

Mid Devon District Council

LICENSING

**SEX ESTABLISHMENT
LICENSING POLICY**

March 2011

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Foreword

This Licensing Policy sets out Mid Devon District Council's requirements for premises to be licensed as sex establishments within the meaning of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended by section 27 of the Policing and Crime Act 2009). This legislation shall be referred to thereafter as 'the Act'.

Section 2 of the Act provides that local authorities may resolve that Schedule 3 will apply to their area, which has the effect of requiring premises operating as sex establishments in that authority's area to be licensed. The adoption of Schedule 3 also allows the Council to set terms and conditions and fees for the grant, renewal, variation and transfer of such licences and the number of licences that may be issued in the area, which may be nil.

We do not take a moral stand in adopting this policy. We recognise that parliament has made it lawful to operate a sex establishment, and that such businesses are a legitimate part of the retail and leisure industries. It is our role as a Licensing Authority to administer this licensing regime in accordance with the law.

1.0 Introduction

- 1.1 Mid Devon District Council with effect from 20 March 1985 resolved to apply Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, providing that anyone wishing to operate a 'sex establishment' within the district must first obtain a licence from the council.
- 1.2 This Statement of Licensing Policy for Sex Establishments sets out the Council's requirements for premises to be licensed as 'sex establishments' within the meaning of the Act.
- 1.3 The information contained in the appendices attached and referred to within this policy should be read as an inclusive part of this policy document.
- 1.4 Readers are strongly advised to seek their own legal advice if they are unsure of the requirements of the Act or schedules issued under the Act.

Definition of Sex Establishment

- 1.5 A 'sex establishment' is defined under the Act as a 'sex shop', a 'sex cinema' or a 'sexual entertainment venue'. Full definitions of those and other relevant terms can be found in Appendix A. This appendix also provides detail on when a sexual entertainment venue is exempt from the provisions of the Act.
- 1.6 Sex establishments include any premises, vehicle, vessel or stall used as a sex establishment but does not apply to the sale, supply or demonstration of articles which are manufactured for use primarily for the purposes of birth control or primarily relate to birth control.
- 1.7 Mid Devon is one of the larger local authorities in England with a rural area of 353 square miles or 914 km² but it has a fairly sparse population of nearly 79,000. Tiverton is by far the largest town with a population of nearly 22,000 while the two other major towns are Cullompton with a population of 8,500 and Crediton with a population of nearly 7,500. The rest of the population is spread throughout the district in villages and hamlets stretching from Dartmoor to Exmoor to the Blackdown Hills.



Policy Development

- 1.8 This Licensing Policy sets out the policies the Council will generally apply when making decisions on applications. This document explains the application process and provides information on what is expected of applicants. In addition, the processes by which representations may be made about an application are explained.
- 1.9 Whilst this policy stands alone, applicants are advised to also have regard to the Council's Licensing Act 2003 Policy which may impact on applicants, particularly those wishing to undertake other licensable activities such as the retail sale of alcohol.
- 1.10 In addition to considering the requirements of the Act, consideration has been given to the following requirements in developing this policy:
- (a) Section 17 of the Crime and Disorder Act 1998 to take all reasonable steps to reduce crime and disorder within the district;
 - (b) Regulators' Compliance Code (set out under the Legislative and Regulatory Reform Act 2006) not to impede economic progress by the regulations we set out and to particularly consider the impact of regulations on small businesses; and
 - (c) Provision of Services Regulations 2009 to ensure requirements are:
 - (i) non-discriminatory;
 - (ii) justified by an overriding reason relating to the public interest;
 - (iii) proportionate to that public interest objective;
 - (iv) clear and unambiguous;
 - (v) objective;
 - (vi) made public in advance; and
 - (vii) transparent and accessible.
- 1.14 At the time of adopting this policy, the Council has no licensed sex establishments and no premises likely to fall within the definition of a sexual entertainment venue.

Consultation

- 1.15 The consultation with regard this revised document took place between 6 November 2010 and 26 February 2011, in line with the HM Government Code of Practice on Consultation (published July 2008) which is available at www.berr.gov.uk/files/file47158.pdf. Consultation was conducted with local residents, the statutory responsible authorities under the Licensing Act 2003, and holders of premises licences under the Licensing Act 2003 in the district.

Exchange of Information

- 1.16 The authority may from time to time exercise its powers under section 115 of the Crime and Disorder Act 1998 to exchange data and information with the police and other partners to fulfil its statutory objective of reducing crime in the area.
- 1.17 Details of applications and objections which are referred to a Licensing Sub-Committee for determination will be published in reports that are made publicly available in accordance with the Local Government Act 1972 and the Freedom of Information Act 2000.

- 1.18 The names and addresses of objectors will not be disclosed to applicants without their consent or published in public reports in accordance with the Act. Such details will be made available to Councillors on the Licensing Sub-Committee.

Further Information

- 1.19 Should you have comments regarding this policy please write to the above address or email licensing@middevon.gov.uk
- 1.20 Relevant legislation can be viewed at www.opsi.gov.uk.

2.0 Primary Considerations

2.1 Mid Devon District Council being the Licensing Authority for the purposes of the Act recognises that it can set a quantity limit regarding the number of sex establishments in an area but has not chosen to do so based on the specific geographical characteristics and nature of this District.

2.2 Whilst the Council has not imposed a limit on the number of premises that may be licensed in any area, and whilst treating each application upon its own merits, the Council will not licence premises in proximity to:

- (a) a residential area;
- (b) premises, areas or access routes to such premises or areas which are designed for or attract children or families, such as school, play areas, parks, children's centres, youth clubs, nurseries or leisure facilities, or any other similar establishment;
- (c) a place of public religious worship;
- (d) historic buildings, cultural attractions and tourist attractions;
- (e) educational establishments;
- (f) community facilities and public buildings;
- (g) an area with a history of social difficulties;
- (h) a gateway to an identifiable locality.

3.0 The Application and Determination Process

Making an Application

- 3.1 Whilst not required, the Council would normally expect that applications for licences for permanent commercial premises should be from businesses with planning consent for the property concerned.
- 3.2 The Authority expects that applicants will have consulted with local residents, businesses and/or community groups in the vicinity of the premises so far as is reasonable practicable.
- 3.3 Applicants are advised to consult the Licensing Authority's pool of sex establishment conditions in order to ascertain the standard of the premises required, and the types of controls typically applied (available from the Licensing Team).
- 3.4 Applications in respect of premises must state the full address of the premises. Applications in respect of a vehicle, vessel or stall must also state where it is to be used as a sex establishment.
- 3.5 Applications should be made in line with Appendix B, which details requirements such as notification of the police, and the display and advertisement of public notices. Application forms can be downloaded from the Council's website, completed online or are available upon request to the Licensing Team.
- 3.6 An application form and relevant documentation for the new licence, renewal, variation or transfer must be completed and returned with the appropriate fee as set in the Council's fees and charges.

Duration of Licences

- 3.7 Licences will generally be issued on an annual basis but can be issued for a shorter term if deemed appropriate.

Commenting on Licence Applications

- 3.8 Unlike some other licensing regimes (such as for alcohol, entertainment, or gambling), a wide range of people can raise objections about sex establishment licences. The police are a statutory consultee for all applications.
Objectors should have something to say that is relevant to the statutory grounds for refusal that are set out in the Act (see 3.24 below).
- 3.9 Representations must state the grounds on which the objection/positive representation is made. Objections should ideally:
 - be made in writing;
 - be made in black ink;
 - indicate the name and address of the person or organisation making the representation;
 - indicate the premises to which the objection relates;
 - indicate the proximity of the premises to the person making the representation.
- 3.10 Representations may only be made within the period of 28 days following the date on which the application was given to the Licensing Authority.

- 3.11 The Licensing Authority will not normally consider any objection or positive representation that does not contain the name and address of the person making it.
- 3.12 Representations received that are frivolous or vexatious or which relate solely to moral grounds are likely to be given lesser weight.
- 3.13 A vexatious objection is generally taken to be one which is repetitive, without foundation or made for some other reason such as malice. A frivolous objection is generally taken to be one that is lacking in seriousness. Where representations are made the Licensing Authority will provide copies to the applicant. Names and addresses of those making representations will not be disclosed, except with written permission.

Determination of Applications

- 3.14 When considering applications, the Licensing Authority will have regard to:
- Local Government (Miscellaneous Provisions) Act 1982 (as amended);
 - Any supporting regulations;
 - This Licensing Policy
 - Any supporting Government Guidance
- 3.15 This does not, however, undermine the rights of any person to apply for a licence and have the application considered on its individual merits, nor does it override the right of any person to make objections on any application where they are permitted to do so under the Act (see 3.24 below).
- 3.16 When determining applications, the Licensing Authority will take account of any comments made by the Chief Officer of Police and any representations made.
- 3.17 We take the following approach to deciding applications:
- each case will be decided upon its merits. This authority will not apply a rigid rule to its decision making;
 - objectors can include residents'/tenants' associations, community associations, and trade associations. Councillors and MPs may also raise objections. Elected Councillors may represent interested parties, providing they do not also sit on the Licensing Sub-Committee determining the application in question;
 - we will give clear reasons for our decisions.
- 3.18 In all cases, the Licensing Authority reserves the right to consider each application on its own merits. Where objections are made and not withdrawn, a hearing before a Licensing Sub Committee will normally be held within 20 working days of the end of the period during which representations may be made, unless all parties agree that a hearing is not necessary.
- 3.19 Objections will be considered by a Licensing Sub Committee, where both applicants and objectors will have an equal opportunity to state their case.

Conditions

3.20 *The Licensing Authority may determine and agree an application unconditionally or with reasonable conditions. The Council recognises that all applications should be considered on an individual basis and any condition attached to such a licence will be tailored to each individual premises. No condition will be imposed that cannot be shown to be necessary. Whilst not forming part of this policy, the Licensing Authority will maintain and keep under review a pool of conditions which may be imposed by Licensing Sub-Committee (available from the Licensing Team).*

Refusal of licences

- 3.21 Except where the Council is prohibited from granting, renewing, varying or transferring a licence, the Council will not refuse a licence without first:
- Notifying the applicant or holder of the licence in writing of the reasons;
 - Giving the applicant or holder of the licence the opportunity of appearing and making representations before a Licensing Sub Committee.

Mandatory Grounds for Refusal

- 3.22** *The council must refuse to grant or transfer a licence to:*
- (a) A person under the age of 18;*
 - (b) A person who is for the time being disqualified from holding a licence;*
 - (c) A person who is not resident in an EEA state or was not so resident throughout the period of 6 months immediately preceding the date upon which the application was made;*
 - (d) A body corporate which is not incorporated in an EEA state; or*
 - (e) A person who has, within the period of 12 months immediately preceding the date upon which the application was made, been refused the grant or renewal of a licence for the premises, vehicle, vessel or stall in respect of which the application is made, unless the refusal has been reversed on appeal.*

Discretionary Grounds for Refusal

3.23 *An application for grant or renewal of a licence may be refused on one or more of the grounds shown in below.*

3.24 *An application for transfer of a licence on either or both of the grounds shown in paragraphs (a) and (b) below.*

- (a) The grounds for refusal are:*
- (b) That the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason;*

- (c) 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;**
- (d) That the number of sex establishments in the relevant locality that the application is made is equal to or exceeds the number which the council considers is appropriate for that locality (nil may be an appropriate number for these purposes).**
- (e) That the grant or renewal of the licence would be inappropriate having regard to:**
- i. The character of the relevant locality;**
 - ii. The use to which any premises in the vicinity are put; or**
 - iii. The layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.**

Revocation of licences

3.25 The Council may revoke a licence:

- on any of the grounds specified in paragraph under the paragraph entitled mandatory grounds for refusal;**
- on either of the discretionary grounds specified in paragraph (a) and (b).**

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

Cancellation of licences

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

3.28 In the event of the death of a licence-holder, the licence will be deemed to have been granted to his personal representatives and will remain in force for 3 months from the date of death, unless previously revoked.

3.29 Where the Council are satisfied that it is necessary for the purpose of winding up the estate of the deceased licence-holder, it may extend or further extend the period in which the licence remains in force.

Appeals

3.30 Section 27 of the Act permits appeals against the decisions of the Council in relation to sex establishments. Appeals will be heard in the first instance by the Magistrates' Court. An appeal should be made within 21 days of the date of the decision to the Magistrates' Courts.

- 3.31 An appeal can be made in the following circumstances:
- Refusal of an application for the grant, renewal or transfer of a licence.
 - Refusal of an application to vary terms, conditions, or restrictions on or subject to which any licence is held.
 - A grievance relating to any term, condition or restriction on or subject to which a licence is held.
 - Revocation of a licence.
- 3.32 There is no right of appeal for objectors. There is a right of appeal against refusal on mandatory grounds, only where the appellant alleges the ground did not apply to them. There is no right of appeal against refusal on the grounds that there are sufficient sex establishments in the locality or that to grant would be inappropriate having regard to the character of the locality, use of premises in the vicinity and the layout, character, condition and location of the premises.
- 3.33 A person wishing to appeal against a Council decision on a sex establishment is strongly advised to seek legal advice prior to commencing any action in a Court of Law.

4.0 Complaints and Enforcement

- 4.1 ***Where possible and appropriate the Council will give early warning to licence holders of any concerns about problems identified at premises and of the need for improvement.***
- 4.2 ***The Council is responsible for the administration and enforcement of the licensing regime and will have regard to the Department of Business Enterprise & Regulatory Reform's Regulators' Compliance Code and the Better Regulation Commission's Five Principles of Good Regulation. The Council will carry out its regulatory functions in a fair, open and consistent manner.***
- 4.3 ***Specifically, the Council is committed to:***
- (a) be proportionate – to only intervene when necessary and remedies will be appropriate to the risk posed;
 - (b) be accountable – to justify decisions, be subject to public scrutiny and allow opportunities to resolve differences before enforcement action is taken, unless immediate action is needed;
 - (c) be consistent – to implement rules and standards fairly;
 - (d) be transparent – to be open and to provide clear explanations of what is needed, by when and the rights of appeal.
 - (e) target its regulatory action at cases in which action is needed.
- 4.4 The Council recognises the interests of both citizens and businesses and will work closely, with partners, to assist licence holders to comply with the law and the conditions attached to the licence. However, proportionate but firm action will be taken against those who commit serious offences or consistently break the law or breach the conditions of the licence.
- 4.5 The Council has set clear standards of service and performance that the public and businesses can expect. In particular, an enforcement policy has been created that explains how the council will undertake its role and how the principles of effective enforcement will be achieved.
- 4.6 This policy is freely available from the licensing section, as are details of the corporate complaints procedures, both of which can also be viewed on the Council's web-site.

Appendix A – Definition of Terms

- **Definition of a ‘Sex Establishment’**

A ‘Sex Establishment’ is defined under the Act as a ‘Sex Shop’, a ‘Sex Cinema’ and a ‘Sexual Entertainment Venue’.

It includes any premises, vehicle, vessel or stall used as a sex establishment but does not include a private dwelling to which the public are not admitted.

- **Meaning of a ‘Sex Cinema’**

‘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
- (b) Are concerned primarily with the portrayal of, or primarily deal with or relate to, genital organs or urinary or excretory functions, but does not include a dwelling-house to which the public is not admitted.

- **Meaning of a ‘Sex Shop’**

‘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 are associated with sexual activity.

- **‘Sex Article’** means anything made for use in connection with, or for the purpose of stimulating or encouraging:

- (i) sexual activity; or
- (ii) acts of force or restraint which are associated with sexual activity

(a) anything to which the sub paragraph below applies.

This sub paragraph applies –

- (a) to any article containing or embodying matter to be read or looked at or anything intended to be used, either alone or as one of a set, for the reproduction or manufacture of any such article; and
- (b) to any recording of vision or sound, which:
 - (i) is concerned primarily with the portrayal of, or primarily deals with or relates to, or is intended to stimulate or encourage, sexual activity or acts of force or restraint which are associated with sexual activity
 - (ii) is concerned primarily with the portrayal of, or primarily deals with or relates to genital organs or urinary or excretory functions.

- **Sex Articles and Significant Degree**

Licences for sex shops are required where 18R films are being sold, or where there is a “significant degree” of “sex articles”.

The phrase ‘sex articles’ is defined in the 1982 Act, (as above) but the phrase ‘a significant degree’ is not. When considering whether or not a business is selling a significant degree of sex articles and needs a licence, we will consider:

- (a) the ratio of sex articles to other aspects of the business;
- (b) the absolute quantity of sales;
- (c) the character of the remainder of the business;
- (d) the nature of the displays in the business;
- (e) turnover;
- (f) other factors which appear to be materially relevant.

- **Meaning of a ‘Sexual Entertainment Venue’**

A ‘sexual entertainment venue’ means:

“any premises at which relevant entertainment is provided before a live audience for financial gain of an organiser. For the purposes of the Act it does not matter whether the financial gain arises directly or indirectly from the performance or display of nudity.”

- **‘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). An audience includes an audience of one.

- A **‘display of nudity’** means:

- (a) In the case of a woman, exposure of her nipples, pubic area, genitals or anus;
- and
- (b) In the case of a man, exposure of his pubic area, genitals or anus;

- An **organiser** means:

- Any person who is responsible for the organisation or management of;
- (a) The relevant entertainment; or
 - (b) The premises.

- **Exempt Premises**

Notwithstanding the above, the following are not sexual entertainment venues for the purposes of this policy:

- (a) sex cinemas and sex shops;
- (b) premises at which the provision of relevant entertainment is such that:**

- (i) there have not been more than eleven occasions on which relevant entertainment has been so provided which fall (wholly or partly) within the period of 12 months;
- (ii) no occasion has lasted for more than 24 hours; and
- (iii) no occasion has begun within the period of one month beginning with the end of any previous occasion on which relevant entertainment has been so provided

For the purposes of this policy, relevant entertainment is provided if, and only if, it is provided, or permitted to be provided, by or on behalf of the organiser before an audience and involves partial or full nudity.

Requirements for Applying for Grant, Variation, Transfer or Renewal of a Sex Establishment Licence

Grant of a licence

- 1) To apply for the grant of a sex establishment licence an applicant must: -
 - a) send the Council: -
 - i) a completed application form;
 - ii) a plan to the scale of 1:100 of the premises to which the application relates;
 - iii) a non-returnable application fee of £2000;
 - iv) a 'hearings' fee of £2000 (returnable if a committee hearing is not required);
 - b) display a notice on or near the premises;
 - c) advertise the application in a local newspaper;
 - d) send a copy of the application and plan to the Chief Officer of Police, Tiverton Town Police Station, Lowman Green, Tiverton EX16 4LA within 7 days of making the application to the council.

Plan requirements

- 2) The plan shall show: -
 - a) the extent of the boundary of the building, if relevant, and any external and internal walls of the building and, if different, the perimeter of the premises;
 - b) the location of points of access to and egress from the premises;
 - c) the location of escape routes from the premises;
 - d) in a case where the premises is to be used for more than one licensable activity, the area within the premises used for each activity;
 - e) fixed structures (including furniture) or similar objects temporarily in a fixed location (but not furniture) which may impact on the ability of individuals on the premises to use exits or escape routes without impediment;
 - f) in a case where the premises includes a stage or raised area, the location and height of each stage or area relative to the floor;
 - g) in a case where the premises includes any steps, stairs, elevators or lifts, the location of the steps, stairs, elevators or lifts;
 - h) in the case where the premises includes any room or rooms containing public conveniences, the location of the room or rooms;
 - i) the location and type of any fire safety and any other safety equipment including, if applicable, marine safety equipment; and
 - j) the location of a kitchen, if any, on the premises.
- 3) The plan may include a legend through which the matters mentioned or referred to above are sufficiently illustrated by the use of symbols on the plan.

Public notices

- 4) A notice must be displayed at or on the premises to which the application relates for a period of not less than 21 consecutive days from the day following the day the application was given to the Council, where it can be conveniently read from the exterior of the premises.
- 5) Where the premises cover an area of more than 50 square metres, a further identical notice must be displayed every 50 metres along the external perimeter of the premises abutting any highway.
- 6) The notice must be on pale blue paper sized A4 or larger and printed legibly in black ink or typed in black in a font size equal to or larger than 16.
- 7) The notice must state: -

- a) details of the application and activities that it is proposed will be carried on or from the premises,
 - b) the full name of the applicant,
 - c) the postal address of the premises, or in the case where there is no postal address, a description of the premises sufficient to enable the location and extent of the premises to be identified,
 - d) the date, being 28 days after that on which the application is given to the council, by which representations may be made to the council and that representations should be made in writing,
 - e) that it is an offence knowingly or recklessly to make a false statement in connection with an application and the maximum fine (£5000) for which a person is liable on summary conviction for the offence.
- 8) A similar notice must be published in a local newspaper or similar document within 7 days of giving the application to the council.

Variation of a licence

- 9) The holder of a licence may apply at any time for any variation of the terms, conditions or restrictions on or subject to which the licence is held.
- 10) The process of applying for a variation is the same as that for applying for an initial grant except that a plan of the premises is not required unless the application involves structural alterations to the premises.

Renewal of a licence

- 11) The holder of a licence may apply for renewal of the licence. In order for the licence to continue to have effect during the renewal process, a valid application together with the appropriate fee must be submitted before the current licence expires.
- 12) The process of applying for renewal of a licence is the same as that for applying for an initial grant except that a plan of the premises is not required.

Transfer of a licence

- 13) A person may apply for transfer of a licence at any time.
- 14) The process of applying for transfer of a licence is the same as that for applying for an initial grant except that a plan of the premises is not required.