

**BRISTOL CITY COUNCIL  
LICENSING COMMITTEE  
30 JANUARY 2012**

**LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982 -  
DETERMINATION OF FOUR APPLICATIONS FOR SEXUAL  
ENTERTAINMENT VENUE LICENCES**

Report of the Strategic Director of Neighbourhoods and City Development

**Purpose Of Report**

1. To determine four applications for the grant of a Sexual Entertainment Venue licences and in respect of any that are granted, to decide what conditions should be imposed on the licence in respect of premises trading as

- (i) Urban Tiger, 4 Broad Quay, Bristol.
- (ii) Lounge @ 30, 30 Clare Street, Bristol
- (iii) Central Chambers, 9-11 St Stephens Street, Bristol
- (iv) Temptations, 46 West Street, Bristol

**Background**

2. The Council has adopted the Local Government (Miscellaneous Provisions) Act 1982, as amended, therefore, subject to limited exceptions and exemptions, or in the absence of a waiver, premises offering relevant entertainment require a Sexual Entertainment Venue (SEV) licence to operate in the city of Bristol.

3. Members will be aware that all SEV applications received between the 31 January 2011 (First Appointed Day – FAD) and the 31 July 2011 (Second Appointed Day – SAD) must all be considered before any individual application can be determined. Members are referred to the reports for consideration of the four “round one” applications before this Committee on the following dates:

- Urban Tiger – 19 January 2012;
- Lounge @ 30 – 20 January 2012;
- Central Chambers – 23 January 2012; and
- Temptations – 24 January 2012.

4. Members are also referred to the minutes of those four meetings (item XXX on the agenda for this meeting) which record, among other things, the salient features of representations made by or on behalf of applicants to the relevant meeting.

5. A copy of the council’s regulations prescribing standard conditions applicable to licences for Sexual Entertainment Venues attached as

Appendix A. These are the terms, conditions and restrictions on or subject to which any such licences that may be granted are presumed to have been granted unless they have been expressly excluded or varied.

6. A copy of the Council's SEV policy is attached for members' information at Appendix F.

7. If any licence is to be granted as applied for it would be subject to the standard conditions as modified by the application. The standard conditions in respect of each application would be as attached, Urban Tiger - Appendix B, Lounge @ 30 – Appendix C, Central Chambers – Appendix D and Temptations as Appendix E. Following the consideration of all applications your officers will advise further as to conditions which members may consider appropriate to attach to the licences if granted.

Since this report was first drafted the Committee has been informed by some applicants that they no longer seek to exclude or vary any or all of the standard conditions. Further information will be tabled clarifying the position of applicants once all applications have been considered and prior to determination.

8. Legal implications are as follows:

- (i) This advice is provided prior to completion of the Committee's consideration of the four round one applications with a view to guiding Members in the determination of those applications once all four of them have been considered. The process of considering round one applications before determining any of them is peculiar to the transitional provisions governing the licensing of sexual entertainment venues. It is probably intended to avoid the somewhat arbitrary decision making that might otherwise flow from the judgment of appropriate numbers under ground C at a level below the number of applicants, but the goal of ensuring fairness does result in a rather convoluted procedure having to be followed to implement the statutory provisions that have themselves been referred to by Lord Hoffman as being "rather convoluted" in the leading case of *Belfast City Council v Miss Behavin' Ltd* [2007] UKHL 19. (The judgment of the House of Lords in that case deals with many issues arising in the current applications and a copy of the transcript is being included in Members' packs for ease of reference. In this advice this case will be referred to as "The Belfast Council case"). There is not yet any specific judicial guidance to help authorities in considering a number of applications of this type before determining any of them and what follows is intended to guide rather than prescribe; the Committee will wish to consider if the suggested process will need to be adjusted as it proceeds with its determinations. This

advice is supplementary to what has been provided previously and aims to avoid unnecessary repetition. Further guidance may be tabled prior to the meeting to address any issues arising during the course of consideration of the four applications.

- (ii) In the case of all four applications reports were considered in private that included material that was exempt from publication and was considered potentially relevant to the grounds in 12 (3) (a) and/or (b). Clearly it will not be possible to deliberate in public whether or not this ground arises and/or whether it ought to be relied on for refusal in any particular case so the Committee is intending to conduct this part of its deliberations in private. Members have indicated a preference to conduct this part of the meeting first and will need to make evidence based findings of fact in relation to these suitability grounds in connection with applicants and/or managers as the case may be in each application. Members have made clear their commitment to a transparent a decision making process as the law permits and thus intend to conduct deliberation of other grounds in public. Whilst this goal is admirable it should not be allowed to interfere with the primary object of making a proper decision that accords with the law and achieves the purpose of the regulatory regime. Therefore, when deliberating in public, any Member who considers that there is a need to refer to exempt information, or to obtain confidential legal advice, or for some other purpose permitting the conduct of business in private should move the appropriate resolution to facilitate this.
- (iii) Having made findings whether or not ground (a) and/or (b) applies to any of the applications Members may wish to consider each application in turn and whether or not any of the grounds in 12 (3) (d) arise in respect of them. The report prepared in connection with each application sets out in full the grounds which may be relied upon to refuse applications and these will not be repeated here. As previously advised, the proper consideration and application of those grounds involves to varying degrees the making of judgments, the finding of facts and the exercise of discretion. In a regime that features judgment of issues such as the character of a locality it is not surprising that the law will be slow to interfere with the reasonable reliance on the local knowledge of elected councillors in exercising judgment. However, members will know that reliance on local knowledge in the exercise of judgment is not the same as reliance on speculative and unsubstantiated material and opinions in the making of findings of fact. The latter is not permitted. Any relevant factors that might be taken into account ought to be drawn from the material that has been admitted into consideration through the particular

agenda items dealing with the application and not from information in the media or in public forum statements or the like. Material admitted into consideration includes objections submitted within the statutory timescale; any late objections that have been conscientiously admitted into the decision making process by the Committee (at the time of writing this report no late objections have been so admitted), the observations of the Chief Constable, the information provided by your officer team, information brought forward when hearing the applicant and the guidance in your own policy. Speculative and unsubstantiated allegations should be disregarded.

### **Ground C**

(iv) This is the ground that permits a Council to refuse a license for a sexual entertainment venue in any locality on the ground that the number of sex establishments of that kind in the relevant locality at the time the application is determined is equal to or exceeds the number which the Council considers is appropriate for that locality. In the Belfast Council case Lord Hoffman stated that:

“it was said that because the Order says that the Council “may” refuse, this ground is “discretionary”. But I am not sure whether that is a very helpful adjective. It would hardly be rational for the Council to decide that the appropriate number of sex shops in the locality was nil, but that it would all the same exercise its discretion to grant a licence. I think it is more accurate to say that the question of how many sex shops, if any, should be allowed is a matter for the Council’s judgment.” (paragraph 6, page 2 of 19)

At its November meeting the Committee made findings as to the relevant locality within which each application site is situated and exercised its judgment as to the appropriate number for that locality. That judgment was made at a policy level, ie. not in the context of the merits of the individual applications, but through the process of considering applications the views of objectors have been taken into account and applicants have also been able to deploy arguments as to how the Committee's judgment ought to be exercised. The Committee is reminded that it must keep an open mind and be ready to consider if its judgment at policy level was wrong and ought to be revised. The judgment falls to be applied at the point of determination once all of the applications have been considered at consecutive hearings.

It will be appreciated that, unless the Council revises its decision of what locality any of the application sites is situated in, or of what is the appropriate number of sexual entertainment venues

for that relevant locality, this ground cannot possibly be relied upon to found refusal of the application in the Old Market/West Street locality area because the appropriate number for that area is judged to be one and there is only one application before the Committee from that locality.

It will also be appreciated that, if any one or more of the three city centre locality applications is refused on any other ground(s) then this ground cannot arise in connection with that locality either, since the appropriate number for that locality is judged to be two and there are three applications.

However if the Committee does not decide to refuse any of the City centre applications on any of the other grounds and affirms its judgment that two is the appropriate number of sexual entertainment venues for the city centre locality, then there is no fixed process for deciding which two of the three applications is to be preferred. Given the importance of that decision for all of the applicants this decision is one that must be made with the utmost care. It is for precisely this situation that the legislation requires that determination may only be made once all applications have been considered.

### Exercise of discretion

(v) Members will understand the need to exercise their discretion reasonably and for any departure from its policy to be rational. Members are well versed in the exercise of discretion in a manner that is lawful but when implementing any new regime it is helpful to revisit the judgment in the case of Associate Picture Houses -v- Wednesbury Corporation: is worth revisiting in this context:-

“The law recognises certain principles on which discretion must be exercised, but within the four corners of those principles the discretion is an absolute one and cannot be questioned in any court of law.

What, then are those principles? They are perfectly well understood. The exercise of such a discretion must be a real exercise of the discretion. If in the statute conferring the discretion, there is to be found, expressly or by implication, matters to which the authority exercising the discretion ought to have regard, then, in exercising the discretion, they must have regard to those matters. Conversely, if the nature of the subject matter and the general interpretation of the Act make it clear that certain matters would not be germane to the matter in question,

they must disregard those matters. Expressions have been used in cases where the powers of local authorities come to be considered relating to the sort of thing that may give rise to interference by the court. Bad faith, dishonesty – those, of course, stand by themselves – unreasonableness, attention given to extraneous circumstances, disregard of public policy, and things like that have all been referred to as being matters which are relevant for consideration. In the present case we have heard a great deal of the meaning of the word unreasonable. It is true that discretion must be exercised reasonably. What does that mean? Lawyers familiar with the phraseology commonly used in relation to the exercise of statutory discretions often used the word unreasonable in a rather comprehensive sense. It is frequently used as a general description of the things that must not be done. For instance a person entrusted with a discretion must direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters, which are irrelevant to the matter that he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting “unreasonably”. Similarly, you may have something so absurd that no sensible person could ever dream that it lay within the powers of the authority. .... the example of the redhead teacher dismissed because she had red hair. This is unreasonable in one sense. In another sense it is taking into consideration extraneous matters. It is so unreasonable that might almost be described as being done in bad faith. In fact, all those things largely fall under one head. ....

### Human Rights obligations

(vi) The Council is bound by section 6 of the Human Rights Act 1998 to carry out its functions in a way that is compatible with convention rights. As will be appreciated from reading the Belfast Council case, whether or not a breach occurs does not depend on the way in which the Council reaches its decisions. This is a decision to be taken by the Court in which the issue is raised. Nonetheless the Council should take great care to act compatibly with convention rights enjoyed by those affected by its decisions.

Insofar as the determination is determinative of civil rights and obligations of applicants in the operation of their businesses the Council's practice of affording a hearing not just in respect of the substantive application but also in connection with the imposition of standard conditions ought to ensure that the decision will not be judged to be incompatible with the applicant's article 6 rights.

Throughout the process some applicants have urged upon you that refusal of their application would be incompatible with their Article 10 (freedom of expression) and Article 1 Protocol 1 (peaceful enjoyment of property) rights. These are considered in the Belfast Council case in the context of sex shops. They have yet to be considered in the context of the regime for licensing of sexual entertainment venues but the Belfast Council case nonetheless provides some helpful guidance.

### Freedom of Expression

(vii) Article 10 confers the right to freedom of expression, including the freedom to hold opinions and to receive and impart ideas without interference by the public authority. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others.....

Their Lordships in the Belfast City case decided, or were prepared to assume, that article 10 was engaged in the case albeit at a relatively low level. This is hardly surprising given that books, magazines and the like have a propositional content that is significant in the imparting and receiving of ideas and the holding of opinions. However the margin of appreciation for the control of pornography was recognised as being wide and in all the circumstances of the case the decision to restrict the right was not judged to be incompatible with the applicant's article 10 rights.

The buying and selling of material goods with a propositional content, that impart ideas and opinions, is a different thing to the provision and enjoyment of the various descriptions of relevant entertainment that are sought to be provided in the applications before you. In any court in which the issue was raised by a disappointed applicant the Court would need to be satisfied that the Article 10 right was engaged at all, i.e. how is this activity relevant to the freedom to hold and impart opinions etc.?

If engaged then any proportionate exercise of the Council's discretion, that balances the rights of the applicant and its customers with those of the wider community, ought to fall within the wide margin of appreciation afforded to the state under Article 10.

## Article one of protocol one

(iix) Members will appreciate that all of the round one applicants have the benefit of a licence under the 2003 Act authorising a range of activities, including the supply of alcohol. Any decision to refuse an SEV licence does not deprive the applicant of its premises and nor does it prevent those premises from being used for a business that includes the provision of licensable activities. It would not prevent the premises being used for the provision of relevant entertainment altogether, albeit without an SEV licence this could only be provided on the occasional basis permitted under the exemption applying to occasional use, effectively no more than once a month.

Detailed advice about this convention right has been provided to the Council during the various stages of the process of implementing the new regime, in connection with the decision to adopt the amended legislation, in the adoption of policy and the prescribing of standard conditions and most recently in the consideration of the policy on numbers for the localities within which these four applications are situated and now in connection with the determination of these individual applications.

Underpinning that advice has been that the sexual entertainment venue regulatory regime is one that engages the third rule of this right (control of use) and not the second rule (property deprivation). Whether what is contemplated is the refusal of a licence or the granting of a licence subject to conditions the Council has a wide margin of appreciation when striking the balance between the applicant's rights and those of the general interest. In this regard the Committee is referred in particular to Baroness Hale's judgment in the Belfast Council case (paragraphs 30 to 39) and also paragraphs 98 – 103 of the case.

### **Duty to give reasons**

(ix) Where an application is refused the Council must give an applicant a statement in writing of the reasons for its decision. This must be a proper intelligible statement that explains the decision, not one that simply recites the grounds of refusal. For example, if refusal is founded on Ground C the statement should include an explanation of why the relevant locality was chosen, how its character was identified and why that character was thought to make the granting of more than the appropriate number of sexual entertainment licences inappropriate.

Pauline Powell  
Senior solicitor  
For Head of Legal Services

9. The granting of a Sexual Entertainment Venue licence has an effect on the conditions that are attached to a premises licence granted under the Licensing Act 2003. In the case of existing operators where conditions on premises licences relate only to the provision of relevant entertainment they shall read as if they are deleted from the third appointed day (31 January 2012) onwards. Where any conditions which are attached to a premises licence are inconsistent with, and less onerous than, the conditions attached to an SEV licence they shall be treated as having been deleted. In the event that a licence is granted in respect of these premises, consideration may be given to the conditions attached to the current premises licence as to which would be read as deleted or those that should be replicated on the SEV licence. Your officers will provide advice as to the effect on each premises licence granted under the Licensing Act 2003 as commensurate with the individual determinations that are made.

## **APPENDICES**

Appendix A – Standard conditions as attached to Bristol City Council Policy relating to SEVs.

Appendix B - Standard conditions as attached to Urban Tiger if granted as applied for.

Appendix C - Standard conditions as attached to Lounge @ 30 if granted as applied for. Appendix D - Standard conditions as attached to Central Chambers if granted as applied for.

Appendix E - Standard conditions as attached to Temptations if granted as applied for.

Appendix F – Bristol City Council Policy relating to SEVs

**RECOMMENDED:** The Committee is asked to determine the applications.

## **LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985**

**Background papers: Application, letters of objection**

**Contact Officer: Myra McSherry, Licensing Administration Manager  
Neighbourhoods**

**Telephone: 01179142500**

**City Council of Bristol (The Council)**  
**Regulations prescribing standard conditions applicable to licenses for sexual entertainment venues**

Made on the; 25 day of February 2011.

Coming into force on the: 1 day of July 2011

1. The Council makes these regulations pursuant to its power under paragraph 13 of the Third Schedule to the Local Government (Miscellaneous Provisions) Act 1982 ("The Act").

2. In these conditions

'Audience';

'Sexual Entertainment Venue'; and

'Relevant Entertainment';

each have the meaning given in the Act .

'Performer' means any individual who performs or actively participates in Relevant

Entertainment (whether or not they are an employee) and "Performance" and

"Performing" shall be construed accordingly

'Permitted Relevant Entertainment' means entertainment falling within the description specified on the licence as being permitted at the licensed premises

'Relevant Offence' means

1. An offence under the Local Government (Miscellaneous Provisions) Act 1982

Schedule 3.

2. A sexual offence, being an offence listed in Part 2 of Schedule 15 to the

Criminal Justice Act 2003, other than the offence mentioned in paragraph 95

(an offence under section 4 of the Sexual Offences Act 1967

(procuring others

to commit homosexual acts));

3. Every Sexual Entertainment Venue Licence granted, renewed or transferred by the Council shall be presumed to have been so granted, renewed or transferred subject to the standard conditions contained in the schedule unless they have been expressly excluded or varied by the Council.

**Schedule**

A. Only Permitted Relevant Entertainment is authorised under this licence

B. Permitted relevant entertainment may only take place on those parts of the premises as are identified on the plan annexed to the licence

C. Relevant entertainment shall not occur in private rooms, cubicles or other enclosed areas. For these purposes a room, cubicle or other area is private unless it is completely open on one side so that activities within may be supervised from the exterior.

D. The Council shall be provided with a Code of Conduct for Performers and Rules to be observed by members of the audience.

E. The Code and Rules referred to in Condition D above shall be brought to the attention of all performers and members of the audience and reasonable measures shall be taken to ensure that they are complied with.

- F.
1. At no time during the performance may there be any contact between a performer and a customer. Prior to the performance or at the completion of the performance there may be hand-to-hand payment for the performance.
  2. At no time except during the performance may a performer or employee be unclothed. Immediately following the performance, the performer must dress, so that (for example) the performer may not be unclothed when seeking payment for a performance.
  3. No performer or employee may at any time (and whether or not performing):
    - a. sit or lie on the lap or any other part of any customer;
    - b. kiss, stroke, fondle, caress or embrace any customer;
    - c. engage in any other contact of a sexual nature with any customer.
  4. In these conditions:
    - a. "customer" means any person visiting the premises other than employees or performers, whether or not they have paid for or intend to pay for services provided;
    - b. "employee" means any person working at the venue whether under a contract of employment or some other contract;
    - c. "unclothed" means when breasts and/or genitals and/or anus are fully or partially uncovered.

d. “other contact of a sexual nature” means contact which must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating the customer.

G. As soon as is reasonably practicable, and in any event within seven days, the Council shall be notified of any material change in the management structure, where a material change means one which is at variance with the information provided in the most recent application for a licence, or its renewal or variation as the case may be;

H. No person shall be employed or shall perform at the premises who has unspent convictions for any Relevant Offence;

I. Copies of the licence and the conditions applicable to it shall be displayed on the premises in a place where it is likely to be seen by every member of the audience;

J. The licensee shall retain control over all parts of the licensed premises when used for Relevant Entertainment;

K. Customers shall be made aware of any charge for admission to the premises, and of any further charges that may be levied in connection with the provision of Relevant Entertainment, before being admitted to the premises;

L. There shall be no display either upon or outside of the licensed premises (in such a way that it is visible on the exterior) of photographs or other images which indicate or suggest that Relevant Entertainment is provided upon the premises, with the exception of any registered trade mark, trading name or trading symbol that has been provided to the Council in connection with the most recent application for licence, its renewal or variation as the case may be;

M The licensee shall ensure that no area where Relevant Entertainment may take place can be viewed from outside the licensed premises at any time;

N The licensed premises shall be sufficiently illuminated to ensure that usable CCTV images can be captured;

O 1. Performers shall not be permitted to share the following facilities with any members of the audience and suitable separate provision must be made;

- (i) water closet;
- (ii) washing facilities;

2. Performers and Audience shall not be permitted to share any smoking area

3. No Member of the audience shall be permitted to enter any changing area used by Performers

P. All external doors affording access to the licensed premises shall be fitted with a device to provide for their automatic closure and such device shall be maintained in good working order;

Q. The availability of relevant entertainment shall not be marketed or advertised in any of the following ways:-

(a) by means of personal solicitation in the locality of the licensed premises;

(b) by means of leafleting in the locality;

(c) by means of externally displayed advertisement (such as on billboards) in any part of the Council's administrative area

R. The following shall be made available without charge to performers and the Audience:

Literature and contact names and telephone numbers of organisations that provide advice and counselling on matters relating to:-

(i) sexual problems;

(ii) family planning;

(iii) sexually transmitted diseases

(iv) rape and sexual assault.

S. (i) No telephone number, residential address, email address or other information that may facilitate further contact between performers and members of the Audience is passed from audience to performer, or vice versa; and

(ii) This prohibition shall be brought to the attention of all members of the Audience

T. (i) Performers may perform only in accordance with written contracts, which define their rights and obligations, including terms as to the nature of their performance and payment. No deduction shall be made from such payment unless permitted by the contract, and no deduction by way of penalty shall be permitted;

(ii) No relevant entertainment shall be provided by any performer unless sufficient checks have been made of documents evidencing the performer's age, identity and right to work in the United Kingdom;

(iii) Copies of all documents referred to in (i) and (ii) above shall be retained for not less than 12 months after the last provision of Relevant Entertainment by the said Performer and shall be produced to an authorised officer of the Council or a Constable upon request at any reasonable time.

U. The licensee shall exercise all due diligence and take all reasonable steps to ensure that the terms and conditions imposed on the licence are observed and complied **with at all times**

**Standard conditions as would be applicable in respect of Urban Tiger if the application were granted as applied for.**

- A Only Permitted Relevant Entertainment is authorised under this licence
- B Permitted relevant entertainment may only take place on those parts of the premises as are identified on the plan annexed to the licence
- C Relevant entertainment shall not occur in private rooms, cubicles or other enclosed areas. For these purposes a room, cubicle or other area is private unless it is completely open on one side so that activities within may be supervised from the exterior.
- D The licensee shall provide to the Council a Code of Conduct for performers and rules to be observed by members of the audience;
- E The licensee shall ensure that the rules referred to in Condition D above are brought to the attention of all members of the audience;
- F The licensee shall exercise all due diligence and take all reasonable proportions to ensure that:
- ~~(i) there is no physical contact between performers and any member of the audience;~~
  - ~~(ii) there is a minimum of one metre between performers and members of the audience at all time;~~
  - (iii) no sexual intercourse or any other sex act takes place on the premises or any area in their vicinity that is under the control of the licensee.

Application made to vary standard condition F so as to replace  
 (i) above with *'at no time during the performance may there be any deliberate contact between a performer and a customer. and*  
 (ii) above with *'kiss, stroke, fondle, caress or embrace in a manner designed solely or principally to sexually stimulate any customer'*. In the event that this amendment is not acceptable to members a request has been made that the definition of employee is amended to read as follows: *'employee' means any performer working at the venue, whether self-employed, under a contract of employments or any other contract.*

- G The licensee shall notify the Council as soon as is reasonably practicable, and in any event within seven days, of any material change in the management structure, where a material change means one which is at variance with the information provided in the most recent application for a licence, or its renewal or variation as the case may be;

- H The licensee shall exercise all due diligence and take all reasonable precautions to ensure that no person shall be employed at the premises who has unspent convictions for any Relevant Offence;
- I Copies of the licence and the conditions applicable to it shall be displayed on the premises in a place where it is likely to be seen by every member of the audience;
- J The licensee shall retain control over all parts of the licensed premises when used for relevant entertainment;
- K Customers shall be made aware of the charges for entry and of any further charges that may be levied in connection with the provision of relevant entertainment before being admitted to the premises;
- L The licensee shall not display either upon or outside of the licensed premises (in such a way that it is visible on the exterior) photographs or other images which indicate or suggest that relevant entertainment is provided upon the premises, with the exception of any registered trade mark, trading name or trading symbol that has been provided to the Council in connection with the most recent application for licence, its renewal or variation as the case may be;
- M The licensee shall ensure that no area where relevant entertainment may take place can be viewed from outside the premises at any time;
- N The licensed premises shall be sufficiently illuminated to ensure that usable CCTV images can be captured;
- O Performers shall not be permitted to share the following facilities with any members of the audience and suitable separate provision must be made;
- (a) water closet;
  - (b) washing facilities;
  - (c) smoking area.
- P All external doors affording access to the licensed premises shall be fitted with a device to provide for their automatic closure and such device shall be maintained in good working order;
- Q The availability of relevant entertainment shall not be marketed or advertised in any of the following ways:-
- (a) by means of personal solicitation in the locality of the licensed premises;
  - ~~(b) by means of leafletting in the locality;~~
  - ~~(c) by means of externally displayed advertisement (such as on billboards) in any part of the Council's administrative area~~

Application made to vary this condition in respect of points b and c above so as to read as follows:

*(b) by means of leafleting in the locality unless the leaflets are compliant with Advertising Standards Agency standards and with any Licensing Authority permit / consent requirements for leaflet distribution generally'.*

*(c) by means of externally displayed advertisements (such as billboards or posters) in the immediate vicinity of the premises'.*

R ~~The licensee shall make available without charge literature and contact names and telephone numbers of organisations that provide advice and counselling on matters relating to:-~~

~~(a) sexual problems;~~

~~(b) family planning;~~

~~(c) sexually transmitted diseases~~

~~(d) rape and sexual assault.~~

*Application made to exclude this condition.*

S Where relevant entertainment permits nudity the licensee shall ensure that at all times when they are not participating in the provision of Relevant Entertainment, Performers wear clothing that fully covers the anus and genitalia and, in the case of female Performers, the breasts;

T The licensee shall exercise all due diligence and take all reasonable precautions to:

(i) ensure that no telephone number, residential address, email address or other information that may facilitate further contact between performers and members of the Audience is passed from audience to performer, or vice versa; and

(ii) ensure that this prohibition is brought to the attention of all members of the Audience;

U Save where performers are engaged under a contract of employment, licensees shall:-

(i) ensure that no Performer is engaged in the provision of Relevant Entertainment other than in accordance with documented terms and conditions, including terms and conditions as to the nature and scope of the service to be provided by the Performer, any control of payment that may be levied therefore and any sums due from the Performer to the Licensee, his servants or agents or other person in under the contract;

(ii) no relevant entertainment is provided by any performer unless sufficient checks have been made of documents evidencing the performers age, identity and right to work in the United Kingdom have been made;

(iii) copies of all documents referred to in (i) and (ii) above shall be retained for at least 12 months after the last provision of relevant entertainment by the said performer and shall be produced to an

authorised officer of the Council or a constable upon request at any reasonable time.

**Standard conditions as would be applicable in respect of Lounge @ 30, if the application were granted as applied for.**

- A Only Permitted Relevant Entertainment is authorised under this licence
- B Permitted relevant entertainment may only take place on those parts of the premises as are identified on the plan annexed to the licence
- C ~~Relevant entertainment shall not occur in private rooms, cubicles or other enclosed areas. For these purposes a room, cubicle or other area is private unless it is completely open on one side so that activities within may be supervised from the exterior.~~  
Application has been made to exclude / vary the above condition in that:  
Individual cubicles are three sided and closed off by a curtain. A camera is mounted in each cubicle and performances are monitored through that camera at all times.
- D The licensee shall provide to the Council a Code of Conduct for performers and rules to be observed by members of the audience;
- E The licensee shall ensure that the rules referred to in Condition D above are brought to the attention of all members of the audience;
- F The licensee shall exercise all due diligence and take all reasonable proportions to ensure that:  
(i) there is no physical contact between performers and any member of the audience;  
(ii) there is a minimum of one metre between performers and members of the audience at all time;  
(iii) no sexual intercourse or any other sex act takes place on the premises or any area in their vicinity that is under the control of the licensee.
- G The licensee shall notify the Council as soon as is reasonably practicable, and in any event within seven days, of any material change in the management structure, where a material change means one which is at variance with the information provided in the most recent application for a licence, or its renewal or variation as the case may be;
- H The licensee shall exercise all due diligence and take all reasonable precautions to ensure that no person shall be employed at the premises who has unspent convictions for any Relevant Offence;
- I Copies of the licence and the conditions applicable to it shall be

displayed on the premises in a place where it is likely to be seen by every member of the audience;

- J The licensee shall retain control over all parts of the licensed premises when used for relevant entertainment;
- K Customers shall be made aware of the charges for entry and of any further charges that may be levied in connection with the provision of relevant entertainment before being admitted to the premises;
- L ~~The licensee shall not display either upon or outside of the licensed premises (in such a way that it is visible on the exterior) photographs or other images which indicate or suggest that relevant entertainment is provided upon the premises, with the exception of any registered trade mark, trading name or trading symbol that has been provided to the Council in connection with the most recent application for licence, its renewal or variation as the case may be;~~  
Application has been made to exclude / vary the above condition in that :  
The Applicant intends to see the advice of the City Council's licensing officer as to signage.
- M The licensee shall ensure that no area where relevant entertainment may take place can be viewed from outside the premises at any time;
- N The licensed premises shall be sufficiently illuminated to ensure that usable CCTV images can be captured;
- O Performers shall not be permitted to share the following facilities with any members of the audience and suitable separate provision must be made;
- (a) water closet;
  - (b) washing facilities;
  - (c) smoking area.
- P ~~All external doors affording access to the licensed premises shall be fitted with a device to provide for their automatic closure and such device shall be maintained in good working order;~~  
Application has been made to exclude the above condition in that the external access at St Nicholas Street is constantly supervised by the security staff, as is the internal access from Bar @ 30 on the ground floor.
- Q ~~The availability of relevant entertainment shall not be marketed or advertised in any of the following ways:-~~
- ~~(a) by means of personal solicitation in the locality of the licensed premises;~~
  - ~~(b) by means of leafleting in the locality;~~

~~(c) by means of externally displayed advertisement (such as on billboards) in any part of the Council's administrative area~~

Application has been made to exclude this condition for the following reason:

Flyers are handed out in the street outside the premises. This practice has been carried out for the past two years and there has been no complaint. The practice is conducted only between the hours of 21:00 and 03:30 and is the primary means of attracting customers to the premises and sustaining the business.

- R The licensee shall make available without charge literature and contact names and telephone numbers of organisations that provide advice and counselling on matters relating to:-
- (a) sexual problems;
  - (b) family planning;
  - (c) sexually transmitted diseases
  - (d) rape and sexual assault.
- S Where relevant entertainment permits nudity the licensee shall ensure that at all times when they are not participating in the provision of Relevant Entertainment, Performers wear clothing that fully covers the anus and genitalia and, in the case of female Performers, the breasts;
- T The licensee shall exercise all due diligence and take all reasonable precautions to:
- (iii) ensure that no telephone number, residential address, email address or other information that may facilitate further contact between performers and members of the Audience is passed from audience to performer, or vice versa; and
  - (iv) ensure that this prohibition is brought to the attention of all members of the Audience;
- U Save where performers are engaged under a contract of employment, licensees shall:-
- (i) ensure that no Performer is engaged in the provision of Relevant Entertainment other than in accordance with documented terms and conditions, including terms and conditions as to the nature and scope of the service to be provided by the Performer, any control of payment that may be levied therefore and any sums due from the Performer to the Licensee, his servants or agents or other person in under the contract;
  - (ii) no relevant entertainment is provided by any performer unless sufficient checks have been made of documents evidencing the performers age, identity and right to work in the United Kingdom have been made;
  - (iii) copies of all documents referred to in (i) and (ii) above shall be retained for at least 12 months after the last provision of relevant entertainment by the said performer and shall be produced to an

authorised officer of the Council or a constable upon request at any reasonable time.

**Standard conditions as would be applicable in respect of Central Chambers, if the application were granted as applied for.**

- A Only Permitted Relevant Entertainment is authorised under this licence
- B Permitted relevant entertainment may only take place on those parts of the premises as are identified on the plan annexed to the licence
- C ~~Relevant entertainment shall not occur in private rooms, cubicles or other enclosed areas. For these purposes a room, cubicle or other area is private unless it is completely open on one side so that activities within may be supervised from the exterior.~~  
Application has been made to vary this condition as set out in the report to be considered on the 23 January 2012.
- D The licensee shall provide to the Council a Code of Conduct for performers and rules to be observed by members of the audience;
- E The licensee shall ensure that the rules referred to in Condition D above are brought to the attention of all members of the audience;
- F ~~The licensee shall exercise all due diligence and take all reasonable proportions to ensure that:~~  
~~(i) there is no physical contact between performers and any member of the audience;~~  
~~(ii) there is a minimum of one metre between performers and members of the audience at all time;~~  
~~(iii) no sexual intercourse or any other sex act takes place on the premises or any area in their vicinity that is under the control of the licensee.~~  
Application has been made to vary this condition as set out in the report which was considered on the 23 January 2012.
- G The licensee shall notify the Council as soon as is reasonably practicable, and in any event within seven days, of any material change in the management structure, where a material change means one which is at variance with the information provided in the most recent application for a licence, or its renewal or variation as the case may be;
- H The licensee shall exercise all due diligence and take all reasonable precautions to ensure that no person shall be employed at the premises who has unspent convictions for any Relevant Offence;
- I Copies of the licence and the conditions applicable to it shall be

- displayed on the premises in a place where it is likely to be seen by every member of the audience;
- J The licensee shall retain control over all parts of the licensed premises when used for relevant entertainment;
- K Customers shall be made aware of the charges for entry and of any further charges that may be levied in connection with the provision of relevant entertainment before being admitted to the premises;
- L The licensee shall not display either upon or outside of the licensed premises (in such a way that it is visible on the exterior) photographs or other images which indicate or suggest that relevant entertainment is provided upon the premises, with the exception of any registered trade mark, trading name or trading symbol that has been provided to the Council in connection with the most recent application for licence, its renewal or variation as the case may be;
- M The licensee shall ensure that no area where relevant entertainment may take place can be viewed from outside the premises at any time;
- N The licensed premises shall be sufficiently illuminated to ensure that usable CCTV images can be captured;
- O Performers shall not be permitted to share the following facilities with any members of the audience and suitable separate provision must be made;
- (a) water closet;
  - (b) washing facilities;
  - (c) smoking area.
- P All external doors affording access to the licensed premises shall be fitted with a device to provide for their automatic closure and such device shall be maintained in good working order;
- Q The availability of relevant entertainment shall not be marketed or advertised in any of the following ways:-
- (a) by means of personal solicitation in the locality of the licensed premises;
  - ~~(b) by means of leafleting in the locality;~~
  - (c) by means of externally displayed advertisement (such as on billboards) in any part of the Council's administrative area
- Application has been made to vary point (b) of condition Q so as to permit leafleting after 21.00 hours.
- R The licensee shall make available without charge literature and contact names and telephone numbers of organisations that provide advice and counselling on matters relating to:-

- (a) sexual problems;
  - (b) family planning;
  - (c) sexually transmitted diseases
  - (d) rape and sexual assault.
- S Where relevant entertainment permits nudity the licensee shall ensure that at all times when they are not participating in the provision of Relevant Entertainment, Performers wear clothing that fully covers the anus and genitalia and, in the case of female Performers, the breasts;
- T The licensee shall exercise all due diligence and take all reasonable precautions to:
- (v) ensure that no telephone number, residential address, email address or other information that may facilitate further contact between performers and members of the Audience is passed from audience to performer, or vice versa; and
  - (vi) ensure that this prohibition is brought to the attention of all members of the Audience;
- U Save where performers are engaged under a contract of employment, licensees shall:-
- (i) ensure that no Performer is engaged in the provision of Relevant Entertainment other than in accordance with documented terms and conditions, including terms and conditions as to the nature and scope of the service to be provided by the Performer, any control of payment that may be levied therefore and any sums due from the Performer to the Licensee, his servants or agents or other person in under the contract;
  - (ii) no relevant entertainment is provided by any performer unless sufficient checks have been made of documents evidencing the performers age, identity and right to work in the United Kingdom have been made;
  - (iii) copies of all documents referred to in (i) and (ii) above shall be retained for at least 12 months after the last provision of relevant entertainment by the said performer and shall be produced to an authorised officer of the Council or a constable upon request at any reasonable time.

**Standard conditions as would be applicable in respect of Temptations, if the application were granted as applied for.**

- A Only Permitted Relevant Entertainment is authorised under this licence
- B Permitted relevant entertainment may only take place on those parts of the premises as are identified on the plan annexed to the licence
- C ~~Relevant entertainment shall not occur in private rooms, cubicles or other enclosed areas. For these purposes a room, cubicle or other area is private unless it is completely open on one side so that activities within may be supervised from the exterior.~~  
Application has been made to vary standard condition C as set out in the main report which was considered on the 24 January 2012.
- D The licensee shall provide to the Council a Code of Conduct for performers and rules to be observed by members of the audience;
- E The licensee shall ensure that the rules referred to in Condition D above are brought to the attention of all members of the audience;
- F The licensee shall exercise all due diligence and take all reasonable proportions to ensure that:  
(i) there is no physical contact between performers and any member of the audience;  
(ii) there is a minimum of one metre between performers and members of the audience at all time;  
(iii) no sexual intercourse or any other sex act takes place on the premises or any area in their vicinity that is under the control of the licensee.
- G The licensee shall notify the Council as soon as is reasonably practicable, and in any event within seven days, of any material change in the management structure, where a material change means one which is at variance with the information provided in the most recent application for a licence, or its renewal or variation as the case may be;
- H The licensee shall exercise all due diligence and take all reasonable precautions to ensure that no person shall be employed at the premises who has unspent convictions for any Relevant Offence;
- I Copies of the licence and the conditions applicable to it shall be

displayed on the premises in a place where it is likely to be seen by every member of the audience;

- J The licensee shall retain control over all parts of the licensed premises when used for relevant entertainment;
- K Customers shall be made aware of the charges for entry and of any further charges that may be levied in connection with the provision of relevant entertainment before being admitted to the premises;
- L The licensee shall not display either upon or outside of the licensed premises (in such a way that it is visible on the exterior) photographs or other images which indicate or suggest that relevant entertainment is provided upon the premises, with the exception of any registered trade mark, trading name or trading symbol that has been provided to the Council in connection with the most recent application for licence, its renewal or variation as the case may be;
- M The licensee shall ensure that no area where relevant entertainment may take place can be viewed from outside the premises at any time;
- N The licensed premises shall be sufficiently illuminated to ensure that usable CCTV images can be captured;
- O Performers shall not be permitted to share the following facilities with any members of the audience and suitable separate provision must be made;  
(a) water closet;  
(b) washing facilities;  
(c) ~~smoking area.~~  
Application has been made to exclude part (c) of the above condition.
- P ~~All external doors affording access to the licensed premises shall be fitted with a device to provide for their automatic closure and such device shall be maintained in good working order;~~  
Application has been made to vary this condition as detailed in the main report considered on the 24 January 2012
- Q The availability of relevant entertainment shall not be marketed or advertised in any of the following ways:-  
(a) by means of personal solicitation in the locality of the licensed premises;  
(b) ~~by means of leafletting in the locality;~~  
(c) by means of externally displayed advertisement (such as on billboards) in any part of the Council's administrative area  
Application has been made to exclude part (b) of the above condition.
- R The licensee shall make available without charge literature and

contact names and telephone numbers of organisations that provide advice and counselling on matters relating to:-

- (a) sexual problems;
- (b) family planning;
- (c) sexually transmitted diseases
- (d) rape and sexual assault.

S Where relevant entertainment permits nudity the licensee shall ensure that at all times when they are not participating in the provision of Relevant Entertainment, Performers wear clothing that fully covers the anus and genitalia and, in the case of female Performers, the breasts;

T The licensee shall exercise all due diligence and take all reasonable precautions to:

- (vii) ensure that no telephone number, residential address, email address or other information that may facilitate further contact between performers and members of the Audience is passed from audience to performer, or vice versa; and
- (viii) ensure that this prohibition is brought to the attention of all members of the Audience;

U Save where performers are engaged under a contract of employment, licensees shall:-

- (i) ensure that no Performer is engaged in the provision of Relevant Entertainment other than in accordance with documented terms and conditions, including terms and conditions as to the nature and scope of the service to be provided by the Performer, any control of payment that may be levied therefore and any sums due from the Performer to the Licensee, his servants or agents or other person in under the contract;
- (ii) no relevant entertainment is provided by any performer unless sufficient checks have been made of documents evidencing the performers age, identity and right to work in the United Kingdom have been made;
- (iii) copies of all documents referred to in (i) and (ii) above shall be retained for at least 12 months after the last provision of relevant entertainment by the said performer and shall be produced to an authorised officer of the Council or a constable upon request at any reasonable time.

**BRISTOL CITY COUNCIL****Local Government (Miscellaneous Provisions) Act 1982****Control of Sexual Entertainment Venues*****1. Introduction***

The Local Government (Miscellaneous Provisions) Act 1982 introduced a regime for the control of sex establishments. The regime is adoptive and Bristol City Council has for many years been able to control the provision of sex shops and sex cinemas within its administrative area. The 1982 Act has recently been amended, enabling the control of “sexual entertainment venues”. The Council has adopted the amended Schedule. Once it is in force this will enable applicants to seek to obtain a licence to operate a sexual entertainment venue, or to secure a waiver.

The Act imposes a duty on the Council to refuse a licence in certain cases (for example if an individual applicant is under the age of 18 years) and confers powers on the Council to refuse to grant or refuse to renew a licence by reference to matters such as the maximum number of sex establishments which the Council considers appropriate for the locality of the premises, the premises that are subject of the application and the character of the locality.

The legislation may be viewed here:

<http://www.legislation.gov.uk/ukpga/1982/30>

Local Government (Miscellaneous Provisions) Act 1982 Chapter 30

<http://www.legislation.gov.uk/ukpga/2009/26/section/27>

Policing and Crime Act 2009 Part 2 Section 27 - Regulation of lap dancing and other sexual entertainment venues etc

**2. Scope of this policy**

This policy will guide the Council when determining applications made in connection with sexual entertainment venues. It will assist it in achieving the purpose of the legislation in a manner that is consistent with the body of case law that has developed since the regime was first enacted.

This policy applies to every type of sexual entertainment venue (as defined in the Act) unless an exemption applies. Reference should be made to the legislation itself for a full understanding of what might fall within the definition

and when exemptions may apply, but in summary a sexual entertainment venue is:

- (a) **premises** (which includes traditional premises as well as vehicles, vessels and stalls etc. – but not private dwellings to which the public are not admitted) **at which**
- (b) **relevant entertainment** (i.e. either: (i) a live performance of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purposes of stimulating any member of the audience\* whether by verbal or other means; or (ii) a live display of nudity\* of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purposes of stimulating any member of the audience\* whether by verbal or other means.
- (c) **is provided** (i.e. provided or permitted to be provided by or on behalf of the organiser\*)
- (d) **before a live audience**
- (e) **for the financial gain of the organiser or entertainer** (this can be direct or indirect)
- (f) **unless an exemption applies** (exemptions are detailed in par 2A of the third schedule – see link above)

\*audience includes an audience of only one person

nudity is the exposure of the pubic area, genitals or anus and, in the case of women, their nipples

organiser the person who is responsible for the organisation or management of the entertainment itself or the premises

Licensing of sex cinemas and sex shops is outside the scope of this policy, which is directed at the new aspect of the regime under which sexual entertainment venues are regulated.

This policy is intended to be strictly applied, but will not operate inflexibly; the Council will take all relevant factors into consideration when determining applications and each and every case will be decided on its merits.

### **3. Decision making responsibility**

By law all functions of the local authority concerning this regime, including the making of this policy and determination of applications, are matters that cannot be the responsibility of its Executive. As such the Full Council is the body that controls the way decisions are made. The Full Council exercised its powers under Section 7 of the Licensing Act 2003 to arrange for the Licensing Committee to be responsible for the Schedule 3 functions on behalf of the Council. By virtue of Section 10 the Licensing Act 2003 a licensing committee may arrange for the discharge of any functions exercisable by it:-

- (a) By a sub-committee established by it, or
- (b) (Subject to certain statutory restrictions) by an officer of the licensing authority.

The Licensing Committee has made such arrangements.

#### **4. Transitional provisions**

There are three appointed days under the transitional provisions that apply to the new provisions. These are called the first appointed day (FAD), the second appointed day (SAD) and the third appointed day (TAD).

The FAD in Bristol is the 31 January 2011. The SAD is the day six months after that and the TAD is the day six months after the SAD. There are some 'grandfather rights' that apply to the following:-

- (a) Those with a licence for relevant entertainment under the Licensing Act 2003 who are using the premises as a sexual entertainment venue under that licence.
- (b) Those with a licence for relevant entertainment under the Licensing Act 2003 who are undertaking preparatory work to use the premises as a sexual entertainment venue under the 2003 Act Licence.

Both category of operator may continue to use their premises as a sexual entertainment venue until at least TAD, or, if they have made an application before TAD, until the determination of that application or the conclusion of any appeal against a refusal of it. In other words, these two groups can continue to trade for at least one year following the 31 January 2011 even if no licence or waiver has been granted to them, indeed even if they have not chosen to make an application.

There are three groups of applications in the transitional order :-

1. Round one applications:

From the FAD until on or before the SAD Round 1 applications can be made. All of these must be considered before any of them can be determined. In practice, therefore, the first time the Council is permitted to determine applications will be after the day following the second appointed day, i.e. six months plus one day from the 31 January 2011. When they are determined, any licences granted to applicants with "grandfather rights" will not take effect until the third appointed day. Any others that are granted will take effect straightaway.

2. Round two applications:

These second round applications may be made after the SAD and before the TAD.

It is important to note that none of these applications may be determined until all of the Round 1 applications have been determined.

As with the Round 1 applications, licences granted to applicants with “grandfather rights” whose applications are granted before the TAD will not take effect until the third appointed day; any others that are granted will take effect straightaway.

### 3. All other applications

Any applications made after the third appointed day TAD may not be determined until such time as all of the Round 1 applications (if any) have been dealt with.

## **5. Determining applications**

The Council will determine every application on its own merits.

## **6. General obligations that apply to the discharge of all of the Council’s powers and duties**

There are a number of general obligations that apply whenever the Council is discharging any of its many functions. Those most likely to be relevant are highlighted in this part of the policy and must be borne in mind when considering any aspect of the regime including all of the things specifically addressed in the following paragraphs. For the avoidance of doubt, the Council has screened this policy statement to ensure it is compatible with those obligations and will, through its information gathering powers, seek to ensure that relevant information may come forward through the application process to enable all of its general obligations to be satisfied in the discharge of the function of determining applications for sexual entertainment venue licences. Material that is relevant to the achievement of these obligations will be properly taken into account.

There are many such general obligations applying to the work of a local authority, amongst which are (in no particular order of priority):-

- its fiduciary duties to the Council Tax and Rate payers of the City (protection of the public purse).
- its obligations to act compatibly with rights conferred under the European Convention of Human Rights
- its general and specific duties under Equalities Law
- its obligations under Crime and Disorder legislation

## **7. Considering applications and representations**

Applications have to be made in writing and must contain the particulars specified in paragraphs 10.2 to 10.5 of the third schedule (see hyperlink above) and such particulars as the appropriate authority may reasonably require in addition. The Council's application form will be designed to elicit information that enables its decision making to be guided by this policy, including information that is relevant to enabling it to meet all of its general obligations such as those referred to in the preceding paragraph.

Public notice must be given of all applications and that notice shall be in the form that the Council may prescribe. The Council intends to prescribe a form of application that facilitates public representations, including, for example, requiring applicants to identify the brand name under which the premises are intended to operate and other material information.

The council will record that applications have been received on its licensing web pages. The council will also display additional notices in the area making use of street furniture and community notice boards. It also intends to notify Ward Members about applications made within their areas and the relevant Neighbourhood Forum co-ordinators.

Persons objecting to an application for the grant renewal or transfer of a licence must give notice in writing of their objection to the Council, stating in general terms the grounds of the objection not later than 28 days after the date of the application. Providing they comply with the statutory requirements their format of written objections is entirely a matter for the objector. However, to assist the public, the Council will make available a form for objectors to use if they so choose.

The Council will give an opportunity of appearing before and being heard by a committee or sub-committee:

- (a) before refusing to grant a licence, to the applicant;
- (b) before refusing to renew a licence, to the holder; and
- (c) before refusing to transfer a licence, to the holder and the person to whom he desires that it shall be transferred.

The Council will also usually permit objectors to address the Committee or sub committee in respect of the matters raised in their written objection (but no other matter)

The Council has arranged for hearings to take place before committees and sub-committees whose Members are accustomed to conducting such business in accordance with the rules of natural justice and other relevant

obligations. Training has been made available to all Councillors concerned in the conduct of hearings and determination of such matters.

When considering applications the Councillors will usually enhance their existing local knowledge of the locality by use of maps and site visits. Applicants should be required to provide a location map and plan of the premises.

## **8. Grounds for refusal**

### **Mandatory grounds**

A licence shall not be granted where one of the mandatory refusal grounds applies, that is:-

- (a) to a person under the age of 18; or
- (b) to a person who is for the time being disqualified by virtue of revocation in the previous year;
- (c) to an individual applicant who has not been resident in the UK for the previous six months;
- (d) to a body corporate which is not incorporated in an EEA state;
- (e) to an applicant 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 was reversed on appeal.

If the Council finds any of these grounds apply then it must refuse the application

### **Discretionary grounds for refusal**

A licence may otherwise be refused on one or more of the following grounds.

- (a) That the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or any other reason
- (b) 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;

- (c) That 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 consider is appropriate for that locality. (Nil may be an appropriate number for these purposes)
- (d) That the grant or renewal of the licence would be inappropriate, having regard -
- (v) to the character of the relevant locality; or
  - (vi) to the use to which any premises in the vicinity are put; or
  - (vii) to the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made

If the Council finds any of these grounds apply then it may refuse the application

## **Factors for consideration**

### **Discretionary grounds (a) and (b)**

In considering the suitability of those persons referred to in (a) and (b) above the factors the Council may take into account include:

- relevant experience;
- relevant criminal convictions;
- whether the person has committed relevant offences;
- relevant observations or findings by public authorities, including licensing authorities, in connection with the conduct of the person or their ability to manage and control premises;
- relevant findings by courts and tribunals in connection with the treatment of protected groups (within the meaning of the Equalities Act 2010)
- information germane to the person's ability to, among other things:
  - ensure the safety and wellbeing of performers;
  - ensure the proper protection of the public;
  - ensure the suitability of employees, performers and others using the venue;
  - prevent performance by or for those who may thereby be harmed, including minors;
  - understand and adhere to conditions imposed on any licence granted and ensure they are observed by others on the premises;
  - engage constructively with the Council and other relevant regulators

### **Discretionary ground (c)**

The Council is mindful of its power to determine an appropriate maximum

number of sex establishments, or of sexual entertainment venues, in the relevant locality at the time of application is determined. The Council will adopt the same approach to this issue when determining applications for sexual entertainment venues as it has taken with respect to applications for sex shop licences. It will not seek to predetermine the localities that are comprised within the City of Bristol or predetermine the appropriate number for each such locality, but will consider this issue on a case by case basis. That is to say, it will decide what is the relevant locality as a matter of fact in each particular application and not by drawing boundaries on a map or some other method.

Having established the relevant locality, in considering the issue in ground 'c' the Council will take into account all relevant considerations including:-

The character of the locality:

- residential
- leisure
- educational establishments

Other uses in the locality:

- faith / religious institutions
- churches
- family friendly facilities

Impact on regeneration

Impact on tourism, including considerations of the perception of the City at gateway locations

Impact on retail attraction

Risk of public nuisance

Whether the locality is subject of stress caused by a cumulative impact of premises authorised to provide licensable activities under the Licensing Act 2003;

Impact on crime and disorder

Public perception of the safety of the locality and impact on that perception, e.g. typical footfall at material times, level of street lighting, use by lone females

Existence of social problems in the locality and impact on any initiatives to tackle them, e.g. kerb crawling, prostitution.

Levels of recorded crime

Levels of anti social behaviour

A dedicated Appendix will be maintained with this policy to record all decisions made to control the number of sex establishments under this provision

## **Discretionary grounds (d)**

### **For d(i)**

Having regard to the character of the locality (see ground (c ) above) the Council will consider whether the particular application is appropriate ,

taking into account:

The size and appearance of the premises

Their proximity to places where the public congregate for purposes other than use of the premises, such as bus stops and taxi ranks

The nature and style of the relevant entertainment that is proposed

The nature of the clientele it is likely to attract and their number

The duration of the proposed licence/activity

The manner in which the relevant entertainment is likely to be managed

The risk of nuisance to others engaged in legitimate activity

The proposed hours of operation.

### **For d(ii)**

Whether premises in the vicinity are put to any of the following uses:

- residential, in particular homes occupied by families
- leisure
- educational establishments
- churches and other places of worship
- family friendly facilities
- other sex-oriented/adult premises (whether or not they are licensed/licensable)
- youth clubs
- womens refuges
- community centres
- parks and other open spaces
- swimming pools
- public transport

### **For d (iii)**

In considering these factors the council will take into account information concerning:-

- whether the premises are fit for the purpose proposed
- their planning status
- the general appearance to others using the locality
- whether premises are self contained
- means of access and egress, whether shared with other building users (if any)
- accessibility
- sightlines
- 'hidden' areas and other places where effective monitoring may be hampered
- standard of decoration and "fit –out"
- visibility from the street
- facilities for smokers
- facilities for performers (changing, washing, wc, smoking areas etc) and whether they are adequately separated from those provided for customers

## **9. Reasons**

The Council will usually make available the reasons for its Committee and sub committee decisions on its web pages. Rarely publication of reasons may be deferred where there is good reason (for example where relevant information is sub judice or otherwise reasonably judged to be exempt from publication).

## **10. Waiver**

In circumstances in which the Council reasonably judges that it would be unreasonable or inappropriate to require a licence for the sexual entertainment venue concerned it may waive the requirement for a licence. An applicant for a waiver must submit the information prescribed in the legislation and such other information as the council may reasonably require. There are no advertising or publicity provisions governing waivers.

If an application for waiver is allowed a waiver notice is given which can be for a specific period or open ended. When it is open ended the council, by giving at least 28 days Notice, can bring it to an end

The Council will consider each waiver application received on its own merits. It is unlikely a waiver will be granted for relevant entertainment that includes a performance of nudity.

## **APPENDIX**

### **RECORD OF DECISIONS TAKEN TO CONTROL THE NUMBER OF SEX ESTABLISHMENTS IN LOCALITIES IN BRISTOL**