



## Licensing Committee

Members of the **Licensing Committee** of **Gravesham Borough Council** are summoned to attend a meeting to be held at the Civic Centre, Gravesend, Kent on **Monday, 16 September 2019 at 7.30 pm** when the business specified in the following agenda is proposed to be transacted.

S Walsh  
Service Manager (Communities)

### Agenda

#### Part A

#### Items likely to be considered in Public

1. Apologies for absence
2. Minutes (Pages 3 - 6)
3. Declarations of Interest
4. To consider whether any items in Part A of the agenda should be considered in private or the items in Part B in public.
5. Three-Yearly Review of SEV Policy (Pages 7 - 38)
6. Update on Licensing Web-Content and Forms  
ORAL  
REPORT
7. Pro-Active Review of Premises Licences with Outdated Embedded Conditions  
ORAL/PRESENTATION
8. Any Other Business which by reason of special circumstances the Chair is of the opinion should be considered as a matter of urgency.
9. Exclusion of the Public

To move, if required, that pursuant to Section 100A(4) of the Local

Civic Centre, Windmill Street, Gravesend Kent DA12 1AU

Government Act 1972 that the public be excluded from any items included in Part B of the agenda because it is likely in view of the nature of business to be transacted that if members of the public are present during those items, there would be disclosure to them of exempt information as defined in Part 1 of Schedule 12A of the Act.

## **Part B**

### **Items likely to be considered in private**

None.

### **Members**

Cllr Steve Thompson (Chair)

Cllr Jenny Wallace (Vice-Chair)

Councillors:           Derek Ashenden  
                              John Caller  
                              Emma Elliott  
                              Brian Francis  
                              Leslie Hoskins  
                              Nirmal Khabra  
                              Diane Marsh  
                              Lyn Milner  
                              Emma Morley  
                              Leslie Pearton  
                              Tony Rana  
                              Denise Tiran  
                              Frank Wardle

Substitutes:            To be notified

**Licensing Committee****Wednesday, 5 December 2018****7.30 pm****Present:**

Cllr Sara Langdale (Chair)

Councillors: Gurjit Kaur Bains  
Lesley Boycott  
Gurdip Ram Bungar  
John Caller  
Harold Craske  
Brian Francis  
Rob Halpin  
Gary Harding  
Karen Hurdle  
Lyn Milner  
Leslie Pearton  
Jenny Wallace  
Michael Wenban

Elizabeth Thornton Service Manager (Property and Regulatory)  
Mark Lees Regulatory Services Manager  
Chris Wakeford Committee Services Officer, Scrutiny (minutes)

**67. Apologies**

An apology for absence was received from Cllr Greta Goatley and Cllr Steve Thompson; Cllr Harold Craske and Cllr Rob Halpin appeared as their respective substitutes.

**68. Minutes**

The minutes of the meeting held on 4 September 2018 were signed by the Chair.

**69. Licensing Act 2003 - Revision of Statement of Licensing Policy**

The Regulatory Services Manager presented Members with feedback on the responses received during the public consultation on the review of the Gravesham Borough Council Statement of Licensing Policy under the Licensing Act 2003.

Evaluation of each response and a recommendation as to whether or not to amend the policy statement was conducted by the Licensing Officer and Regulatory Services Manager. Recommendations have been entered onto a grid which is attached at Appendix 3 to the report.

The Regulatory Services Manager highlighted the main amendments to the Committee, as detailed in Appendix 3 to the report.

**Resolved** that the Committee noted the recommendations shown in Appendix 3 and recommended that these be incorporated in the Statement of Licensing Policy to be put before the Council for approval on 18 December 2018.

#### **70. Gambling Act 2005 - Revision of Statement of Licensing Policy**

The Regulatory Services Manager presented Members with feedback on the responses received during the public consultation on the review of the Gravesham Borough Council Statement of Licensing Policy under the Gambling Act 2005.

Evaluation of each response and a recommendation as to whether or not to amend the policy statement was conducted by the Licensing Officer and Regulatory Services Manager. Recommendations have been entered onto a grid which is attached at Appendix 3 to the report.

The Regulatory Services Manager highlighted the main amendments to the Committee, as detailed in Appendix 3 to the report.

Following a question from the Committee, The Regulatory Services Manager explained that an extensive list of all the consultees had been circulated to Members of the Committee following the last meeting. The consultees had all been contacted and provided with equal opportunity to engage in the consultation.

The Regulatory Services Manager reminded Members that, at its meeting on 8 December 2015, Full Council approved a 'no-casinos' resolution as allowed under Section 166 of the Gambling Act 2005. On 18 December 2018, Council will need to decide whether to ratify the 'no-casinos' resolution for a further three years so that it can be included in the new policy.

**Resolved** that:

- The Committee noted the recommendations shown in Appendix 3 to the report and recommended that these be incorporated in the Statement of Licensing Policy to be put before the Council for approval on 18 December 2018
- The Committee recommended that Full Council ratify the existing no-casinos resolution for a further three years.

#### **71. Minutes of the meeting of the Licensing Panel held on Thursday, 30 August 2018**

The Committee considered and noted the Minutes of the meeting of the Licensing Panel held on Wednesday, 30 August 2018.

#### **72. Minutes of the meeting of the Licensing Panel held on Wednesday, 31 October 2018**

The Committee considered and noted the Minutes of the meeting of the Licensing Panel held on Wednesday, 31 October 2018.

**Close of meeting**

The meeting ended at 7.43 pm

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**Classification:** Public

**Key Decision:** No

### **Gravesham Borough Council**

**Report to:** Licensing Committee

**Date:** 16 September 2019

**Reporting officer:** Regulatory Services Manager

**Subject:** Review of Statement of Licensing Policy for Sex Establishments and Sexual Entertainments Venues

**Purpose and summary of report:**

1. To present to Members with a proposed draft Statement of Licensing Policy for Sex Establishments and Sexual Entertainments Venues.

**Recommendations:**

1. Members to approve and adopt the draft Gravesham BC Statement of Licensing Policy for Sex Establishments and Sexual Entertainment Venues (as attached at Appendix 2 to this report )
2. The revised policy to be published and to become effective as from 1 April 2020

**1. Background**

- 1.1 The powers the Council has to regulate sex establishments are contained in Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982. In order to use these powers a local authority has to adopt them through a prescribed process. Gravesham formally adopted the provisions on 20 December 1982.
- 1.2 Section 27 of the Policing and Crime Act 2009 introduced a new category of sex establishment called "sexual entertainment venues". In order to implement this change a local authority has to adopt the legislation although it is not mandatory. Gravesham Borough Council chose to adopt the provisions on 5 October 2010 and they became effective as of 1 April 2011.
- 1.3 There are currently no sex establishments or sexual entertainment venues in the borough and nor have any applications been received for the same.
- 1.4 At their meeting of 5 October 2010, Council delegated sex establishment licensing to the Licensing Committee established for the purposes of the Licensing Act 2003.

## **2. Statement of Licensing Policy**

- 2.1 There is no statutory requirement to have a licensing policy for sex establishments including sexual entertainments venues; however it is considered best practice. A modern, effective policy document ensures that the trade and public alike have a document that fully explains the elements of the regulatory process which includes the principles to be applied when considering applications for such premises. It also ensures consistency of approach by officers thus ensuring fairness and transparency for both the trade and public alike. Gravesham Borough Council therefore initially developed a policy that was adopted by Licensing Committee on 17 October 2010 and which became effective on 1 April 2011.
- 2.2 The policy was formulated working in close conjunction with other local authorities in Kent via the mechanism of the Kent and Medway Regulatory Licensing Steering Group thus promoting consistency to the benefit of licensees, potential licensees, businesses and residents alike. The other benefit is to minimise the risk of judicial review of individual policies.

## **3. Draft Statement of Licensing Policy**

- 3.1 Although there is no statutory requirement to undertake a review of the policy statement, there is a commitment set out in the policy statement to do so at least every three years to ensure the policy remains up to date and relevant.
- 3.2 Since the last policy revision, there have been no changes to legislation or statutory guidance. Consequently, no changes are proposed and it is therefore considered that there is no need for a public consultation.
- 3.3 As with the existing policy, we propose setting no numerical limits for Sexual Entertainments Venues within Gravesham. Instead each application would be judged on its own merits but taking into account the various criteria laid out in the policy document. In this way each application will be considered as to whether it is suitable given the nature of the particular locality in question.
- 3.4 As the policy is not a statutory requirement there is no need for it to be formally adopted by Council following consideration by Licensing Committee.
- 3.5 The draft statement of licensing policy is attached as Appendix 2.

## **4. Recommendation**

- 4.1 Members are asked to approve the draft Gravesham BC Statement of Licensing Policy for Sex Establishments and Sexual Entertainments Venues so that it can become effective from 1 April 2020.

## **5. BACKGROUND PAPERS**

- 5.1 None. Anyone wishing to inspect background papers should, in the first place, be directed to Committee & Electoral Services who will make the necessary arrangements.



IMPLICATIONS	APPENDIX 1
<b>Legal</b>	The relevant legislation in relation to the regulation of sex establishments is Sch.3 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended).
<b>Finance and Value for Money</b>	There are no direct financial implications for Gravesham Borough 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
<b>Risk Assessment</b>	Whilst each individual application will be judged on its own merits a policy ensures a transparent and consistent approach to licensing that would reduce the opportunity for challenge through the courts. Challenges to a particular decision are more likely to fail if we can demonstrate that we have adhered to our published policy and there is no justifiable reason to depart from it. Any departure from the policy will be based on material evidence and documents giving clear and compelling reasons for doing so.
<b>Data Protection Impact Assessment</b>	<i>A data protection impact assessment (DPIA) should be carried out at the start of any major project involving the use of personal data or if you are making a significant change to an existing process.</i>
	<p>a. Does the project/change being recommended through this paper involve the processing of <a href="#">personal data</a> or <a href="#">special category data</a> or <a href="#">criminal offence data</a>? A definition of each type of data can be found on the Information Commissioner's Office website via the above links. No</p>
	<p>b. If yes to question a, have you completed and attached a DPIA including Data Protection Officer advice? N/A</p>
	<p>c. If no to question b, please seek advice from your nominated DPIA assessor or the Information Governance Team at <a href="mailto:gdpr@medway.gov.uk">gdpr@medway.gov.uk</a>. N/A</p>
<b>Equality Impact Assessment</b>	<p>a. Does the decision being made or recommended through this paper have potential to cause adverse impact or discriminate against different groups in the community? If yes, please explain answer. No</p>
	<p>b. Does the decision being made or recommended through this paper make a positive contribution to promoting equality? If yes, please explain answer. No</p>
	<i>In submitting this report, the Chief Officer doing so is confirming that they have given due regard to the equality impacts of the decision being considered, as noted in the table above</i>
<b>Digital and website implications</b>	The Digital Team would be asked to upload a copy of the revised policy on the council's website and update any associated web-content.
<b>Safeguarding children and vulnerable adults</b>	The local Safeguarding Children's Board is named within the Policy as a consultee and 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 is referred to in the Policy as one of the specific matters to which the authority will have consideration in deciding whether or not to grant an application.

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# **Statement of Licencing Policy for Sex Establishments & Sexual Entertainment Venues**

**2020-2023**

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## 1. Introduction to Gravesham

- 1.1 Gravesham Borough Council is situated in the County of Kent, which contains 12 District Councils and 1 Unitary Authority.

The Council maintains a 'Community Profile' in order to provide an outline of the Gravesham borough and an overview of the local community.

The bi-annually reviewed profile outlines various statistics that have been reached based on the research and analysis of key data information that has been collected from a wide range of stakeholders including central and local government, partner organisations and a series of independent bodies.

Gravesham's Community Profile is available to view on the council's website <http://www.gravesham.gov.uk/> by searching for 'Community Profile' or directly by visiting:

<http://www.gravesham.gov.uk/home/about-the-council/policies-strategies-open-data/transparency-and-open-data/community-profile>

## 2. Overview

- 2.1 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.
- 2.2 On 20 December 1982 Gravesham Borough Council adopted Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 to licence and regulate sex establishments; namely sex shops and sex cinemas.
- 2.3 On the 5 October 2010, the Council also adopted Section 27 of the Policing and Crime Act 2009, which extends the provisions of Schedule 3 to the 1982 Act by introducing a new category of sex establishments called sexual entertainment venues.
- 2.4 The first appointed day of transition was 1 April 2011.
- 2.5 By adopting schedule 3, as amended, Gravesham Borough Council as the licensing authority is able to discharge its functions within the authority's area in relation to the following :
- sexual entertainment venues (providing relevant entertainment)
  - sex shops
  - sex cinemas
- 2.6 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. 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.
- 2.7 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.

- 2.8 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.
- 2.9 If a local authority has not made a resolution to adopt the provisions introduced by section 27 Policing and Crime Act 2009 within one year of the Act coming into force it must, as soon as is reasonably practicable, consult local people about whether they should make such a resolution. The purpose of this duty is to ensure that local authorities consider the views of local people whether, for whatever reason; they have not adopted the provisions. This duty should be seen to be an extension to existing general duties on local authorities to consult and involve local people when exercising their functions.
- 2.10 The Licensing Authority have also taken into consideration the provisions of Section 17 Crime and Disorder Act 1998 that 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.
- 2.11 At the time of revising this policy, the council is not aware of any evidence of any crime or disorder directly attributable to the operation of such establishments in the Gravesham area.
- 2.11 This policy helps to promote efficient and effective approaches to regulatory inspection and enforcement which is in compliance with:
- a) The Regulator's Code (set out under the Legislative and Regulatory Reform Act 2006) not to impede progress by the regulations we set out and to particularly consider the impact of regulations on small businesses: and
  - b) 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
    - vii) Transparent and accessible

In certain instances we may conclude that a provision in the policy is either not relevant or is outweighed by other provisions. We will ensure that any decision to depart from the policy will be properly reasoned, based on material evidence and documented giving clear and compelling reasons for doing so.

- 2.12 The Council sees the licensing process as an integral part of its approach to achieving its strategic and corporate objectives which can be viewed on our website at:

<http://www.gravesham.gov.uk/home/about-the-council/policies-strategies-open-data/corporate-plan>

## 3. Policy

- 3.1 Guidance from the Home Office advises that, while local authorities are not required to publish a licensing policy relating to sex establishments they can do so if they wish as long as it does not

prevent any individual application from being considered on its merits at the time the application is made.

3.2 The purpose of this policy is to:

- Set out the expectations of the local authority in meeting the requirements of the legislation
- The process for making an application
- The process the Council will follow in considering and determining an application.
- Assist those making representations in respect of an application to make properly directed and evidenced representations

3.3 Notwithstanding this policy, each application will be assessed on its individual merit and granted or refused purely on that merit. Whilst this policy will set out the broad scope of expectations, it should not be seen as restricting or predetermining the outcome of any application or representation in respect of the licensing of any premises.

3.4 Although the existence of a policy is not a statutory requirement it is considered best practice and also that a modern, effective policy document will ensure that the trade and the public alike will have a document that fully explains the elements of the regulatory process which includes the principles to be applied when considering applications for sex establishments, the application process itself and the grounds for objection, refusal, the hearings procedure and the grounds for appeal. Likewise it is considered best practice that a policy document is kept under regular review and in this instance this policy will be reviewed at least every three years or sooner if there is any reason for doing so.

## 4. Functions

4.1 Under section 101 of the Local Government Act 1972, local authorities may arrange for the discharge of its responsibilities by a committee or sub-committee of the appropriate authority.

4.2 An authority may delegate its functions to those who sit on its licensing committee that was 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 not be acting as the licensing committee under the Licensing Act 2003 and would instead be exercising their functions under Schedule 3.

## 5. Consultations

5.1 The Policing and Crime Act 2009 is not prescriptive about how local authorities should consult with local people in order to comply with this duty. The Council 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 Council will seek to make any relevant information available to local people in order to inform them of the legislation, criteria and outcomes.

5.2 For the purpose of this duty 'local people' are defined as anyone who lives or works in the local authority area.

5.3 Where appropriate, the council 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 in holding activities in the future.
- A number of enforcement agencies such as Police and Fire Authority.
- Local people and businesses in Gravesham who are near to existing premises.
- Advertise the consultation on the Councils internet and available at Council contact points.

5.4 A full list of those consulted will be displayed.



## 6. Definitions of venues that require licensing

- 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 (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 This list is however not exhaustive and local authorities 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 occasions 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 occasions 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, e.g. 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 in order to assist the Licensing Authority to prove or refute any allegation of unlicensed events, 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
  - 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 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 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 planning process.
- 12.2 Operators and persons making representations should be aware that in many cases there would be a need to obtain planning permission before a premise may be used for the purposes relevant to this policy. The Licensing Authority will not normally consider planning matters such as 'need' in determining a licence application as this is more appropriately dealt with by Planning.
- 12.3 Applicants are advised to seek independent 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 Local 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 Paragraph 12 (3) (c) and 12 (3) (d) of Schedule 3 allow appropriate authorities 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 Council 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 Council 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 not to set specific relevant localities in respect of each type of sex establishment.
- 14.7 In determining the relevant locality each case will be decided on its merit having consideration to the individual circumstances of the application.
- 14.8 In defining the location for sex entertainment venues the Licensing Authority is mindful of the potential for crime and disorder where such premises do not have robust management systems in place.
- 14.9 Where there is a high volume of other premises licensed under the Licensing Act 2003, there is a potential for conflict at the entrance to sex entertainment venues originating, not within the premises, but with potential customers who maybe refused entry. The location of sex entertainment venues near to licensed premises under the Licensing Act 2003 will be considered to determine if there is an impact to crime and disorder.

14.10 In licensing of 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

14.11 When considering an application for the grant, renewal, variation or transfer of a licence the Council 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.

14.12 Sex establishments should not be functionally visible to passers by on retail thoroughfares or pedestrian routes. In more sensitive locations applicants should consider whether it would be 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 entertainment venue 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 Local Authority can grant a waiver if they consider that to require a licence would be unreasonable or inappropriate. Where a waiver is granted the appropriate authority should inform the applicant that a waiver has been granted. The waiver may last for such a period that the appropriate authority think fit, but can be terminated by the appropriate 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 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 shops, sex cinemas and sex entertainment venues must be made on the prescribed form and accompanied by the relevant fee which will be published on the council's website.
- 16.4 A site plan of radius of  $\frac{1}{4}$  of a mile (scale 1:500) clearly outlining the locality in which the proposed sexual entertainment venue will be situated. The plan should clearly identify the proposed sexual entertainment venue marking the site/premises boundary with a red line and define other types of businesses and residential properties around the site as listed at 14.10.
- 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 sexual entertainment venue. All areas requiring to be licensed should be outlined in red on the plan. If a part of the premises is within a premises licensed 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 must show the position of all CCTV cameras and shall be with the approval with Kent Police and 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 it can be conveniently read by members of the public. 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 Ebbsfleet Police Station no later than 7 days after the date of application.
- 16.12 On determining an application the council shall have regard to all relevant considerations, including any comments made by:
- Police
  - Fire Authority
  - Planning and Building Control
  - Gravesham Safeguarding Children Board
  - UK Border Agency
  - Environmental Health (Environmental Protection and Food and Safety)

- Ward Councillors
- Interested Parties (local residents/businesses)
- Any other persons considered relevant

- 16.13 Officers from any of these authorities may inspect the premises to ensure that the required technical standards are met under a variety of legislation.
- 16.14 The council 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 on an application

- 17.1 Any person can object to an application
- 17.2 Objections must not be based on moral grounds/values. Any objections on this basis will be refused or disregarded if presented with other reasons for objection.
- 17.3 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 general terms of the objection.
- 17.4 The general terms of any objection must be provided to the applicant prior to the determination of the application.
- 17.5 The report to the relevant Sub-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 (Appendix A) in respect of each type of licensed premises.
- 18.2 Whilst these conditions form the basis for promoting the efficient operation of premises, 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 and 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 merit.
- 18.3 Whilst conditions may be prescribed on any matter 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
  - Minimum distance between audience and performers
  - The control of access to changing room facilities
  - The control of private viewings
- 18.4 The authority may specify other conditions specific to individual premises dependant on the type of activity undertaken. Such condition may not be listed in the pool of conditions.

### 19. Hearings

- 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 Licensing sub-committee that is responsible for determining the application.
- 19.2 Whilst Schedule 3 does not make explicit provision for objectors to be heard, this Council believes it right to offer an oral hearing to objectors. This does, however remain within their discretionary powers. 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 licensing sub-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 Licensing Sub-Committee will consider the applicants presentation, the Council'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 Sub-Committee for consideration prior to the hearing and in special circumstances with approval of all parties 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 prior to the publication of the agenda papers. At least one copy of the video evidence shall be supplied to the licensing authority prior to the hearing to make sure suitable equipment is available so that the evidence can be viewed at the hearing.
- 19.8 Officers will 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 Sub-Committee 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 to allow for the Licensing Sub-Committee to come to a decision on the application.
- 19.20 When a decision is reached the Licensing Sub-Committee will inform the applicant and relevant parties of their decision and the reasons for coming to it.
- 19.21 The decision of the Licensing Sub-Committee will be confirmed, in writing, to the applicant within 5 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 appropriate 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 local authority will give consideration to:

**a) Unsuitability of applicant**

In determining the suitability or otherwise of an applicant the local 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
- 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.

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

The local authority takes a serious view of any application that seeks to subvert the underlying principals 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.

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

The local authority has not set a limit as to the number of establishments of a specific type. In deciding whether to allow the application the authority will have consideration to:

- 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.

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

In deciding whether the grant of a is appropriate the local 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 14.9
- 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.

### 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.

### 23 Appeals

23.1 The Local Government (Miscellaneous Provisions) Act 1982, Section 27 permits appeals against the decision of the Council in relation to sexual entertainment venues. Appeals will be heard in the first instance by the Magistrates Court. An appeal must be made within 21 days of the decision of the Licensing Sub-Committee 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 There is no right of appeal for objectors.

23.4 There is no right of appeal against refusal on the ground that there are sufficient sex establishments in the locality or that to grant would be inappropriate having regard to the character of the locality, use of premises in the vicinity and the layout, character, condition and location of the premises.

23.5 A person wishing to appeal against the council decision is strongly advised to seek assistance from a solicitor prior to commencing action in a Court of Law.

### 24 Enforcement

24.1 The Council delivers a wide range of enforcement services 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 Council is aware of its duty to have regard to the Regulators' Code in order to promote proportionate, consistent and targeted regulatory activity through the development of transparent and effective dialogue and understanding between regulators and those we regulate.

24.2 The Regulators' Code is based on the principles that regulators should:

- carry out their activities in a way that supports those they regulate to comply and grow
- provide simple and straightforward ways to engage with those they regulate and hear their views
- base their regulatory activities on risk
- share information about compliance and risk
- ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply
- ensure that their approach to their regulatory activities is transparent

24.3 The Council 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 Council 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 are operating as stated in their application.
- 24.6 Any breaches found in existing licensed premises may impede the renewal of the licence.
- 24.7 Authorised officers will make visit 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 will have enforcement action taken this may include prosecution.



## **APPENDIX A - MODEL CONDITIONS RESTRICTIONS RELATING TO SEX ESTABLISHMENTS**

These regulations apply to the licences for sex establishments granted, renewed or transferred by the Council under the provisions of schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982.

### **Definitions**

In these regulations, save where the context otherwise requires, the following expressions shall have the following meanings:-

- i) "Sex Establishments", "Sex Cinema", "Sex Shop", "Sex Article", "Sexual Entertainment Venues" and "relevant entertainment and nudity" shall have the meanings ascribed to them in the Third Schedule of the Local Government (Miscellaneous Provisions) Act 1982 as amended.
- ii) "Premises" means a building or part of a building and any forecourt, yard or place of storage used in connection with a building or part of building which is subject of a licence for a sex establishment granted under the Third Schedule.
- iii) "Approval of the Council" or "Consent of the Council" means the approval or consent of the Council in writing.
- iv) "Approved" means approved by the Council in writing.
- v) "The Council" means the Gravesham Borough Council.

### **General**

The following terms, conditions and restrictions are applicable to sex establishment licences. In the event of a conflict between these and any special conditions contained in a licence relating to a sex establishment the special condition shall apply.

The grant of a licence for a sex establishment shall not be deemed to convey any approval or consent which may be required under any other enactment by law or regulation other than the Third Schedule to the Local Government (Miscellaneous Provisions) Act 1982 as amended.

### **Sex Shops**

#### **Times of opening**

##### Condition 1

Except with the previous consent of the Council the premises shall not open to the public before 09.00 and shall not be kept open after 23.00.

#### **Conduct and Management of Premises**

##### Condition 2

Where the Licensee is a body corporate or an unincorporated body, any change of director, company secretary or other person responsible for the management of the body is to be notified in writing to the Council within 14 days of such change and such written details as the Council may require in respect of any new director, secretary or manager, are to be furnished within 14 days of a request in writing from the Council.

##### Condition 3

The Licensee or some responsible person nominated by him in writing for the purpose of managing a sex establishment in his absence and whose details (including photographs) have been supplied to and approved in writing by the Council, shall be in charge of and upon the premises during the whole time they are open to the public.

##### Condition 4

The holder of the licence shall keep exhibited in a suitable place within the shop premises, so that it can be easily seen by premises users, a copy of the licence and any conditions and regulations made and they shall be readily available for inspection by any of the following officers;

- a) Duly authorised officer of Gravesham Borough Council
- b) Police Officer; and
- c) Officer of the Fire Authority

### Condition 5

The name of the person responsible for the management of the sex establishment being either the Licensee or a manager approved by the Council, shall be prominently displayed within the sex establishment throughout the period during which he is responsible for its conduct.

### Condition 6

The Licensee shall retain control over all portions of the premises and shall not let, licence or part with possession of any part of the premises.

### Condition 7

The Licensee shall maintain good order in the premises at all times and shall ensure that persons entering or leaving the licensed premises conduct themselves in an orderly manner and do not in any way cause annoyance to residents and persons passing by.

### Condition 8

No person under the age of 18 shall be permitted entry to the premises or be employed in the business of sex establishments.

### Condition 9

The Licensee shall ensure that the public are not admitted to any part or parts of the premises other than those which have been approved by the Council.

### Condition 10

The Licensee shall ensure that no part of the premises shall be used by prostitutes (male or female) for soliciting or for any immoral purpose.

### Condition 11

Neither the Licensee nor any employee or other person shall seek to obtain custom for the sex establishment by means of personal solicitation outside or in the vicinity of the premises.

### Condition 12

The Licensee shall ensure that during the hours the sex establishment is open for business, every employee wears an identifying badge indicating his name and that he is an employee.

### Condition 13

No refreshment of any kind shall be provided nor any consumed on the licensed premises other than for any bona fide staff in a part of the premises not open to the public.

## **Use of the Premises**

### Condition 14

The sex shop shall be conducted primarily for the purpose of the sale of goods for retail and change of use of any portion of the premises from that licensed by the Council, shall not be made until the consent of the Council has been obtained thereto.

### Condition 15

No change from a sex cinema or sexual entertainment venue to a sex shop or from a sex shop to a sex cinema or sexual entertainment venue shall be effected without the consent of the Council and neither sex articles nor other things intended for use in connection with, or for the purpose of stimulating or encouraging sexual activity and acts of force or restraint which are associated with sexual activity shall be sold, hired, exchanged, loaned or demonstrated in a sex cinema or sexual entertainment venue.

## **Goods available in sex establishments**

### Condition 16

All sex articles and other things displayed for sale, hire, exchange or loan within the sex shop, shall be clearly marked to be shown to the persons who are inside the sex shop the respective charge being charged.

### Condition 17

All printed matter for sale, hire, exchange or loan shall be available for inspection prior to purchase, and a notice to this effect is to be prominently displayed within the sex establishment.

### Condition 18

No film or video shall be exhibited, sold or supplied unless it has been passed by the British Board of Film Classification or such other authority performing a similar scrutinising function as may be notified to the licensee by the Council and bears a certificate to that effect and is a reproduction authorised by the owner of the copyright of the film or video so certified.

- a) The screen of any equipment used should be no more than 12 inches and placed in such a position so as not to be visible to the public from outside the premises.
- b) The screen shall be placed in such a position approved by the Council.
- c) Only videos of clips of other videos for advertising purposes shall be shown and no individual clip shall be shown for longer than three minutes.
- d) No film or video will be shown in its entirety
- e) Films will not be shown at the customer's request.
- f) All trailers shown are to be approved by the British Board of Film Classification.
- g) A warning notice will be placed on the screen stating 'For staff use only' or 'No customers allowed to operate'.

## **External appearance**

### Condition 19

No advertisement, words, letter, model, sign, placard, board, notice, device, representation, drawing, writing or any other matter or thing (whether illuminated or not) shall be exhibited so as to be visible from the outside of the premises except:- (i) Any notice of a size and in the form approved by the Council which is required to be displayed so as to be visible from outside the premises by law, or by any condition of a licence by a Council.

Such display, advertisement, word, letter, model, sign, placard, notice, device, representation, drawing, writing or any other matter or thing (whether illuminated or not) as shall have been approved by the Council.

### Condition 20

A prominent clear notice shall be displayed at each entrance to the premises advising customers no person under 18 will be admitted and they may be asked to produce evidence of their age.

Suggested notice "NO PERSONS UNDER 18 CANNOT BE ADMITTED TO THESE PREMISES".

### Condition 21

The entrance doors to the premises shall be obscured, screened or arranged so as to effectively prevent the interior of the premises being seen by passers by,

### Condition 22

The obscuration, screening or other arrangements shall be to the satisfaction of and approved by the Council.

## **State, Condition and Layout of the Premises**

### Condition 23

The premises shall be maintained in good repair and condition throughout, including the front fascia of the shop to the satisfaction of the Council.

### Condition 24

Lighting in all parts of the premises shall be to a level approved by the Council and shall be in operation continuously during the hours when the sex establishment is open to the public.

### Condition 25

The number, size and position of all doors or openings provided for the purpose of the ingress and egress of the public shall be approved by the Council and shall comply with the following requirements:-

- i) All such doors or openings approved by the Council shall be clearly indicated on the inside by the word "Exit" or "Fire Exit".
- ii) Doors and openings that lead to parts of the premises to which the public are not permitted to have access, shall have notices placed over them marked "Private – no access to the public".
- iii) Save in the case of emergency no access shall be permitted through the premises adjoining or adjacent.

### Condition 26

The external door/doors to the sex establishment shall be fitted with a device to provide for their automatic closure and such device shall be maintained in good working order.

### Condition 27

Alterations or additions either internal or external, whether permanent or temporary to the structure, lighting or layout of the premises, shall be made except with the prior approval of the Council.

### Condition 28

All parts of the premises shall be kept in a clean and wholesome condition to the complete satisfaction of the Council.

## **Safety**

### Condition 29

The Licensee shall take all reasonable precautions for the safety of the public and employees.

### Condition 30

Gravesham Borough Council reserves the right after grant, renewal or transfer of this licence to at any time dispense with or modify or relax any of these terms, conditions and restrictions and to make such additional terms, conditions and restrictions as they may deem requisite to meet the circumstances of any particular case.

### Condition 31

The licence may be revoked by Gravesham Borough Council if at any time the holder is convicted of any offence of using the licensed premises, or other premises for which a similar licence has been granted other than in accordance with the terms, conditions or restrictions of the licence or is convicted of any offence under any enactment defined in Paragraph 1 of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982.

## **Sex Cinemas**

### **Film Categories**

#### Condition 1

The categories U, PG, 12, 15, 18 and restricted 18 have the following effect:

- U – Universal – suitable for all
- PG – Parental Guidance – some scenes may be unsuitable for young children
- 12 – Passed only for persons of 12 years and over
- 15 – Passed only for persons of 15 years and over
- 18 – Passed only for persons of 18 years and over
- Restricted 18 – Passed only for persons of 18 or over who are members (or their guests) of a properly constituted club

## **Unclassified Films**

### Condition 2

The licensees must notify the Council in writing no later than twenty-eight days prior to exhibiting any other film that has not been classified as specified in the film categories. Such a film may only be exhibited if the Council gives written consent prior to the event and must comply in accordance with the terms of any such consent given.

## **Restricted Films**

### Condition 3

Films restricted 18 (R18) may be shown at the premises only with the Council's prior written consent and in accordance with the terms of any such consent.

## **Persons Under 18**

### Condition 4

No person appearing to be under the age of 18 shall be admitted to any part of the programme and the licensee shall display in a conspicuous position at each entrance to the premises a notice in clear letters in the following terms:

PERSONS UNDER 18 CANNOT BE ADMITTED TO THIS CINEMA FOR ANY PART OF THE PROGRAMME

### Condition 5

No persons under 18 years of age shall be employed in any capacity at the premises in an area operating as a sex cinema club.

## **Advertising**

### Condition 6

No advertisement displayed at the premises where a film is to be exhibited shall depict any scene or incident from a film that has been classified by the British Board of Film Classification, Board of Film Censors or approved for exhibition by the Licensing Authority.

### Condition 7

The licensee shall display in a conspicuous position, to the satisfaction of the Council at each entrance to the premises, during the whole time the public are admitted to the premises and so as to be easily seen and read by the public, a timetable of the films on exhibition.

### Condition 8

When the programme includes a film restricted 18, the licensee shall display in a conspicuous position at each entrance to the premises a notice in clear letters in the following terms:

CINEMA CLUB – MEMBERS AND GUESTS ONLY. PERSONS UNDER 18 CANNOT BE ADMITTED TO THIS CINEMA FOR ANY PART OF THE PROGRAMME.

### Condition 9

The entrance doors to the premises shall be obscured, screened or arranged so as to effectively prevent the interior of the premises being seen by passers by.

The obscuration, screening or other arrangements shall be to the satisfaction of and approved by the Council.

**Restricted 18**

Condition 10

A register of all members and all visitors' books of their guests shall be available for immediate inspection by authorised officers of the Council during any performance or at any other reasonable time.

Condition 11

Tickets shall in no circumstance be sold to persons other than to members.

**Membership**

Condition 12

The club rules must be submitted to the council 14 days before the club commences operation and notice of all the rule changes shall be given to the Council within 14 days of the change.

Condition 13

Membership shall be open to persons of both sexes not less than 18 years of age

Condition 14

Applications for membership, including both name and address, shall be in writing, signed by the applicant and if deemed necessary such applicant shall provide satisfactory references and proof of age.

Condition 15

No persons shall be admitted to membership until the expiration of at least 24 hours after such written application has been approved by the management of the club.

Condition 16

New members shall be supplied with a personal copy of the club rules before being admitted to membership and be given a copy of any rule changes within 14 days of the change.

Condition 17

An annual subscription shall be fixed for the club and shall run for 12 months from the date of registration. Membership may be renewed annually at the subscription for the time being in force, but the management may refuse to renew any membership without assigning reason for such refusal.

Condition 18

Members shall be entitled on any day to bring no more than one guest to accompany the member and the name of the guest shall be entered in the visitors book and counter signed by the member.

Condition 19

Tickets shall be sold only to members on production of a membership card, and members shall if required sign an acknowledgement for the ticket or tickets issued.

Condition 20

Membership cards shall be personal to the member and carry a photograph of the holder.

Condition 21

Neither membership tickets nor guest tickets shall be transferable.

Condition 22

Guests may be asked for proof of identity, or of age, or any particulars of a guest if demanded by the management.

Condition 23



Members shall undertake to behave in a proper and orderly manner. Any member or guest acting in a manner which is offensive, or a nuisance or annoyance to others may be refused admission or expelled from the premises. A member may also be deprived of membership.

### **Sale of Sex Articles**

#### Condition 24

Neither sex articles nor 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 shall be displayed, sold, hired, exchanged, loaned or demonstrated in a sex cinema.

### **Display of Tariff and Charges**

#### Condition 25

There shall be prominently and legibly displayed a comprehensive tariff of all charges and prices which shall be illuminated and placed in such a position that it can easily and conveniently be read before entering the premises. No employee shall stand in such a position as to obscure the notice,

### **Conduct and Management of Premises**

#### Condition 26

The name of the person responsible for the management of the sex cinema on that day shall be prominently displayed within the sex cinema throughout the period during which he is responsible for its conduct.

#### Condition 27

A notice showing the name of the person responsible for the management of the sex cinema on that day is to be prominently displayed within the sex cinema throughout the period during which he is responsible for its conduct.

#### Condition 28

The Licensee shall ensure that no part of the premises shall be used by prostitutes (Male or Female) for soliciting or for any immoral purpose.

#### Condition 29

Neither the Licensee nor any employee or other person shall seek to obtain custom for the sex establishment by means of the personal solicitation outside or in the vicinity of the premises.

#### Condition 30

The Licensee shall ensure that during the hours the sex establishment is open for business, every employee wears an identifying badge indicating his name and that he is an employee.

#### Condition 31

The Licensee or some responsible person nominated by him in writing for the purpose of managing a sex establishment in his absence and whom details (including photographs) have been supplied to and approved in writing by the Council, shall be in charge of an upon the premises during the whole time they are open to the public.

#### Condition 32

All parts of the premises shall be kept in a clean and wholesome condition to the complete satisfaction of the council.

### **Internal access to cinema**

#### Condition 33

Windows and openings within the premises where films are shown should have blinds of a type and size that covers windows and openings which render the interior of the cinema where films are being shown invisible to passers by and/or other areas within the building that are open to the public for other activities.

Condition 34

The Licensee shall ensure that no noise shall emanate from the cinema that can be heard from within another area of the building or from outside.

**Security**

Condition 35

A member of staff is to remain in the vicinity of the entrance to the cinema to prevent under 18's or non-members from illegal entry.

**Use of Premises**

Condition 36

No change from a sex shop or sexual entertainment venue to a sex cinema or from a sex cinema to a sex shop or sexual entertainment venue shall be effected without the consent of the Council.

**Safety**

Condition 37

The Licensee shall take all reasonable precautions for the safety of the public and employees.

**Sexual Entertainment Venues**

**Times of opening**

Condition 1

The premises shall not open unless otherwise permitted as follows:

**Conduct and Management of Premises**

Condition 2

The name of the person responsible for the management of the sexual entertainment venue being either the Licensee or a manager approved by the council shall be prominently displayed within the sexual entertainment venue throughout the period during which he is responsible for its conduct.

Condition 3

The Licensee or the responsible person shall maintain a daily register to be kept on the premises and produced to an authorised officer on request. The register is to be completed each day within 30 minutes of the Sexual Entertainment venue opening for business and will records the name and contact details of any person who is to be responsible for managing the Sexual Entertainment Venue in the absence of the Licensee and details of all staff employed at the premises including performers.

Condition 4

A notice showing the name of the person responsible for the management of the Sexual Entertainment Venue on that day is to be prominently displayed within the premises throughout the period during which he is responsible for its conduct.

Condition 5

Where the Licensee is a body corporate or an unincorporated body any change of director, company secretary or other person responsible for the management of the body is to be notified in writing to the Council within 14 days of such change.

Condition 6

The Licensee shall ensure that no part of the building or its boundary is used by prostitutes (Male or Female) for the purposes of soliciting or any other immoral purposes. Neither the Licensee nor any employee or other person shall seek to obtain custom by means of personal solicitation outside or in the vicinity of the premises.

Condition 7

The Licensee shall ensure that the public are not admitted to any part or parts of the premises other than those that have been approved by the Council.

Condition 8

The Licensee shall maintain food order on the premises and in particular shall ensure that no:

- lewd conduct
- indecent behaviour
- unlawful possession and/or supply controlled drugs
- conduct likely to cause a breach of the peace on the premises
- offers of any sexual or indecent service for reward
- any acts of violence against person or property and/or the attempt or threat of such acts takes place on the premises or in its immediate vicinity.

Condition 9

A management operation manual detailing all aspects of procedure when the premises is operating relevant entertainment shall be produced and approved by the Licensing Authority. This document shall be ongoing and kept under constant review.

Condition 10

All members of staff (except performers) shall be easily identifiable. If required by the Council or Kent Police in writing the Licensee shall ensure that during the hours the premises are open for relevant entertainment staff will wear a badge/format approved by the Council indicating their name and that they are an employee or person working on the premises.

**Age Restriction**

Condition 11

No person under the age of 18 shall be admitted to the premises or employed in the business of the Sexual Entertainment Venue

Condition 12

A prominent clear notice shall be displayed at each entrance to the premises advising customers that no person under 18 will be admitted to the premises and they may be asked to produce evidence of their age.

**Advertising**

Condition 13

No display, advertisement, word, letter, model, sign, light, placard, board, notice, device, representation, drawing, writing or any other matter or thing (where illuminated or not) shall be exhibited so as to be visible from outside the premises without approval by the Council.

Condition 14

The licence holder shall not display outside the premises, or on any advertising material, photographs or other images that indicate and suggest striptease or similar dancing takes place on the premises and which may be offensive.

Condition 15

The premises should not advertise by means of cruising vehicles or use of any other form of solicitation to invite people into the premises.

**External and Internal access to an area holding relevant entertainment**

Condition 16

The entrances to the premises shall be of a material or covered with a material that will render the interior invisible to passers by.

## Condition 17

Windows and openings within the premises other than entrances will have curtains/blinds of a type and size that covers windows and openings which render the interior of the premises where relevant entertainment is taking place invisible to passers by and/or other areas within the building that are open to the public for other activities.

## Condition 18

Windows will remain closed whilst the premises or part of that premises is being used for relevant entertainment.

## **Layout of the premises**

## Condition 19

No fastening of any description shall be fitted upon any booth or cubicle within the premises.

## Condition 20

All dance booths or cubicles are to be equipped with a panic alarm for safety.

## Condition 21

Any changes to the layout of the premises must be informed to the licensing authority in writing submitting plans. Alteration must not take place without prior written consent by the Licensing Authority.

## Condition 22

The Licensee shall ensure that noise from the premises or vibration be transmitted through the structure of the premises does not give rise to a nuisance to the occupiers of premises in the vicinity of the venue.

## Condition 23

The external doors to the premises shall be fitted with a device to provide for their automatic closure and such devices shall be maintained in good working order.

## Condition 24

Doors and openings which lead to parts of the premises to which the public are not permitted to have access shall have notices placed over them marked 'private' and remain closed other than for the purposes of ingress and egress of management, staff and performers.

## **Entertainers/Performers**

## Condition 25

An appropriate room shall be set aside to provide a changing and rest area for entertainers. Arrangements shall be made to ensure that there is restricted public access to this room which shall be maintained at all times whilst the licensable activities are taking place and until such time as all performers using the dressing room have finished.

## Condition 26

At all times during the performance, performers shall have direct access to a dressing room without passing through or in close proximity to the audience.

## Condition 27

On leaving the premises performers, who wish to be, shall be escorted by a staff member to their vehicle or other safe location.

## Condition 28

Performers shall not be aged less than 18 years old.

## Condition 29

Only the performers shall provide the entertainment, no audience participation shall be permitted.

## Condition 30

No performance shall include a sex act with any other performer, persons in the audience or with the use of any object or animal.

### Condition 31

In the event of the relevant entertainment being performed for private viewing, the patron shall be informed of the duration and price of the relevant entertainment and the details shall be specified in a clearly visible notice in each area designed for private relevant entertainment.

### Condition 32

Any person who can be observed from the outside of the premises must be properly and decently dressed. Scantily clad individuals shall not exhibit in the entranceway or in an area of the premises open to the public that is not a designated area for relevant entertainment.

### Condition 33

All performers shall be aware of the management operation that will include a written policy on the conduct of performers.

### Condition 34

Photography or videoing of performances shall not be allowed.

### Condition 35

There shall be routine checking of employment records and evidence that all prospective staff and performers have the right to work in the UK.

### Condition 36

Performers should not be permitted to arrange contacts or liaisons, exchange telephone numbers or other means of making contact while on the premises.

## **Staffing**

### Condition 37

During any lap dancing performance, or private dance, performers may not:

- Touch customers in any way
- Performers must not be within 30cms (12") from any part of a patron
- Climb onto furniture provided for patrons
- Simulate sex acts
- Use sex articles

## **Sale of goods**

### Condition 38

Neither sex articles nor 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 shall be displayed, sold, hired, exchanged, loaned or demonstrated in a Sexual Entertainment Venue

## **Display of Tariff and Charges**

### Condition 39

There shall be prominently and legibly displayed a comprehensive tariff of all charges and prices which shall be illuminated and placed in such a position that it can easily and conveniently be read before entering the premises. No employee shall stand in such a position so as to obscure the notice.

### Condition 40

Where a charge is to be made for the company of a hostess or other companion this shall be identified on the tariff of charges to the satisfaction of the Council.

### Condition 41

No order shall be accepted unless the customer has been provided with a copy of the said tariff and has been given sufficient time and opportunity to read it.

Condition 42

No charge shall be made to the customer for any drink provided for the hostess or companion unless that customer has specifically ordered it having first been made aware of the cost

**Use of Premises**

Condition 43

No change from a sex shop or sexual entertainment venue to a sex cinema or from a sex cinema to a sex shop or sexual entertainment venue shall be effected without the consent of the Council.

**Pool of Possible Additional Conditions**

**Age Restriction**

Condition A

All members of staff at the premises shall seek credible photographic proof of age evidence from any person who appears to be under the age of 25 years and who is seeking access to the premises. Such credible evidence, which shall include a photograph of the customer, will either be a passport, photographic driving licence, or proof of age card carrying a 'PASS' logo.

**Security**

Condition B

Door supervisors, registered with the Security Industry Authority (SIA) shall be on duty at all times when relevant entertainment is taking place.

Condition C

An adequate number of door supervisors shall be on duty on the premises whilst relevant entertainment takes place. There shall be at least one door supervisor on each entrance, in each separate part of the premises and on the door to the dressing room.

Condition D

CCTV to be installed to a standard agreed by the local authority and police to cover all areas, including all access and egress points in accordance with CCTV Code of Practice. Maintained and serviced on a regular basis and records to be kept. The system to have an incorporated recording facility and recordings to be stored for one calendar month. The CCTV system to be fully operations throughout the hours that the premises are open for licensable activities. Access of the recordings to be made available at any reasonable time to local authority and the police officers upon request. Staff will be fully trained in the CCTV system and there will be at least one member of staff on duty during trading hours who is able to provide a recording of any incident in a format that can be taken away and viewed.

**Entertainers/Performers**

Condition E

Whilst dancers are performing there shall be a minimum distance of one metre between the dancers and the seated customers and prominent, clear notices shall be displayed at each table stating this requirement.

Condition F

There shall be no physical contact between customers and the dancers at any time except for the placing of money or tokens in a garter or into the hands of the dancer at the beginning or conclusion of a performance.

**Staffing**

Condition G

All staff employed to work at any premises licensed as a sex establishment shall be required to provide an enhanced disclosure and barring service check to the licensing authority in which the premises is located.