

APPENDIX 1



SEX ESTABLISHMENTS SOUTH KESTEVEN DISTRICT COUNCIL PROCEDURES

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1. INTRODUCTION AND DEFINITIONS

1.1 Introduction

South Kesteven is one of the biggest and most widespread districts in the UK, covering 365 square miles of some of England's finest countryside. Our four traditional market towns: Grantham, Stamford, Bourne and The Deepings, together with over 80 villages, are home to over 132 000 residents.

For more information about South Kesteven go to www.southkesteven.gov.uk.

1.2 Definitions

In this document the following phrases bear the following meanings:-

'Act'

The Local Government (Miscellaneous Provisions) Act 1982 (as amended).

'Committee'

Licensing Committee (South Kesteven District Council)

'Council'

South Kesteven District Council.

'Display of nudity'

This means:

- in the case of a woman: exposure of her nipples, pubic area, genitals or anus; and
- in the case of a man: exposure of his pubic area, genitals or anus.

'Licensed Premises'

The premises, vessel, vehicle or stall licensed by the Council as a Sex Establishment.

'Licensing Act'

The Licensing Act 2003

'Licensing Officer'

The Council's licensing officer located at Council Offices, St Peters Hill, Grantham, Lincolnshire. NG31 6PZ

'Organiser'

Any person who is responsible for the organisation or management of the relevant entertainment or the licensed premises.

'Permitted Hours'

These are the hours of activity and operation that have been authorised under a Sex Establishment Licence.

'Procedures'

This document.

'Relevant Entertainment'

Relevant entertainment as defined by Schedule 3, Paragraph 2A (2) of the Act.

'Relevant Locality'

The locality where premises are situated or where the vehicle, vessel or stall is going to be used. The locality and the area that this covers is a matter for the Council to decide and will be determined on a case by case basis for the purpose of decision making.

'Sex Article'

A sex article as defined by Schedule 3, Paragraph 4 (3) of the Act.

'Sex Cinema'

A sex cinema as defined by Schedule 3, Paragraph 3 (1) of the Act.

'Sexual Entertainment Venue (SEV)'

An SEV as defined by Schedule 3, Paragraph 2A (1) of the Act.

'Sex Establishment'

A sex establishment as defined by Schedule 3, Paragraph 2 of the Act.

'Sex Shop'

A sex shop as defined by Schedule 3, Paragraph 4 (1) of the Act.

'Transitional Order'

The Policing and Crime Act 2009 (Commencement No. 1 and Transitional and Saving Provisions) Order 2010.

2. BACKGROUND

Origins of the legislation

- 2.1 In 1982 the Act introduced a discretionary licensing regime for sex shops and sex cinemas. These provisions were adopted by South Kesteven District Council on 1st February 1983.

2.2 In 2005 the Licensing Act introduced a new licensing regime which amalgamated several pieces of old legislation under the heading "Provision of regulated entertainment". Entertainment of an adult nature such as lap dancing, pole dancing and striptease etc. fell under this heading. However, the power for the community to object to such applications was restricted, as any objection needed to relate to the four specified licensing objectives. This made it difficult for local communities to have any control on the number and/or location of these types of venues.

2.3 In order to address these concerns the Policing and Crime Act 2009 introduced provisions creating a new category of Sex Establishment known as a Sexual Entertainment Venue (SEV) to enable local authorities to require venues such as lap dancing establishments to be licensed as Sex Establishments. These provisions are also discretionary but the Council adopted them with effect from 8 April 2011.

Sex Establishments

2.4 The definitions contained within the Act are complex defining three types of sex establishments licensable by this Council:

- Sex Shop;
- Sex Cinema;
- SEV.

2.5 In general -

- "sex shop means any premises, vehicle, vessel or stall used for a business which consists to a significant degree of selling, hiring, exchanging, lending, displaying or demonstrating –
 - (a) sex articles; or
 - (b) other things intended for use in connection with, or for the purpose of stimulating or encouraging –
 - (i) sexual activity; or
 - (ii) acts of force or restraint which is associated with sexual activity." This includes adult films and magazines.
- "sex cinema means any premises, vehicle, vessel or stall used to a significant degree for the exhibition of moving pictures, by whatever means produced, which –
 - (a) are concerned primarily with the portrayal of, or primarily deal with or relate to, or are intended to stimulate or encourage –
 - (i) sexual activity; or
 - (ii) acts of force or restraint which are associated with sexual activity; or

(b) are concerned primarily with the portrayal of, or primarily deal with or relate to, genital organs or urinary or excretory functions;" (e.g. pornographic movies). However, dwelling houses and cinemas showing films covered by the Licensing Act (e.g. a film rated by the British Board of Film Classification) are excluded from this definition.

- SEV "means any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer." "...relevant entertainment" means
 - (a) any live performance; or
 - (b) 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)." Nudity is not a necessary element of such a performance and an audience can comprise one person. The term 'SEV' is therefore likely to cover lap dancing, pole dancing, table dancing, strip shows, peep shows, live sex shows and potentially, burlesque.

2.6 These procedures apply to all forms of sex establishments unless otherwise stated. Whilst the Act allows applicants to apply to the Council for the requirement for a licence to be waived, the presumption is that such applications will be refused. Waivers will only be granted where applicants can establish that exceptional circumstances exist making it unreasonable or inappropriate for the premises to be licensed as a sex establishment.

3 MAKING AN APPLICATION

3.1 All applications relating to sex establishments **must**:-

- be made on the Council's prescribed form which is available from the Licensing Section at the Council or via the website at www.southkesteven.gov.uk; and
- must be accompanied by a layout plan (for premises) and the relevant fee. Full details of the fees can be obtained from the Licensing Section or the Council's website.

3.2 Applicants **must**:-

1. Serve a copy of their application on the Police at the address stated within the application form.

2. Give public notice of the application, in the form prescribed by the Council. A copy of this form is available from the Licensing Section. Notice of the application must be given by publishing an advertisement in a local newspaper circulating in South Kesteven not later than 7 days after the date of the application.
3. Where the application relates to premises - display a copy of the notice for 21 days beginning with the date of the application, on or near the premises and in a place where the notice can be conveniently read by the public.
4. Provide a copy of the site notice, the relevant page of the newspaper containing the advertisement, and a certificate confirming that the application has been publicised and served in compliance with the legislation to the Licensing Officer.

3.3 **Any failure to comply with the requirements of paragraphs 3.1 and 3.2 above may result in the application being deemed invalid and being rejected.**

3.4 Whilst applicants for variation are not legally obliged to advertise their applications and serve a copy on the Police, it is the Council's directive that they should comply with paragraph 3.2 above.

3.5 Once an application has been received the Licensing Officer may consult other relevant officers of the Council, local Councillors and other relevant partners and stakeholders, so as to gather appropriate information to be placed in the report to the Committee regarding the character of the relevant locality, the use to which any premises in the vicinity are put, and details as to the layout, character, and condition of the premises.

3.6 Any person wishing to object to an application must do so in writing within 28 days of the date of the application stating the general terms of the objection. Objections received after this date may only be considered at the discretion of the Council if it feels that they are relevant.¹ In determining whether to exercise the discretion to take late representations into account, the Council will have regard to the following:-

- how late the objection is.
- whether there is a good reason for the objection being late or whether the lateness was intentional.
- whether it introduces new grounds of objection or information or whether it merely repeats other objections which were made in time.

¹ Belfast City Council v Miss Behavin' Ltd Northern Ireland [2007] UKHL 19 [2007] LLR 312

- whether consideration of the late objection would result in unfairness to the applicant or disrupt the Committee's procedures.

In appropriate circumstances the Council may defer determination of an application to allow the applicant time to respond to any late objections.

- 3.7 Applicants will be given notice of any objections that are received, though the names and addresses of objectors will not be disclosed unless the objector gives the Council permission to do so.
- 3.8 With the exception of uncontested transfer applications, all applications relating to sex establishments will be heard by a meeting of the Committee, and both applicants and objectors may be invited to attend. The hearing procedure is outlined in Section 5.

4. DETERMINATION OF APPLICATIONS

- 4.1 Each application will be determined on its own merits. However applications may only be refused on certain defined mandatory or discretionary grounds.

4.2 Mandatory grounds

The Council must refuse an application if:-

- the applicant is under 18 years of age; or
- the applicant is for the time being disqualified from holding a licence under Schedule 3 Paragraph 17 (3) of the Act following revocation of a previous licence; or
- the person applying is not resident in the United Kingdom, or was not so resident during period of six months immediately preceding the date when the application was made; or
- where a body corporate is the applicant - it is not incorporated in the United Kingdom; or
- the applicant has been refused the grant or renewal of a licence for the same premises within a period of 12 months immediately preceding the date when the application was made, unless the refusal has been reversed on appeal.

4.3 Discretionary grounds

The Council may refuse an application for the grant or renewal of a licence if:-

- the applicant is unsuitable to hold the licence by reason of conviction of an offence or for any other reason;
- the business 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 sex establishments of a particular type in the relevant locality at the time the application is made is equal to or exceeds the number which the Council consider is appropriate for that locality;
- "the grant or renewal of the licence would be inappropriate, having regard -
 - (i) to the character of the relevant locality; or
 - (ii) to the use to which any premises in the vicinity are put; or
 - (ii) to the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made."

The Council has a wide discretion with regard to variation applications and may refuse the application if it thinks fit. Transfer applications can only be refused if :-

- the applicant is unsuitable to hold the licence by reason of conviction of an offence or for any other reason; or
- the business would be managed or carried on for the benefit of a person other than the applicant, who would be refused the licence if they made the application themselves.

4.4 Suitability of the Applicant

The applicant will be required to demonstrate that he is a suitable person to hold a licence. In determining suitability, the Council will normally take into account:

- previous knowledge and experience of the applicant;
- information relating to the operation of any existing/previous licence held by the applicant, including any licence held in any other local authority area;
- information about the applicant and their management of the premises received from objectors, Council Officers or the Police including any known criminal convictions or cautions the applicant or officers of any corporate applicants may have;

- any other relevant information.

The above factors are not an exhaustive list of considerations but are merely indicative of the types of factors which may be considered in dealing with an application. Similar considerations may also apply to persons whom it is alleged would benefit from the grant of the application but would be unsuitable to hold the licence themselves - in such cases the Council will also have regard to any evidence to show that the business would in fact be carried on for their benefit.

4.5 Character of the relevant locality and use of other premises in the vicinity

The Council will not grant or renew a licence for a sex establishment if, in the Council's opinion, it would be inappropriate to do so with regard to the character of the relevant locality or if the appropriate number of sex establishments, or of a particular type of sex establishment, in that locality would be exceeded. Whilst not intended to be an exclusive list, the Council will have particular regard to the following matters:-

- the proximity of residential premises, including any sheltered housing and accommodation for vulnerable people;
- the proximity of educational establishments;
- the proximity of places of worship;
- 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, etc.;
- any planned or proposed regeneration of the area;
- any relevant planning considerations such as whether the premises are in a conservation area or areas designated as primarily residential or prime retail frontage;
- any complaints or reports of nuisance, disturbance, crime and /or disorder caused by or associated with the premises;
- the proximity of other sex establishments.

Many of these issues will also be relevant when considering the uses to which other premises within the vicinity are put.

4.6 Layout, character and condition

The Council will not grant or renew a licence for a sex establishment if, in the Council's opinion, it would be inappropriate having regard to the layout, character and condition of the proposed sex establishment.

Whilst not intended to be an exclusive list the Council will have particular regard to the following:-

- the type of activity to which the application relates;
- the days and hours of operation of the activity;
- the layout and condition of the premises with particular concern for public safety, health and safety and the prevention of crime and disorder.

4.7 Disability Access

Applicants are reminded of their duties under Equality Act 2010 and should provide such facilities so as to enable the admission of disabled people.

4.8 All sexual establishment licences

Any licence granted by the Council, may be subject to conditions which the Council imposes.

5. HEARINGS

5.1 With the exception of uncontested transfer applications, all applications relating to sex establishments will be heard by a meeting of the Committee. It will be the general practice of the Council to invite the Police and/or others who have lodged objections to appear and be heard at any hearings in addition to the applicant. However, the Council has a discretion and can, as a result, decide not to invite the Police and/or other objectors to hearings. In deciding whether to exercise the discretion the Council will consider the facts surrounding each particular application and will aim to act fairly at all times.

5.2 Officers will notify the applicant, Police and objectors of the date and time of the hearing. These parties shall give notice to the Council stating:-

- a. whether they will attend the hearing; and
- b. the names and addresses of any witnesses that they intend to call; and
- c. a time estimate for their representations to the Committee.

5.3 An agenda will be circulated to members prior to the hearing. This will include a copy of the application, a copy of any representations made by the Police and a copy of any objections received. The identity of the objector(s) will not be made known without their prior consent (although information as to the general vicinity in which the objector(s) live may be included).

- 5.4 Whilst additional material in support of the application or representation may be taken into account at the hearing, such material should be provided to the Council as soon as possible and at least 5 working days before the hearing.
- 5.5 Where there has been a failure to adhere to paragraph 5.4 above, or where additional material is produced at the hearing, this will only be admitted at the discretion of the Committee. This will usually be allowed only in exceptional circumstances and if the late production does not prejudice any other party in being able to respond fully.
- 5.6 Late objections/representations will be dealt with in accordance with paragraph 3.6 above.
- 5.7 Where a party does not attend the hearing and is not represented the Council may either adjourn the hearing or may continue with the hearing in the party's absence. If the latter option is followed the Committee will still consider any application, representation or notice submitted by the absent party in so far as it is relevant.
- 5.8 The hearing will concentrate on matters which are relevant to one or more of the grounds upon which a licence may be refused under Schedule 3 of the Act. (See Section 4 above.)
- 5.9 The hearing will be inquisitorial and not adversarial. The procedure outlined in Appendix 1 will normally be followed.

6 APPEALS

- 6.1 Appeals against decisions of the Council are generally made to the Magistrates' Court and appeals against decisions of the Magistrates may be made to the Crown Court. However, not all decisions carry a right of appeal.
- 6.2 The only persons entitled to appeal are:
 - i) an applicant for the grant, renewal or transfer of a licence whose application has been refused; or
 - ii) an applicant for the variation of the terms, conditions or restrictions on or subject to which any such licence is held whose application for variation is refused; or
 - iii) a holder of any such licence who is aggrieved by any term, condition or restriction on or subject to which the licence is held; or
 - iv) a holder of any such licence whose licence is revoked.

However, even these persons do not have a right of appeal in every case.

6.3 There is no right of appeal for the following:-

- objectors;
- an applicant who has been refused the grant/renewal or transfer of a licence on any one of the mandatory grounds, unless he seeks to show that the grounds for refusal does not apply to him;
- an applicant who is refused a licence on the grounds:-
 - i) that there are sufficient sex establishments in the locality, or
 - ii) that to grant the licence would be inappropriate having regard to the relevant locality, use to which premises in the vicinity are put, or the layout, character, or condition of the establishment.

The only means of challenge available for such persons is by way of Judicial Review.

6.4 Any application for an appeal must be lodged within 21 days from the date that the applicant was notified in writing of the decision against which he is appealing. A fee will be payable and the relevant court will advise as to the amount.

7 ENFORCEMENT

7.1 All decisions, determinations, inspections and enforcement action taken by the Council will have regard to the relevant provisions of the Act, and the enforcement policy of the Council.

8 MONITORING AND REVIEW OF THESE PROCEDURES

8.1 These procedures will be reviewed as and when appropriate. In preparing any succeeding procedures regard will be had to data and information collated over the operating period of the current procedures.

9 EQUALITY AND DIVERSITY

9.1 Delivery of this licensing regime will be in accordance with the Corporate Equality Scheme. The use of an Impact Needs Assessment process will inform service delivery and will be subject to ongoing monitoring and customer/stakeholder consultation during the life of this procedure with the framework of the regime. Relevant matters that come to light as a result of monitoring and consultation may result in changes to service delivery and where necessary may result in changes to these procedures.

9.2 Advice and guidance will be made available in English which is the most common language of customers and stakeholders. Guidance documents issued by the Licensing Section will include advice about translation and access to information about services, however it is recognised that local communities will normally have access to alternative translation and advice services. The Council will also signpost customers to other providers of guidance and information relevant to the regime but is not responsible for the accuracy of such information.

CONTACT DETAILS & FURTHER INFORMATION AVAILABLE FROM:

Our website: www.southkesteven.gov.uk

Email: licensing@southkesteven.gov.uk

APPENDIX 1 - HEARINGS PROCEDURE

1. The following procedure will ordinarily be followed at the Committee hearing:
 - i) The Chair will introduce him/herself, the other Committee Members and officers attending. The applicant, then the Police and objector(s) (if invited and present) will introduce themselves and their witnesses. The Chair will outline the procedure to be followed and explain any time limits imposed on representations.
 - ii) The applicant will present his case and ask his witnesses to give their evidence. The applicant and each witness after giving their evidence may, at the discretion of the Chair, be asked questions by the Police, the objector(s), the Committee Members, and the Legal Adviser.
 - iii) The Police and objector(s) (if invited and present), in turn, will then be asked to make their representations following which they will be asked questions by the applicant, the Committee and the Legal Adviser.
 - iv) Once all parties have given their evidence and all questions have been asked, each party will be asked to sum up their case. The order of summing up will be the Police and the objector(s) (if present), and finally the applicant.
 - v) Hearings will normally be conducted in public; however the Committee does have powers of exclusion which cover the public, the press, and even applicants, objectors and their representatives in appropriate circumstances.
2. Whilst it will only hear representations which are relevant, the Committee is not restricted to considering any objections raised. In coming to a decision it will consider all relevant information, including observations by Council Officers, the Police and objectors (whether or not these parties are invited to speak at the hearing), representations by the parties at the hearing, as well as the local knowledge of the Committee Members.
3. Due to time constraints, applications for adjournments will only be granted when absolutely necessary, taking into account the following:
 - i) Once a hearing date has been set it is for the parties to ensure that they can attend or are represented. Hearings may proceed in the absence of a party and their representations will be taken into account.

- ii) If it is not possible for a party or their witnesses to attend the hearing then the Council's preference will be for the hearing to proceed and the representation to be given by way of written evidence.
- iii) Any party who wishes to make an application for an adjournment should seek the consent of all other parties to the application and notify the Council as soon as possible that an adjournment is being sought. If all parties agree the matter may be adjourned administratively.
- iv) If an adjournment is not agreed administratively prior to the hearing, then the matter will remain listed and the application for the adjournment will be heard and the Committee will decide whether to allow the adjournment or to proceed on written evidence.
- v) The Council may adjourn proceedings of its own motion where it considers it necessary for its consideration of any application or objection.
- vi) Where an adjournment is granted all parties will be notified as soon as possible and notified of the new hearing date.

4. In coming to a decision the Committee will have regard to any rights the applicant may have under the Human Rights Act 1998, Part I Article 10 (Freedom Of Expression) and Part II Article 1 (Protection Of Property), as qualified, and will weigh them in the balance.
5. At the end of the hearing the Committee will retire to make their decision. In all cases the Committee will try to make their decision and to communicate this, with reasons, within a reasonable time of retiring. Where this is not possible the committee may:
 - i) announce their decision on the day with reasons to follow; or
 - ii) delay their decision and reasons for a set period.
6. However the decision is delivered, it will always be followed up with written notification of the decision to all parties, including full reasons, and information, where relevant, about the appeals process.