

Sex establishment licensing policy and procedure

Draft Sex Establishment Policy

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1 Introduction

- 1.1 This document contains the policy of the London Borough of Merton on the Regulation of Sex Establishments Part A, and
- 1.2 The procedure relating to Applications for Sex Establishment Licences Part B.
- 1.2 The policy will guide the Council when considering applications for licences, bearing in mind the spirit and intent of the Act and relevant case law. The Council will not follow this policy inflexibly but shall consider each application on its merits.
- 1.3 The Local Government (Miscellaneous Provisions) Act 1982 introduced a licensing scheme to control sex establishments, defined as sex shops and sex cinemas. The scheme was only enforceable if the Act was adopted by a local authority. The London Borough of Merton adopted the Act on 27th January 1983 .
- 1.4 Section 27 of the Policing and Crime Act 2009 introduced a new category of venue known as a sexual entertainment venue (SEV's), which will permit local authorities to regulate lap dancing clubs and similar venues under Schedule 3 of that Act.
- 1.5 Section 27 gives local authorities greater powers to control the number and location of lap dancing clubs and similar venues in their area. These powers are not mandatory and only apply where they are adopted by this authority. The London Borough of Merton adopted these powers on 23 September 2010.
- 1.6 These adopted amendments allow this authority to refuse an application on potentially wider grounds than is currently permitted under the Licensing Act 2003 and give local people a greater say over the regulation of such premises in their area.

2 Definitions

The Term	The Meaning
The Council	The London Borough of Merton
The 1982 Act	Local Govt (Miscellaneous Provisions) Act 1982
The 2009 Act	Policing & Crime Act 2009

The 2003 Act	The Licensing Act 2003
Licensed Premises	Any premises, vehicle or stall licensed under the Act
Licence Holder	A person who is the holder of a sex establishment licence
Permitted Hours	The hours that the licensed premises are permitted to be open to the public
Sex Establishment Licence	A licence granted pursuant to Schedule 3 of the Act
Relevant Locality	In relation to premises, the Ward in which the premises is located or are to be situated, and in relation to a vehicle, vessel or stall, the Ward or Wards in which it is desired to use it as a sex establishment
Inappropriate proximity	<p>A distance of 400 metres in direct line of sight between the proposed establishment and the following:</p> <ul style="list-style-type: none"> (a) Purely or primarily residential accommodation. (b) Schools, play areas, nurseries, children's centres or similar premises. (c) Access routes to and from schools, play areas, nurseries, children's centres or similar premises. (d) Places of worship. (e) Community facilities or public buildings including, but not limited to, swimming pools, leisure centres, public parks, youth centres/clubs and sheltered housing. (f) Historic buildings or tourist attractions; <p>or 200 metres distance if there is no direct line of sight.</p>

In this policy the following expressions shall have the meanings assigned to them by Schedule 3 of the Act:

“Sex Establishment”, “Sex Cinema”, “Sex Shop”, “Sex article” and “Sexual Entertainment Venue (SEV)”.

The Term	Meaning
Sex Establishment	Sex Cinema or a Sex Shop
Sex Cinema	<p>Any premises, vehicle, vessel or stall used to a significant degree for the exhibition of moving pictures, by whatever means produced which:</p> <ul style="list-style-type: none"> • Are concerned primarily with the portrayal of, or primarily deal with or relate to, or are intended to stimulate or encourage: <ul style="list-style-type: none"> i) sexual activity ii) acts of force or restraint which are associated with sexual activity • 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 are not admitted
Sex Shop	<p>Any premises, vehicle, vessel or stall used to a significant degree for the exhibition of moving pictures, by whatever means produced which:</p> <ul style="list-style-type: none"> • Are concerned primarily with the portrayal of, or primarily deal with or relate to, or are intended to stimulate or encourage: <ul style="list-style-type: none"> ii) sexual activity iii) acts of force or restraint which are associated with sexual activity
Sex Article	<p>Anything made for use in connection with, or for the purpose of stimulating or encouraging:-</p> <ul style="list-style-type: none"> i) sexual activity; ii) acts of force or restraint which are associated with sexual activity and iii) anything 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

	<p>iv) to any recording of vision or sound, which 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; or</p> <p>v) is concerned primarily with the portrayal of, or primarily deals with or relates to, genital organs, or urinary or excretory functions.</p>
<p>Sexual Entertainment Venue (SEV)</p>	<ul style="list-style-type: none"> • a “sexual entertainment venue” is premises where relevant entertainment is provided, or permitted to be provided, by or on behalf of the organiser in front of a live audience for the financial gain of the organiser or entertainer. <p>“Relevant entertainment” may take the form of a live performance or live display of nudity and must be of such a nature that, ignoring financial gain, it must reasonably be assumed to have been provided solely or principally for the purpose of sexually stimulating any member of the audience.</p> <p>Sub-paragraph (14) of the Police & Crime Act 2009 states that an audience can consist of just one person.</p>

3 Requirement for a licence

3.1 The Act provides that no person shall within the London Borough of Merton use any premises, vehicle, vessel or stall as a sex establishment except under and in accordance with the terms of a licence granted under this Schedule by the authority.

3.2 The Council may waive the requirement for a licence in any case where they consider that to require a licence would be unreasonable or inappropriate.

- 3.3 The Council will consider each case on its merits but is of the opinion that waivers will only be granted in exceptional circumstances.

4 Applicants

- 4.1 Individuals, limited companies and firms may apply for a licence. A licence must be obtained if they are proposing to use any premises, vehicle, vessel or stall as a sex establishment.

5 Duration of licences

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

Part A

6 Mandatory Grounds for Refusal

- 6.1 The Act imposes a duty on a Local Authority to refuse to grant a licence to a:
- (a) person under the age of 18; or
 - (b) person who is for the time being disqualified following the revocation of a licence; or
 - (c) person, other than a body corporate, who is not resident in the United Kingdom or was not so resident throughout the period of six months immediately preceding the date when the application was made; or
 - (d) body corporate which is not incorporated in the United Kingdom; or
 - (e) person who has, within a period of 12 months immediately preceding the date when the application was made, been refused the grant or renewal of a licence of the premises, vehicle, vessel or stall in respect of which the application is made, unless the refusal has been reversed on appeal.

7 Discretionary Grounds for Refusal

- 7.1 The Act allows the Authority to refuse to grant or renew a licence on the grounds that:
- (a) the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reasons; or
 - (b) 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; or
- (c) the number of sex establishments in the relevant locality at the time the application is made or determined is equal to or exceeds the number which the Authority consider is appropriate for that locality; or
 - (d) 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
 - (iii) to the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.

7.2 The Act provides that the appropriate number under 8.1(c) above may be nil.

8 Relevant Locality

8.1 The Council is of the opinion that it is inappropriate for the Council to treat the whole of the borough as a relevant locality.

8.2 The Council has determined that it is appropriate to consider each individual ward as a relevant locality and has determined that the number of sex establishments that it believes to be the appropriate in each ward as nil.

8.3 The Council is of the view that it is not appropriate to have a sex establishment situated within "inappropriate" proximity to:

- (a) Purely or primarily residential accommodation.
- (b) Schools, play areas, nurseries, children's centres or similar premises.
- (c) Access routes to and from schools, play areas, nurseries, children's centres or similar premises.
- (d) Places of worship.
- (e) Community facilities or public buildings including, but not limited to, swimming pools, leisure centres, public parks, youth centres/clubs and sheltered housing.
- (f) Historic buildings or tourist attractions.

8.4 In considering all applications for the grant of new licences the Council will take account of paragraphs 8.1 to 8.4 and the potential impact of the licensed activity on:

- (a) crime and disorder;
- (b) the cumulative impact of licensed premises in the area, including

hours of operation and the character of the locality in which the premises are situated.

9 Renewal / Variation

- 9.1 Where an application is to renew a licence for the same activity, with the same hours of operation and conditions as previously granted, the Council shall give due weight to the fact that the licence was granted in the previous year and for any years before that.
- 9.2 Where an application is made to vary a licence in terms of the activity, hours of operation or conditions as previously licensed (whether on renewal or not), the Council will take into account the criteria as set out in paragraphs 9.1 to 9.6.
- 9.3 When considering applications for renewal or variation, the Council will take into account those matters set out in paragraphs 8.1 to 8.5 above.
- (a) type of activity;
 - (b) duration of proposed licence;
 - (c) proposed hours of operation;
 - (d) layout and condition of the premises;
 - (e) the use to which premises in the vicinity are put;
 - (f) the character of the locality in which the premises are situated.
- 9.4 In considering all applications for renewal the Council will take into account:
- (a) levels of recorded crime and disorder in the area;
 - (b) past demonstrable adverse impact from the activity;
 - (c) whether appropriate measures have been agreed and put into effect by the applicant to mitigate any adverse impacts.

10. Hours of Opening

- 10.1 For new applications, the Council will apply hours of operation between 09:00 hours and 19:00 hours on Monday to Saturday, with no trading permitted on Sundays.

11. Crime and Disorder

- 11.1 In accordance with Section 17 of the Crime and Disorder Act 1998 the Council is under a duty to exercise its functions with due regard to the likely effect on, and the need to do all it reasonably can to prevent, crime and disorder in its areas. The possible crime and disorder implications are clearly relevant factors in the consideration of all applications. In giving due regard to these possible implications

members will consider and weigh up all the information available and representations made, including those from the public and other relevant authorities.

12 Human Rights

12.1 In determining applications, the principles of the Human Rights Act 1998 must be taken into consideration. The Act acknowledges that local authorities are entitled, amongst other things, to act where this is in the “general interest”. If the Authority decided to refuse or to grant an application, or to attach conditions, the rights of appeal that exist through the Magistrates’ Court ensure that the principles of the Human Rights Act are adhered to.

12.2 The Human Rights Act 1998 incorporates the European Convention on Human Rights and makes it unlawful for a local authority to act in a way that is incompatible with a Convention right. The Council will have particular regard to the following relevant provisions of the European Convention on Human Rights:

- (a) Article 6 that in the determination of civil rights and obligations everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law;
- (b) Article 8 that everyone has the right to respect for his home and private life, including, for example, the right to a “good nights sleep”;
- (c) Article 1 of the first protocol that every person is entitled to the peaceful enjoyment of his or her possessions. It should be noted that the Courts have held that a licence is a possession of a person possession; however, this is subject to the right of the State, through statute, to control the use of premises. The Council, therefore, will not unreasonably remove or refuse to vary or renew a licence.

13. Disability Discrimination

13.1 The Disability Discrimination Act 1995 introduced measures to tackle discrimination encountered by disabled people in the areas of employment, access to goods, facilities and services and the management, buying or renting of land or property. For service

providers, such as licensees:

- (a) from December 1996 it has been unlawful to treat disabled people less favourably than other people for a reason related to their disability;
- (b) from October 1999 they have had to make reasonable adjustments for disabled people, such as providing extra help to make changes to the way they provide their services;
- (c) from 2004 they have had to make reasonable adjustments to the physical features of the premises to overcome physical barriers to access.

13.2 This policy will have regard to the likely impact of licensing of sex establishments on disability discrimination particularly when considering the operation and management of the premises.

14 Saturation & Cumulative Impact

14.1 There is a difference between need, and the cumulative impact of premises on a neighbourhood. It is the Council's view that need is the subject of commercial demand and is a matter for the market, whereas the cumulative impact of licensed sex establishments on the licensing objectives within an area is a proper matter for the Council to consider.

14.2 For the purposes of this policy, the Council interprets Cumulative impact as the potential impact on the promotion of the licensing objectives of licensed sex premises in one area. For example, the potential impact on crime and disorder or public nuisance on the relevant locality.

14.3 The proliferation of licensed sex establishments in an area, as in areas of London and other major cities, has been proved to have undesirable effects on a locality. It is important that applicants, responsible authorities and the public should know through the statement of licensing policy that the London Borough of Merton is determined that any proliferation of licensed sex shops concentrated in a particular part the borough is considered to be unacceptable having the potential to cause a cumulative impact on one or more of the licensing objectives.

14.4 The Council considers that a Saturation Policy is required when considering sex establishment applications. The act allows the council to determine whether the number of sex establishments in a relevant

locality at the time the application is made is equal to or exceeds the number which the authority consider is appropriate for that locality. This includes a decision that the correct number is nil. Whilst all applications will be considered on their own merit there will be a presumption of refusal of applications for new sex establishment licences:

- (a) for new premises situated within 2 miles of an existing licensed sex establishment;
- (b) for new premises situated within a council ward where a licensed sex establishment already exists.
- (c) for new premises situated in relevant localities which have been identified under paragraph 9.2 as having an appropriate number of nil.

14.5 The Council's Saturation Policy will not be used as a ground for revoking a licence when representations are received about problems with an existing licensed premise. Nor will it be used to justify rejecting applications to vary an existing licence.

15 Fitness of Applicant

15.1 An applicant must be a fit and proper person to hold a licence. In determining suitability for a new licence or a transfer the Council will in most cases take into account:

- (a) previous knowledge and experience of the applicant;
- (b) any evidence of the operation of any existing or previous licence held by the applicant, including any licence held in any other borough;
- (c) and any report about the applicant and management of the premises received from statutory objectors/responsible authorities.
- (d) any criminal convictions or cautions of the applicant.

15.2 The Council will seek to obtain consensus through consultation regarding the main elements of this Policy amongst stakeholder groups, the industry, the responsible authorities and the public. It is intended that this document will encourage partnership working to achieve high standards and good practice.

Part B

Application Process

16 Consultation

- 16.1 Applicants are legally required to give public notice of the application by publishing an advertisement in the legal section of a local newspaper circulating in the area where the premises are situated and to display a similar notice on or near the premises for 21 days beginning with the date of the application. Furthermore, the applicant will serve a copy of the application on the Metropolitan Police at Wimbledon Police Station.
- 16.2 The Council will consult local residents in relation to applications for grant, renewal or variation of the terms or conditions of a licence. The nature and extent of consultation will depend on the history of a particular premises and the perceived likelihood of problems occurring and objections being received. The Council will inform every domestic dwelling and commercial unit within a 50 metre radius of the premises and may extend this area if it decides it is appropriate in all the circumstances, to do so.
- 16.3 The Council will consult with the following authorities to ensure that all relevant information is available when considering an application
- The Metropolitan Police at Wimbledon
London Fire Brigade
Environmental Health Department
Planning Department
Community Safety Department
Licensing Section
- 16.4 The Council will consult any other organisations it deems relevant to a particular application.
- 16.5 Relevant Ward Councillors will be notified by email circulation of all applications for grant, renewals and transfer of licences and the

variation of conditions within their Ward, and also those on or near the Ward boundary.

17 Consideration

- 17.1 In considering any application for the grant, renewal or transfer of a licence the Council is obliged to have regard to any observations submitted by the Metropolitan Police and any objections received from members of the public, within the 28 day consultation period, in response to public advertisement of the application.
- 17.2 The Council recognises that Sex Establishment Licensing is controversial and stimulates very emotive arguments. However, the Council does not have the right to, and will not, have regard to the morality of sex establishments. Its approval or disapproval of sex establishments is not a matter that can be considered. Consequently, straightforward objections on the grounds that sex establishments should not be allowed on moral grounds will not be considered regarding sex establishment applications and will be rejected.

18 Hearings

- 18.1 All applications for new Sex Establishment Licences and renewals will be considered by the Licensing Sub-committee at a public hearing.
- 18.1.1 Objectors' written representations will be considered by the committee but, following decisions by the court of appeal, they will not normally be afforded a hearing unless the Chairman invites individuals or responsible authorities to verbally clarify their representation for members.
- 18.2 Individuals or responsible authorities will only be afforded a hearing if the Chairman can be satisfied that:
- (a) A relevant written objection was received during the statutory 28 day consultation period.

- (b) The objector will be confined to putting forward only those points that are relevant to consideration of the grounds of refusal and which have been notified in writing to the applicant.
- (c) Objectors and applicant will be heard on the same occasion as the hearing
- (d) The applicant will be afforded the opportunity to address the committee and respond to any enquiries members may have. Members may adjourn to private session to discuss the case before making a decision. A verbal decision will normally be given that day with a written decision sent within 5 working days stating the committee's reasons for that decision.

19. Decision

The council after due consideration may decide to: a) Grant the Licence – paras 19.1 - 19.3, or b) Refuse the Licence – paras 19.4 & 19.5

19.1 Under the provisions in Schedule 3 of the Act, the licensing authority, may grant a licence on such terms and conditions and subject to such restrictions as it may specify.

19.2 Conditions may be imposed for example to control:

- (a) the external appearance of the premises;
- (b) the operating hours of the business;
- (c) the visibility of the interior of the establishment to passers by;
- (d) any change of a sex shop to a sex cinema;
- (e) displays or advertisements on or in such establishments;
- (f) CCTV provision;
- (g) the employment of suitable management & staff.

19.3 **Mandatory Refusal** Under the provisions in Schedule 3 of the Act, the Council must refuse a licence for the following reasons

- (a) to a person under the age of 18; or
- (b) to a person who is disqualified by virtue of the revocation of a previous licence in the area within the preceding 12 months; or
- (c) to a person who has not been resident in the U.K. for the preceding six months; or
- (d) to a body corporate which is not incorporated in the U.K.; or
- (e) to a person who has been refused an application for a licence for the premises within the preceding 12 months, unless the refusal has been reversed on appeal.

19.4 Discretionary refusal – the Council may refuse to grant a licence 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 for any other reason;
- (b) that if the licence were to be granted 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 of a licence if he made the application himself;
- (c) that the number of sex establishments in the relevant locality at the time the application is made is equal to or exceeds the number which the authority consider is appropriate for that locality (the number may be nil);
- (d) that the grant of the licence would be inappropriate, having regard to:
 - (i) the character of the locality where the premises are situated;
 - (ii) the use to which any premises in the vicinity are put;
 - (iii) the layout, character or condition of the premises in respect of which the application is made.

20. Appeals

20.1 An applicant for the grant of a licence whose application is refused has the right of appeal to the Magistrates' Court within 21 days. However, if refusal was on the grounds specified in paragraphs 19.4 c. and d. above then no right of appeal is available under this legislation. A person whose application is refused due to these reasons may attempt to invoke a judicial review of the Council's use of its discretion in coming to a decision, if they believe they can show that the Council has, for example, acted improperly, unreasonably or irrationally, has not examined both sides of a case or has shown predetermination or bias.

20.2 Those making representation, objecting to or supporting an application, have no right of appeal under this piece of legislation.

21 Suitability Policy

21.1 All licensees are required to ensure that the premises:

- (a) comply with all health and safety, law;
- (b) are not a source of nuisance to residents in the vicinity.

22 Operation and Management of the Premises

22.1 The Council requires all licensees to ensure that they and their employees comply with all relevant licence conditions and health and safety regulations.

22.2 In terms of management of licensed sex establishment premises, the Council strongly encourages where possible and appropriate, that licensees:

- (a) work with statutory agencies such as the Police, and the Council in order to create and maintain a safe environment, both within licensed premises and in the environs around them;
- (b) particularly those whose premises are located in areas with the highest levels of recorded crime, develop crime prevention strategies in consultation with the Police and the Council.

22.3 In terms of the management of licensed premises, the Council strongly encourages and where possible and appropriate will require all licensees to develop strategies and procedures to increase access for disabled people to the premises.

22.4 In terms of the employment of staff in licensed premises, the Council requires that all staff be appropriately trained in areas such as health and safety, fire precautions and the legislation relating to sex establishments and, where relevant, first aid.

23. Enforcement

23.1 Once licensed, it is essential premises are maintained and operated so as to ensure the compliance with the specific terms of the licence and the requirements of the Local Government (Miscellaneous Provisions) Act 1982 and the Council will make arrangements to monitor premises.

23.2 The Council will work closely with all other relevant statutory bodies to

ensure an efficient deployment of all personnel engaged in enforcing licensing law and inspecting licensed sex establishments, in order to ensure that resources are targeted at problem and high risk premises, whilst ensuring that all such premises meet the required standards. Failure to maintain compliance will result in action being taken in accordance with the Council's relevant Enforcement Policies.

24 Protection of Children

24.1 The holder of a licence for a sex establishment shall be guilty of an offence if he/she knowingly permits a person under 18 years of age to enter the establishment or to be employed in the business of the establishment. A person found guilty of such an offence shall be liable on summary conviction to a fine not exceeding £20,000.

24.2 Under the act, the London Borough of Merton, may grant a licence on such terms and conditions and subject to such restrictions as it may specify. Conditions to protect children may be imposed including for example:

- (a) all customers appearing to be under the age of 21 to be required to provide proof of their age before being allowed access to the shop;
- (b) prominently displayed signs barring under 18 year olds;
- (c) screening or obscuring of windows, doors and other openings so that the interior of the licensed premises and the displays of articles sold at the premises shall not be visible at any time to persons outside the building;
- (d) goods to be discreetly wrapped before leaving the premises and when being delivered.

25. Policy Review

25.1 The London Borough of Merton will review this policy as required by the governing legislation.

26. Contact Point

26.1 For advice on any aspect of this policy please contact:

The Licensing Section
14th Floor
Merton Civic Centre, London Road

Morden SM4 5DX
0208 545 3969

licensing@merton.gov.uk