

SEX ESTABLISHMENT LICENSING POLICY

1. Introduction

- 1.1 The London Borough of Sutton 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 we can licence sex shops, sex cinemas, and sexual entertainment venues in the Borough. In this policy, we refer to these as “sex establishments” unless stated otherwise.
- 1.2 We do not take a moral stand in adopting this policy. We recognise that Parliament has made it lawful to operate a sex establishment, and that such businesses are a legitimate part of the retail and leisure industries. It is our role as a licensing authority to administer the licensing regime in accordance with the law.
- 1.3 Consultation on this policy was conducted with local residents; the statutory responsible authorities under the Licensing Act 2003; and holders of premises licences under the Licensing Act 2003 situated in the Borough.
- 1.4 In developing this policy, we took into account the legal requirements of the 1982 Act and our 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
- 1.5 This ‘Statement of Licensing Policy’ sets out the matters the Council will generally apply when making decisions on applications. It also sets out information about the application process, what is expected of applicants and how people can make objections about applications. It also sets out the types of controls that are available to the Council when decisions are made about licence applications.

2. London Borough of Sutton

- 2.1 The London Borough of Sutton is situated within Greater London which contains 32 London boroughs plus the City of London. The Council area has a population of 180,000 making it one of the smallest in Greater London in terms of population. It covers nearly 17 square miles and is mainly suburban with a more rural section of green belt land to the south of the Borough.
- 2.2 The London Borough of Sutton does not currently have any premises licensed as sex establishments.

3. Location of Licensed Premises

- 3.1 The Council acknowledges that a concentration of licensed premises in a particular area can result in a potential fear of crime, anti-social behaviour, noise pollution and other disturbance to residents.
- 3.2 Whilst the Council have not imposed a limit on the number of premises that may be licensed in any area, and whilst treating each application upon its own merits, the Council will not licence premises that are in the vicinity of: -
- (a) an area mainly comprising residential premises;
 - (b) a school, nursery or any other premises substantially used by or for children under 16 years of age;
 - (c) a park or other recreational area used by or for children under 16 years of age;
 - (d) a church or other place of religious worship.

4. Making an application

- 4.1 An application for the grant, renewal, transfer or variation of a licence must be made in writing to the Council. Application forms and public notices are available on the licensing page of the Council's web site.
- 4.2 In keeping with the Council's policy on the introduction of e-government, the Council consents to applications and other notices being given electronically. The address at which the Council will accept applications and notices is:-
- (a) by post/personal service to BDRS Licensing team Civic Offices, St Nicholas Way, Sutton SM1 1EA;
 - (b) by e-mail to licensing@sutton.gov.uk;
 - (c) on-line www.sutton.gov.uk
- 4.3 To apply for the grant of a sex establishment licence an applicant must submit to the Council: -
- a completed application form;
 - a plan to the scale of 1:100 of the premises to which the application relates;
 - the full application fee.
- 4.4 On submission of an application the applicant must then:
- display the prescribed notice on or near the premises for 21 days from the date the application is submitted;
 - advertise the application in a local newspaper at least once within seven days of submitting the application;
 - send a copy of the application and plan to the Licensing Office, Police Station, 6 Carshalton Road, Sutton, SM1 1BW within seven days of submitting the application to the Council.

- 4.5 The plan submitted must show the internal layout of the premises and identify the following:
- the extent of the boundary of the building, if relevant, and any external and internal walls of the building;
 - the location of points of access to and egress from the premises including the customer entrance/s;
 - the location of escape routes from the premises;
 - in a case where the premises includes a stage or raised area, the location and height of each stage or area relative to the floor;
 - in a case where the premises includes any steps, stairs, elevators or lifts, the location of the steps, stairs, elevators or lifts;
 - includes any room or rooms containing public conveniences;
 - the location and type of any fire safety and any other safety equipment.

5. Fees

- 5.1 Licence fees are set each year and details are available from the licensing team and on the website at www.sutton.gov.uk. There is a separate fee for applying for and renewing a licence and for transferring or making variations to a licence.
- 5.2 The fees are reviewed annually against any rise in the costs of administering the licence regime.
- 5.3 The application fee for a licence and the renewal of a licence includes an element to cover the Council's costs in enforcing the legislation; this element of the fee is refunded if the application is refused.

6. Advice and Guidance

- 6.1 The Council will seek to liaise with applicants and mediate between applicants and others who may make objections to achieve a satisfactory outcome for all involved wherever possible and where resources permit.
- 6.2 Where an applicant considers that mediation and liaison may be likely or probable, it is recommended that the applicant discuss the proposal with the licensing section and those from who they think objections are likely prior to submitting their application.

7. Grant, Renewal or Transfer of Licences

- 7.1 The council may grant to any applicant and renew a licence for the use of any premises as a 'sex establishment' subject to the standard licence conditions.
- 7.2 A licence will normally remain in force for one year unless it is surrendered or revoked. However in exceptional circumstances it may be appropriate to issue a licence for a shorter period as the Council sees fit.
- 7.3 The Council may, if they think fit, transfer a licence to any other person upon application by that person.

7.4 Where an application for renewal or transfer of a licence is made before the date of expiry of the existing licence, the licence shall remain in force until such time as the application has been determined.

8. Variation of licences

8.1 The holder of a licence may apply to the Council to vary the terms, conditions or restrictions on or subject to which the licence is held.

9 Objections

9.1 Unlike some other licensing regimes (such as for alcohol, entertainment, or gambling), a wide range of people can raise objections about sex establishment licences. The police are a statutory consultee for all applications. Objections may be made against an application by any person.

9.2 An objection must be in writing (emails are accepted) and state the grounds on which the objection is made. All objections should relate to the statutory grounds for refusal set out in the Act including:

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

9.3 Objections may only be made within the period of 28 days following the date on which the application was given to the Council.

9.4 The Council 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 officers. Where objections are rejected, the objector will be given a written reason.

9.5 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.

9.6 The Council will not consider any objection that does not contain the name and address of the person or organisation making it.

9.7 Where objections are made and not withdrawn, a hearing before a Licensing Sub-Committee will normally be held within 20 working days from the end of the objection period.

10. Determining applications

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

- the Local Government (Miscellaneous Provisions) Act 1982;
- any supporting regulations or guidance to the Act;
- this Statement of licensing policy.

10.2 This does not, however, undermine the rights of any person to apply for a licence and have the application considered on its individual merits, nor does it override the right of any person to make objections on any application where they are permitted to do so under the Act.

10.3 When determining applications, the Council will take account of any comments made by the chief officer of police and any objections made.

10.4 In all cases the Council will consider each application on its own merit.

11. Conditions

11.1 The Authority has adopted standard conditions for each type of licence under the legislation. These conditions will be attached to each licence issued. Following an objection a Licensing Sub-Committee may impose additional conditions or remove a standard condition where it is reasonable and necessary to do so.

11.2 No additional conditions will be imposed that cannot be shown to be necessary or proportionate.

11.3 The standard conditions for each licence type are available on the licensing page of the Council's web site at www.sutton.gov.uk.

12. Refusal of licences

12.1 Except where the Council are prohibited from granting, renewing, varying or transferring a licence, the Council will not refuse a licence without first: -

- Notifying the applicant or holder of the licence in writing of the reasons.
- Giving the applicant or holder of the licence the opportunity of appearing and making representations before a Licensing Sub-Committee.

13. Revocation of licences

13.1 The Council may revoke a licence on any of the grounds specified in the Act including:

- That the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason.
- That the business is 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.

13.2 The council will not revoke a licence without first giving the holder of the licence the opportunity of appearing and making representations before a Licensing Sub-Committee.

14. Cancellation of licences

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

15. Complaints

- 15.1 Where possible and appropriate the Council will notify licence holders of any concerns identified at the premises and of the steps needed to be taken to resolve those concerns.

16. Enforcement

- 16.1 This Authority will keep itself informed of developments as regards the work of the Better Regulation Executive and other central government bodies in its consideration of the regulatory functions of local authorities
- 16.2 We recognise that sex establishments are not generally a source of crime or disorder. We will adopt a light touch inspection regime, carrying out simple inspections of premises unless circumstances require otherwise.
- 16.3 Our approach to enforcement is set out in our enforcement policies which are available on request.