

Sex Establishments Policy

Statement of Sex Establishments Policy 2011



This Statement of Principles was prepared under Schedule 3 of the Miscellaneous Provisions Act 1982 and Section 27 of the Policing and Crime Act 2009 with regard to the Licensing Act 2003.

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PART ONE: Overview of the Policy.

1.1. Introduction of the Policy:

Swale Borough Council is the Licensing Authority under the provisions of the Miscellaneous Provisions Act 1982 and responsible for the administration of Sex Shop, Sex Venues Licenses and enforcement. We are not required to publish a Statement of principles but have chosen to do so. This statement will be regularly reviewed. Amendments can be made, but will be consulted upon and then formally adopted by Council.

In exercising its functions under the Miscellaneous Provisions Act 1982 this licensing authority shall **aim to permit** the use of premises as Sex venues in so far as the authority thinks it is;

- in accordance with any relevant code of practice
- in accordance with any relevant guidance issued
- in accordance with this policy statement.

When the Licensing Authority is discharging its functions under the Act, it will present clear reasons for any need to depart from any Guidance, or from this Statement of Sex Establishments Policy. It will consider the circumstances of each application and may make exceptions to its own policy where it is appropriate to do so.

Through this policy the Licensing Authority aims to:

- introduction of better and more proportionate regulation to give business greater freedom and flexibility to meet their customers' expectations;
- The necessary protection of local residents, whose lives can be blighted by disturbance and anti-social behaviour associated with the behaviour of some people visiting Sex Establishments.

1.2. Description of Swale Borough:

Swale Borough Council is situated in the County of Kent, which contains 12 district Councils and 1 Unitary Authority. Each authority is represented on the Kent & Medway Regulatory Licensing Steering Group (K&MRLStGp) which identifies issues on which a consistent, countywide approach, is considered essential and formulates a recommended policy that establishes a minimum standard on these identified issues. This Statement of Sex Establishments policy has been in conjunction with the K&MRLStGp.

Swale Borough is the fourth largest district in Kent and covers an area of 364 square kilometres, with a population of 130,300, and 57,000 households (Swales Sustainable Community Strategy 2009-2026). It is a prime location, within 40 miles from London and the channel ports, but set in the Kentish countryside; much of the borough is rural and includes the attractive landscape of the North Downs.

It is a diverse Borough containing three distinct towns, connected by their relationship with the waters of the North Kent coast, particularly the Swale channel. Each town has developed and maintained its own special identity and character.

1.2.1 Faversham Town:

Faversham is an important historic market town, with brewing and food processing comprising the town's main industries. Over recent years Faversham's Café Culture has grown and the pedestrianised town centre with ancient Guildhall and quaint shops attracts many tourists each year. Faversham currently has no Sex Establishments.

1.2.2 Sheerness Town:

Sheerness provides goods and services primarily for the resident population of the Isle of Sheppey, only specific services, such as

the town's supermarket attracts shoppers from further afield. Sheerness is the biggest town on the Isle of Sheppey, owing much of its heritage to the naval dockyard, which has since been converted to a deep water commercial port.

To make the town more attractive to visitors, so far as is consistent with its duties under the Act the Council will support proposals that will stimulate the evening economy but they should be aimed more at the holiday market and leisure entertainment facilities. Bluetown has the only licensed Sex Shop within the Borough although several licensed premises on the island do offer adult entertainment.

1.2.3 Sittingbourne Town:

Sittingbourne prospered as a market town, but has since focused on manufacturing. New proposals to regenerate Sittingbourne, may lead to considerable growth in employment, as plans include increases in retail and entertainment, to minimise the need for people to travel elsewhere. Sittingbourne already has some licensed premises that offer adult entertainment.

PART TWO: DEFINITIONS

The Act

This refers to Schedule 3 of the Local Government Miscellaneous Provisions Act 1982 as amended by the Policing and Crime Act 2009

The Policy

This refers to Swale Borough Councils Sex Establishment Licensing Policy.

Relevant Locality

This is the locality where the premises are situated or where the vessel or stall will be used. The locality and area is a matter for

the Local authority to decide. This Council has determined that the relevant locality will be determined on a case by case basis for the purpose of decision making.

Character of Relevant Locality

This Council has not defined what type of area will be appropriate and/or acceptable in terms of its character. The Council will consider the character of an area on a case by case basis and will take into account such factors as the uses and users of the area, how the area is perceived, the vision/plan for the area, the views of the planning authority.

The Council

Refers to Swale Borough Council

Display of nudity

This is defined in the Act as exposure of nipples, pubic area, genitals or anus in the case of a woman. In the case of a man, exposure of the pubic area, genitals or anus.

The Licensed Premises

This is the premises, vessel, vehicle or stall which is subject to a sex establishment licence. This premises will be in receipt of all of the necessary consents and permissions to operate. Note: licences are not required for the sale, supply or demonstration of birth control items.

The Organiser

This is any person responsible for the organisation or management of the Relevant Entertainment or the premises.

Permitted Hours

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

Sex Article

A sex article is anything for use in connection with or for stimulating or encouraging sexual activity or acts of force or restraint which are associated with sexual activity.

Sex Shop

A sex shop is any premises, vehicle, vessel or stall used for a business which consists to a significant degree of selling, hiring, exchanging, lending, displaying or demonstrating sex articles or other things intended for use in connection with or for stimulating or encouraging sexual activity, or Acts of force or restraint that are associated with Sexual activity.

Sex Cinema

A sex shop is any premises, vehicle, vessel or stall used to a significant degree for the exhibition of moving pictures, however produced, which are concerned primarily with the portrayal of or primarily deal with or relate to or are intended to stimulate or encourage sexual activity.

Sexual Entertainment Venue

A Sexual Entertainment Venue is a premises where relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer. 'Relevant Entertainment' means any live performance or any live display of nudity of such a nature that, regardless of financial gain, it must reasonably be assumed to be provided solely or primarily for the purpose of sexually stimulating any member of the audience whether by verbal or other means.

The following are not deemed as sexual entertainment venues under the new schedule:

- Any premises that at the time in question:has not provided relevant entertainment on more than 11 occasions within the previous 12 months
- no such occasion has begun within the period of one month beginning with the end of any previous occasion; and
- no such occasion has lasted for more than 24 hours

PART THREE: GENERAL POLICY

3.1 Principles to be applied

The Act lists those people who are excluded from being able to hold a licence

A licence cannot be granted to:

- Anyone under 18 years of age
- Anyone who has held a licence that was revoked in the last 12 months (from the date of revocation)
- Anyone who has been refused a new or renewal of licence within the last 12 months prior to the date of making application
- Anyone not resident in the United Kingdom or who has not been resident for six months prior to making application.
- A company not incorporated in the United Kingdom

On determining an application the Council shall have regard to all relevant considerations, including representations received and comments made by:

- Ward Councillors
- Police
- Fire Authority
- Planning Authority
- Pollution
- Child Protection Services
- Interested Parties (local residents/businesses)
- Any representations made by the applicant.

The grounds on which an application for the grant, renewal or transfer of a licence may be refused are set out in the Act. The Council may refuse a licence if:

- The applicant is unsuitable to hold a licence because they have been convicted of an offence or for any other reason;
- Were the licence to be granted, renewed or transferred, the business to which it relates would be managed or carried on for the benefit of a person other than the applicant, who would have been refused a licence if they had applied themselves;
- The number of sex establishments or 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;
- The grant or renewal of licence would be inappropriate having regard to:
 - i.the character of the relevant locality;
 - ii.the use to which any premises in the vicinity are put;
 - or
 - iii.the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.

The Council has not set a limit on the number of sex establishments or sex establishments of a particular kind that it thinks is appropriate for any Relevant Locality. Each application for the grant, refusal, renewal, transfer or variation of a licence will be determined by the Council on its merits on a case by case basis. This part of the Policy may be subject to change following any future review.

3.2 Character of the Relevant Locality

The Council will not normally grant or renew a licence for a Sex Establishment if the character of the Relevant Locality would make the grant or renewal inappropriate.

When considering whether the grant or renewal of a licence would be inappropriate having regard to the character of the Relevant Locality, the Council will have regard to the following:

- The proximity of residential premises, including any sheltered housing and accommodation of vulnerable people;
- The proximity of educational establishments to the premises;
- The proximity of places of worship to the premises;
- Access routes to and from schools, play areas, nurseries, children's centres or similar premises in proximity to the premises;
- The proximity to shopping centres;
- The proximity to community facilities/halls and public buildings such as swimming pools, leisure centres, public parks, youth centres/clubs (this list is not exhaustive);
- Any adverse impact on crime and disorder and public nuisance in the Relevant Locality which the operation of the sex establishment is likely to generate;
- the nature and concerns of any objections received from residents or establishments in the Relevant Locality;
- any evidence of complaints about noise and/or disturbance caused by the premises;
- any current planning considerations;
- the proximity of other sex establishments;

- whether there is planned regeneration of the area.

3.3 Layout, Character and condition of the Premises

When considering an application for the grant, renewal, variation or transfer of a licence the Council will also take into account the following:

- The type of activity to which the application relates;
- The duration of the proposed licence;
- The days and hours of operation of the activity;
- The layout and condition of the premises;
- The use to which other premises in the vicinity are put;
- The levels of crime and disorder in the area;

Sex establishments should not to be functionally visible to passers by on retail thoroughfares or pedestrian routes. In more sensitive locations applicants should consider whether it would be appropriate to locate such premises at basement level or locate entrances away from retail thoroughfares or busy pedestrian routes.

3.4 Disability Access

Applicants are reminded of their duties under the Disability Discrimination Act 1995 and should provide such facilities so as to enable the admission of disabled people.

3.5 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;
- any evidence of the operation of any existing/previous licence held by the applicant, including any licence held in any other local authority area;
- any report about the applicant and management of the premises received from objectors or the Police and any criminal convictions or cautions of the applicant;
- any other relevant reason.

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.

All applications for new licences for sex establishments, as described in the Act will be referred to the relevant Sub-Committee of the Council for decision.

3.6 Renewal Applications

Where a licence was in existence before the introduction of this Policy, this Policy will become a consideration when the licence is due for renewal.

When considering a renewal application the Council may take into account the criteria set out in this policy and:

- past demonstrable adverse impact from the activity
- whether appropriate measures have been agreed and put into effect by the applicant to mitigate any adverse impacts.

It should be noted that the Council in applying its decision-making discretion may consider it appropriate to refuse the renewal of the licence even where there has been no change in the character of the relevant locality or in the use to which any premises in the locality are put.

If a renewal application is not opposed, it shall be approved under authority delegated to relevant officer(s). All contested applications for renewal, as described in the Act shall be referred to the relevant Sub-Committee for decision.

3.7 Variation Applications

Where an application is made to vary any terms and conditions of an existing licence, whether on renewal or not, the Council will take into account the criteria as set out in this policy.

3.8 Enforcement

In accordance with The Policing and Crime Act 2009, we will work together with the police and other relevant authorities. The 'Kent and Medway Enforcement Protocol' was approved in February 2008 and agrees the appropriate responsibilities and procedures for joint working and enforcement between these two agencies.

The Council is committed to the principles of good enforcement by carrying out these regulatory functions in a fair, open and consistent manner. Inspections, enforcement, and where appropriate, surveillance under the Act will be based on the principles of risk assessment, identifying incidents of violent crime, disorder and nuisance in and around licensed premises.

We will need to be satisfied that premises are being run in accordance with the Act and any conditions, which may be attached to the licence. The frequency of inspections will need to be determined on risk-based criteria, with high-risk operations receiving more attention than premises carrying low public safety/nuisance risks.

PART FOUR, THE APPLICATION PROCESS

4.1 Making an Application

An application should be made in writing to: The Licensing Officer, Swale Borough Council, Swale House, East Street, Sittingbourne, Kent, ME10 3HT. Telephone: 01795 417364

Applicants for a licence must complete the application form and submit to the Licensing Office together with:

- five sets of floor plans, drawn to scale and showing all means of entry and exit, any parts used in common with any other building and indicating how the premises lie in relation to the street;
- five sets of plans showing the existing and front elevation of the premises depicting all signage;
- five sets of plans (scale 1:500) showing the sex establishment in relation to other premises within 100 metres;
- five sets of plans (scale 1:50) showing the layout of the sex establishment;
- the correct fee as set by the Council.

As part of the application process, applicants are required to post an A3 notice at the proposed site for 21 days, from the date the application is lodged with the Council, setting out the application details. A specimen notice is available from the Licensing Office. The notice must be posted in a prominent position for the whole of that time and be easily read by passers-by.

Applicants are also required to place a public notice in a local newspaper giving details of the application. A specimen notice is available from the Licensing Office. The newspaper notice should appear in the publication within 7 days of the application being lodged.

Officers from the Licensing Authority and the Fire Authority may inspect the premises to ensure that required technical standards are met. If works are required to bring the building up to standard, the applicant will be notified. Licences will not be issued until all required works are satisfactorily completed.

As part of the process the Licensing Authority will also consult the Noise Pollution Section of the Council. If there is the possibility of noise nuisance, for example, from amplified music, an inspection may be carried out and noise insulation work recommended.

Comments on applications will also be sought from local Ward Councillors, the Police, the Planning Authority and any other relevant person as deemed appropriate by the Council.

Applicants are warned that any person who, in connection with an application for the grant, renewal or transfer of a licence, makes a statement which s/he knows to be false in any material respect, or which s/he does not believe to be true, is guilty of an offence and liable to summary conviction to a fine not exceeding £20,000.

The Council will not determine an application for the grant of a licence unless the applicant allows an authorised officer a reasonable opportunity to enter the proposed sex establishment to make such examination and enquiries as may be necessary to determine the suitability of the applicant and the premises.

Any licence approved does not constitute any approval under any other Acts. The applicant must ensure that all necessary consents and approvals are obtained prior to operation.

There will be no “grandfather rights” for any existing lap dancing clubs. If they wish to continue trading they will need to apply for a licence under the new regime. A transitional period of 12

months will be given in which clubs should apply for a new licence. However any premises which fails to apply for a new licence within this period, will face closure.

4.2 Renewal of Licence

An application to renew the licence must be made in the appropriate form prior to the expiry of the existing licence.

The Council will not determine an application for the renewal of a licence unless the applicant allows an authorised officer a reasonable opportunity to enter the proposed sex establishment to make such examination and enquiries as may be necessary to determine the suitability of the applicant and the premises.

Where, before the expiry of a licence, an application has been made for its renewal, it shall remain in force even though the expiry date has passed, until the withdrawal of the application or its determination by the Authority.

4.3 Variation of Licence

The application form, together with relevant plans and the fee should be sent to the Licensing Office. Please note that applications for variation of licence are also subject to the site and newspaper notice requirements.

Variation applications relate only to proposed changes to such matters as the hours and area of the premises covered by the licence. Any changes in licensee must be the subject of a transfer application.

All variation applications for sex establishment licences will be referred to the relevant Sub-Committee for decision. Applicants must not operate any revised or varied arrangements until such an application has been approved and any revised or varied licence has been issued.

4.4 Transfer of Licence

The Council will not determine an application for the transfer of a licence unless the applicant allows an authorised officer a reasonable opportunity to enter the proposed sex establishment to make such examination and enquiries as may be necessary to determine the suitability of the applicant and the premises.

Where, before the date of expiry of a licence, an application has been made to transfer, it shall be deemed in force with any necessary modifications until the withdrawal of the application or its determination, notwithstanding that the expiry date has passed or that the person to whom the licence is to be transferred is carrying on the business of the sex establishment.

If a transfer application is not opposed, it shall be approved under authority delegated to relevant officer(s). All contested applications for transfer, as described in the Act shall be referred to the relevant Sub-Committee for decision.

4.5 Representations on an Application

Any person wishing to object to an application must submit a written representation within the specified 28 day consultation period, setting out the grounds of objection.

The Council will balance the interests of the applicant with those of the local community in reaching a decision on a licence application. Valid representations must be made within 28 days of the application being submitted. Representations made before the application is submitted can be taken into account. The Council also has discretion to consider representations made after the 28 day consultation period although this will be assessed on a case by case basis.

Unless the person making a representation consents, their name and address shall not be revealed to the applicant.

The general terms of any objection must be provided to the applicant prior to the determination of the application. The report to the relevant Sub-Committee may have full details of the objections, including any actions/undertakings proposed by the applicant to address matters raised.

The Council shall give an opportunity of appearing before and of being heard by the relevant Sub-Committee of the Council:

- 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 to the person to whom he desires that it shall be transferred.

Additionally, the applicant and any persons who made representations and who wish to attend the hearing will have the opportunity to address the Sub-Committee before the application is determined.

Where the Council refuse to grant, renew or transfer a licence, it shall, if required to do so by the applicant or the holder of the licence, give him a statement in writing of the reasons for its decision within 7 days of his request..

4.6 Duration of Licence

Sex establishment licences will normally expire on an annual basis, but may be issued for a shorter period if deemed appropriate.

4.7 Licence conditions

We will not impose any conditions, unless there is a necessity to impose conditions following a relevant representation at a hearing. We will only impose such conditions as are necessary or are arising out of the consideration of the representations. Conditions will be focused on matters that are within the control of individual licensees and will centre on the premises and the vicinity of those premises.

APPENDIX ONE: FUNCTIONS

Function	Who deals with it
Responsibility for the licensing of Sex Venue Licences, incorporating the following: Sex Shops Sex Cinemas Sexual Entertainment Venues	Licensing Authority
Maintain a register of the licenses issued	Licensing Authority
Enforcement	Licensing Authority

APPENDIX TWO: DELEGATIONS.

To Full Council	To Sub Committee	To an Officer
* Final approval of the policy.	<ul style="list-style-type: none"> *New Application for a licence (all cases) * Application to vary a licence (all cases) * Application to transfer a licence following receipt of representations. *Application for annual renewal where representations have been made and not withdrawn *Fee setting (other than annual increases) 	<ul style="list-style-type: none"> * Application to transfer a licence where no representations have been received or received and withdrawn * Application for annual renewal where no representations have been received or received and withdrawn * Where appropriate to instruct the Legal Team to prosecute persons for non-compliance.

CONTACTS

Information on the various aspects of the licensing process and policy can be obtained from the following bodies:

Licensing Officer

Licensing Department

Swale Borough Council
East Street Sittingbourne
Kent ME10 3HT
Tel: 01795 417634

Licensing Coordinator

North Division

Medway Police Station

Purser Way, Gillingham
Kent ME7 1NE
Tel: 01634 792733

Licensing Officer

Maidstone Group Fire Safety

Maidstone Fire Station
Loose Road
Maidstone
Kent ME15 9QB

Environmental Officer

Environmental Pollution Team

Swale Borough Council
East Street Sittingbourne
Kent ME10 3HT
Tel: 01795 417320

Head of Development Control

Planning Services

Swale Borough Council
East Street
Sittingbourne
Kent ME10 3HT
Tel: 01795 417304

Licensing Team

Trading Standards

Kent County Council
1st Floor Invicta House
County Hall Maidstone
Kent ME14 1XX
Tel: 01622 221012

Licensing Team

Child Protection Agency

Social Services Directorate
Kent County Council
Brenchley House
123-135 Week Street
Maidstone, Kent

Crime & Disorder Reduction Partnership (CDRP)

Swale Borough Council
East Street
Sittingbourne
Kent ME10 3HT

For further copies, information or enquiries relating to the content of this leaflet, please contact:

Licensing Section, Regulatory Services,
Swale Borough Council, Swale House,
East Street, Sittingbourne Kent ME10 3HT

Telephone direct: 01795 417364

www.swale.gov.uk

Difficulty in understanding this leaflet? Need it in Braille, large print or on audio tape? For translations or interpretations contact us and we will do our best to help.

Tel: 01795 417850 Email: csc@swale.gov.uk