of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 sets out those premises that are not sexual entertainment venues. These are:

- sex shops and sex cinemas
- premises which provide relevant entertainment on an infrequent basis. These are defined as premises where:
 - a) no relevant entertainment has been provided on more than 11 occasions within a 12 month period
 - b) no such occasion has begun within a period of one month beginning with the end of the previous occasions; and
 - c) no such occasion has lasted longer than 24 hours
- other premises or types of performances or displays exempted by an order of the Secretary of State.

4. Waiver of the need for a sexual entertainment licence

4.1 The authority can grant a waiver for the requirement to hold a sexual entertainment licence if it considers that to require a licence would be unreasonable or inappropriate.

4.2 Waivers may be granted to;

- Book shops, including shops where sale of DVD's and CD's are present
- Sexual Health Clinics
- Cases where we consider that the requirement for a licence is borderline, where events are minor or temporary, or where clarity or regularisation is required.
- Educational Establishments as part of a recognised educational curriculum.

4.3 We will consider each application for a waiver on its individual merits, however, any establishment that would normally require a licence under the provisions of the 1982 Act is unlikely to be granted a waiver other than in exceptional circumstances.

An application for waiver shall be made in writing and shall contain the full name of the applicant; address of the applicant, the age of the applicant. If an application is made by a corporate body it shall contain the full name of the body, the address of its registered or principal office and the full names and private addresses of the directors or other persons responsible for its management.

The application shall also contain the full address of the premises and if the application is relating to a vehicle, vessel or stall shall state where it is to be used as a sex establishment.

4.4 In order for a waiver to be considered, an applicant must provide the basic information included in the application form, and any other information that we may reasonably require in order to make our decision.

4.5 A waiver may be for such period as the Licensing Authority thinks fit. Where a waiver is granted, we will give notice to the applicant stating the application has been granted. We may at any time give a person who would require a licence but for a waiver, notice that the waiver is to terminate, on a date not less than 28 days from the date on which we give the notice, or as may be specified in the notice.

5. New Applications

5.1 An application must be made by completing the prescribed form, giving the full address of the premises, the name, permanent address and age of the applicant or, where the applicant is a business, the name and registered or principal office address of the company and the names and private addresses of its directors or others responsible for the management of the company. The fee must be submitted with the application.

5.2 In addition to completing the prescribed form, applicants for a licence must also give public notice of the application by publishing an advertisement in a local newspaper that is circulated within the borough of Epsom and Ewell no later than seven days after the application is made, together with displaying a notice on the premises where it can be conveniently read by members of the public. The notice shall be displayed for a period of 21 days, beginning with the date the application was made. The authority will prescribe the notice, which will be size A3.

5.3 Where an application is submitted electronically, the Licensing Authority will serve the Chief Officer of Police a copy of the application within seven days of the application being submitted, where the application is not submitted electronically, the applicant must serve notice on the police no later than seven days after the date of application.

5.4 If a New application is not opposed, it shall be approved under delegated authority to relevant officers. All contested applications for renewal, as described in the Act shall be referred to the Licensing Hearings Panel for determination as per 7.1.

Variation of Licence

5.5 The application form, with relevant plans and fee follow the same criteria as set out in paragraph 5.1, 5.2 and 5.3. The fee must be submitted with the application.

Variation applications relate to proposed changes to the licensing hours and the floor area of premises covered by the existing licence. Any changes to the licensee require a Transfer of the licence.

5.6 If a Variation application is not opposed, it shall be approved under delegated authority to relevant officers. All contested applications for renewal, as described in the Act shall be referred to the Licensing Hearings Panel for determination as per 7.1.

Renewal Applications

5.7 When considering a renewal application the authority may take into account the criteria set out at paragraph 8.2 a) to d). The fee must be submitted with the application.

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- 5.8 If a renewal application is not opposed, it shall be approved under delegated authority to relevant officers. All contested applications for renewal, as described in the Act shall be referred to the Licensing Hearings Panel for determination as per 7.1.

Transfer of Licence

- 5.9 When determining an application for the transfer of a licence the authority will have regard to paragraphs 8.1 a) to e). The fee must be submitted with the application.
- 5.10 If a transfer application is not opposed, it shall be approved under delegated authority to relevant officers. All contested applications for renewal, as described in the Act shall be referred to the Licensing Hearings Panel for determination as per 7.1.

6. Objections

- 6.1 Objections can be made, in writing, within 28 days from the date of the application. Anyone is entitled to object. The objection should be relevant to the grounds set out in paragraph 8.2 below for refusing a licence. Moral grounds or values will not be considered relevant.

6.2 The Licensing Authority shall notify the applicant in writing of the general terms of the objections received within 28 days, though shall not, without the express consent of the objector, make public the personal details of the objector .

7. Hearings

- 7.1 Where objections are received, the application shall be referred to the Licensing Hearings Panel for determination, except where the objections received are frivolous or vexatious. Each application will be determined on its individual merit.
- 7.2 Where the Licensing Hearings Panel decides to refuse an application, the applicant will be provided with reasons for the decision in writing.
- 7.3 The Licensing Hearings Panel has the power to attach conditions to any grant which it deems necessary, non-discriminatory and proportionate.

8. Refusal of licence

- 8.1 A licence **must not** be granted:
- a) to a person under the age of 18
 - b) to a person who is for the time being disqualified due to having had a previous licence revoked in the area of the appropriate authority within the last 12 months
 - c) to a person, other than a body corporate, who is not resident in an EU state or was not so resident throughout the period of six months immediately preceding the date when the application was made
 - d) to a body corporate which is not incorporated in an EU state
 - e) 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

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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.

8.2 A licence **may be** refused on one or more of the following grounds:

- a) the applicant is unsuitable to hold a licence by reason of having been convicted of an offence or for any other reason
- b) if the licence were to be granted, renewed or transferred the business to which it relates would be managed or carried on for the benefit of a person, other than the applicant, who would be refused the grant, renewal or transfer of such a licence if he made the application himself
- c) the number of sex establishments, or sex establishments of a particular kind, in the relevant locality at the time of application is determined 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
 - ii. to the use to which any premises in the vicinity are put
 - iii. to the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.

9. Revocation of a licence

9.1 A licence can be revoked by the Licensing Hearings Panel at any time on any one of the grounds set out in 8.1 a to e, 8.2 a to d.

9.2 The Licensing Authority will not revoke a licence without the licence holder being given an opportunity to appear before the Licensing Hearings Panel.

9.3 Where a licence is revoked, the Council shall give the licensee a statement in writing of the reasons for its decision.

9.4 When the Licensing Authority revokes a licence, the decision does not take effect until the time for bringing an appeal has expired.

10. Cancellation of a Sexual Entertainment Venue Licence

10.1 The Licensing Authority may at the written request of the licence holder cancel the licence.

10.2 If a licence holder dies then the licence will have been deemed to have been granted to the licence holder's personal representatives and will remain in force for three months from the date of the licence holder's death and will then expire.

10.3 The Licensing Authority can, however, on the application of the licence holder's personal representatives extend the three month period if the Authority is satisfied that an extension is necessary for the purpose of winding up the late licence holder's estate. The Authority will only do so where there are no circumstances that make such an extension undesirable.

11. Relevant locality

- 11.1 When determining an application, the authority will have regard to the character of the relevant locality, the use of the premises in the vicinity and the layout, character, condition or location of the premises.
- 11.2 The authority shall have a general policy presumption against the granting of licences which are:
- a) adjacent to, or in the vicinity of places of worship
 - b) adjacent to, or in the vicinity of schools or other educational establishments
 - c) adjacent to, or in the vicinity of public buildings or community facilities
 - d) adjacent to, or in the vicinity of family residential areas
 - e) adjacent to, or in the vicinity of a family leisure area
 - f) in an area earmarked for regeneration of a particular kind.
- 11.3 Each application will be considered on its own merit taking into consideration the above, as the Licensing Authority consider there may be some suitable locations for sex establishment licences within the Borough.

12. Pre-application discussions

- 12.1 The authority recognises that a partnership approach is more likely to ensure the licensing objectives are achieved and maintained. Pre-application discussions between the applicants, the authority and the other relevant agencies will be encouraged so that the licensing process itself can be as trouble free as possible.

13. Licence conditions relating to a sexual entertainment venue

- 13.1 Should the authority decide to grant a licence, conditions will be imposed on the licence, such conditions may seek to restrict:
- the hours of opening and closing
 - displays and advertisements on or in sex establishments
 - the visibility of the interior of a sex establishment to passers-by
 - any change of use from one kind of sex establishment to another.

14. Duration of licences

- 14.1 Licences for sex establishments will usually be granted for one year. It may be possible to a licence for a shorter period in exceptional circumstances

15. Appeals

- 15.1 In the event that the Authority refuses an application for the grant, renewal, variation, transfer or revocation of a sex establishment licence, the applicant may appeal the decision to the Magistrates' Court, unless the application was refused under either of the reasons stated in paragraph 8.1 a) to d) (unless the applicant seeks to show that the criteria do not apply to him) or 8.2 c) or d) above, in which case the applicant can only challenge the refusal by way of judicial review. An appeal can also be made against the imposition of conditions.
- 15.2 Appeals must be made within 21 days from the date of written notification of the decision.

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