

BABERGH DISTRICT COUNCIL or / and MIDSUFFOLK DISTRICT COUNCIL

From: Place Directorate	Report Number: L140
To: Licensing and Appeals Committee	Date of meeting: 2 February 2012

**LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982:
SEX ESTABLISHMENT LICENSING POLICY, FEES AND PROCEDURES**

1. Purpose of Report

- 1.1 To report a draft policy, fee structure and procedures regarding Sex Establishment licensing functions to the Licensing and Appeals Committee for consideration, and to seek the Committee's approval to commence a period of consultation with stakeholders on these documents.

2. Recommendations

- 2.1 That the Committee approve the documents attached as Appendix A (policy including fee levels) and Appendix B (application and conditions), as may be suitably modified by the Committee, for a suitable period of consultation with identified stakeholders and any other person with an interest in these matters.

The Committee is able to resolve this matter.

3. Financial Implications

- 3.1 Reasonable fee levels may be levied in respect of Sex Establishment licence applications. However, the number of licence applications in Babergh is likely to remain minimal. Babergh has undertaken the necessary preparatory work within existing resources and by working together in partnership with Mid Suffolk District Council and other stakeholders.
- 3.2 The ongoing resource and costs associated with the consultation process will be shared with Mid Suffolk District Council.

4. Risk Management

- 4.1 Key risks are set out below:

Risk Description	Likelihood	Impact	Mitigation Measures
Failure to develop, consult upon and adopt an appropriate policy, fee levels and procedures will put the Council at risk of challenge and fail to support the decision-making process.	Very high	Critical	Develop, consult upon and adopt the necessary policy, fee levels and procedures to support the functions.

5. Consultations

- 5.1 It is proposed that a wide consultation take place with identified stakeholders, partners and public/communities generally.
- 5.2 Babergh and Mid Suffolk will co-ordinate on the necessary consultation process to achieve efficiencies and cost savings. Failure to consult on these matters will leave the Council at significant risk of legal challenge.

6. Equality Analysis

- 6.1 The equality analysis aspects of the function and policy have been carefully considered during the development phase, and in October 2011 were referred to the Council's Policy and Performance Team in Corporate Services for a preliminary/informal review. It is proposed that the Quality Assurance Group is considered a formal stakeholder to the policy and be consulted accordingly.
- 6.2 Please refer to section 19 (page 12) of the draft policy attached as Appendix A for further detail on equality and diversity implications arising from these licensing functions.

7. Shared Service / Partnership Implications

- 7.1 Whilst the two Councils remain separate entities, the policy and procedures involved with this licensing function have been developed in partnership between Babergh and Mid Suffolk's Licensing Teams (which are now beginning to work together more formally as a joint-Licensing Team from January 2012). This has also involved work as part of the wider Suffolk Licensing Officers Group - including Suffolk Constabulary.
- 7.2 Albeit both Authorities will need to progress these matters separately through their respective Members, it is desirable that common and consistent policy and procedures shall result. At Babergh, the Licensing and Appeals Committee can resolve procedural aspects of the function with Strategy resolving the policy and fee elements via recommendation from Licensing and Appeals.

8. Key Information

- 8.1 With effect from 31 March 2011 Babergh District Council has re-adopted Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 enabling greater control, via a licensing regime, of sexual entertainment venues (SEV). The Council had already, since 1983, responsibility for the licensing of sex cinemas and sex shops and retains these responsibilities.
- 8.2 Whilst a statutory policy is not mandatory for this area of licensing, it is considered good practice and necessary to underpin the service – particularly for the decision making process and providing transparency for operators/local communities. It is also important to properly link and integrate the function, via its policy, to other legislation, strategies and guidance. The policy is likely to evolve and refine over time in the light of national developments and any local experience and precedents.

- 8.3 A reasonable fee may be charged in respect of licence applications for this function. To achieve this, and so as to be consistent with neighbouring Licensing Authorities and comparable work under the Gambling Act 2005, it is proposed that both Babergh District Council and Mid Suffolk District Council set the fee at £3000 for a new, varied or renewed licence and £1500 for the transfer of an existing licence. As with other licensing functions fee levels would be subject to periodic review.
- 8.4 Following a suitable period of consultation with the public and key stakeholders on the policy, fee levels and procedures it is proposed to report back to the Committee for adoption of procedural matters and recommendation to Strategy on policy and fee levels.
- 8.5 There are currently no known sex establishments operating in the Babergh District area, but occasional enquiries are received and some premises operate infrequent (and thus 'exempt') activities that would be deemed 'sexual entertainments' for these purposes. The Council is also subject to general enquiries and FOI requests on this topic from the trade, community groups, industry solicitors and campaign organisations. It is therefore proposed that Babergh shall consult widely to ensure that all views are considered before adoption of a final policy, fee structure and procedures.

9. Appendices

Title	Location
A: Draft Sex Establishment Licensing Policy (including fee levels)	Attached
B: Draft Application and Standard Conditions	Attached

10. Background Documents

10.1 None

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BABERGH DISTRICT COUNCIL

Sex Establishment Licensing Policy

Local Government (Miscellaneous Provisions) Act 1982

Adopted by Strategy Committee on [DATE]

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THE BABERGH DISTRICT:



Babergh is an attractive district in the southern part of Suffolk and has a long border with the county of Essex. Whilst it remains predominately rural, it is within close and convenient distance of London and the Continent. The district has a population of approximately 87,000 residents divided between 76 parishes. It covers an area of 230 square miles and contains several areas of historical significance, including the nationally renowned villages of Lavenham and Long Melford - both of which retain much of their original outstanding character and appearance.

The largest town in Babergh is Sudbury which, along with its neighbouring village of Great Cornard, has a population of approximately 20,500. The other market town of Hadleigh - where the Council's offices are currently located - has a population of approximately 8,500. Ipswich (10 miles from Hadleigh) is now spilling over into the district, and has a population in excess of 130,000 people.

Whilst there are no licensed sex establishments in the Babergh District as of November 2011, the highest concentrations of alcohol and (non-sexual) entertainment licensed premises are, predictably, within the Sudbury and Hadleigh town centre areas. The main licensing activity arises as a consequence of the large leisure and tourism industry. Most premises are under economic pressure within the community, as a result of which many are seeking to diversify and offer more flexibility and greater choice to the consumer. This may in due course extend to seeking relevant entertainments as regulated by Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982.

As well as sex shops and sex cinema, a new category of sex establishment called 'sexual entertainment venue' may also now be licensed by Babergh District Council. Whilst the Council will judge each case on merits, and the content of the entertainment shall primarily inform whether it should be regulated rather than the name it is given, it is expected that the definition of relevant entertainment would apply to the following entertainment activities as they are commonly understood:

- Lap dancing
- Pole dancing
- Table dancing
- Strip shows
- Peep shows
- Live sex shows



SEX ESTABLISHMENT LICENSING POLICY (V1)

**(covering Sex Establishment Venues, Sex Cinemas and Sex Shops as defined by the relevant legislation)
SCHEDULE 3 OF THE LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS ACT 1982)
AS AMENDED BY SECTION 27 OF THE POLICING AND CRIME ACT 2009**

About this Licensing Policy:

- This policy document is to be read in conjunction with the provisions of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, as amended by section 27 of the Policing and Crime Act 2009, and the Home Office guidance on 'Sexual Entertainment Venues' issued March 2010 (as may be revised from time to time).
- Local Authorities are not required to publish a licensing policy relating to sex establishments. However, Babergh District Council considers that it is necessary to do so for:
 - (a) the benefit of operators, the public and other relevant authorities;
 - (b) ensuring transparency and consistency of approach; and
 - (c) guiding and focusing those with a decision-making role.

It is important to note that nothing in this policy shall prevent any individual application from being considered on its individual merits at the time the application is made.

- A licensing policy for sex establishments may include statements about where the Authority is likely to consider appropriate or inappropriate locations for sex establishments/venues. In this policy, Babergh District Council sets out in **general terms** the criteria it will ordinarily apply to its decision making by reference to neighbouring premises uses and character of locality, rather than more specifically by reference to a defined locality.
- Local authorities may also use a licensing policy to indicate how many sex establishments, or sex establishments of a particular kind, they consider to be appropriate for a particular locality. Babergh District Council has not set any specific limitations or quota controls in this policy document, but recognises that it has powers to do so and these shall be kept under close review.
- Local authorities may also produce different policies or a separate set of criteria for different types of sex establishment. This might be appropriate to reflect distinctions between the operating requirements of different sex establishments or the fact that the location that a local authority considers appropriate for a sex shop may be different to that of a sexual entertainment venue.
- This policy document also outlines the criteria Babergh District Council will be guided by when assessing the suitability of the applicant(s)/operator, which is linked into the application process and based around the grounds for refusal specified by paragraph 12 of Schedule 3.

Each application shall be assessed and determined on its individual merits and this policy document may evolve and be revised from time to time in the light of practical experience, precedents, national guidance and any other relevant considerations.

1. The Appropriate Authority

- 1.1 The 'appropriate authority' is responsible for determining applications for sex establishment licences. For the purposes of the 1982 Act 'appropriate authority' means Babergh District Council which has passed a resolution under section 2 of that Act to adopt Schedule 3 in its area.

2. Committee or Sub-Committee (delegation of functions)

- 2.1 Functions under Schedule 3 are the responsibility of the full Council of Babergh District Council. Under section 101 of the Local Government Act 1972, local authorities may arrange for the discharge of these responsibilities by a committee or sub-committee of the appropriate authority.
- 2.2 With the exception of policy setting, which is set by the Council's Strategy Committee upon recommendation from Licensing Committee, Babergh District Council has delegated its functions under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 to its Licensing Committee - as set up to discharge licensing functions under the Licensing Act 2003. However, when dealing with an application for a sex establishment licence, the members of the committee are not acting as the Licensing Committee under the 2003 Act and are instead exercising their functions under Schedule 3 of the 1982 Act. The Licensing Committee may establish a Sub-Committee for the purpose of determining individual applications.

3. Adopting the Provisions

- 3.1 Section 27 of the Policing and Crime Act 2009 came into force in England on 06 April 2010. On 22 February 2011 Babergh District Council resolved to adopt Schedule 3 to the 1982 Act as amended by the 2009 Act so that it has effect in its area with effect from 31 March 2011 (the 'first appointed day'). For transitional purposes the 'second appointed day' was 31 October 2011 and 'third appointed day' 30 April 2012.
- 3.2 Although Babergh District Council had already adopted Schedule 3 to the 1982 Act for the licensing of sex shops and sex cinemas, on 12 July 1983 and effective from 01 September 1983, a further resolution was necessary before the provisions introduced by Section 27 took effect in the Babergh District Council area.
- 3.3 The procedure for local authorities to adopt Schedule 3 as amended by section 27 is set out in section 2 of the 1982 Act, and Babergh District Council has complied with these requirements:
- (a) Firstly, Babergh District Council has passed a resolution specifying that the amendments made by section 27 of the 2009 Act to Schedule 3 of the 1982 Act that Schedule, shall apply to its area and the day on which it came into force in the area was 31 March 2011 (the specified day being more than one month after the day on which the resolution was passed).
 - (b) Secondly, Babergh District Council has published notice that it has passed a under section 2 of the 1982 Act (or in Babergh District Council's case where Schedule 3 is already in force it is adopting the amendments made by section 27) paragraph 2(2) of Schedule 3 to the 2009 Act) for two consecutive weeks in a local newspaper that is circulated in its area. The first publication was not later than 28 days before the day specified in the resolution for the provisions came into force in the local authority's area. The notice stated the general effect of Schedule 3, and appeared in the East Anglian Daily Times on 01 March 2011 and 08 March 2011.

4. Requirement for a Sex Establishment Licence ('waiver' considerations)

- 4.1 Any person wishing to operate a sex establishment as defined by Schedule 3 requires a sex establishment licence, unless the requirement for a licence has been waived by the appropriate authority.
- 4.2 An applicant may apply for a waiver either as part of the application for a licence or separately. The Local Authority may grant a waiver if it considers that to require a licence would be 'unreasonable' or 'inappropriate'. Where a waiver is granted the Council shall inform the applicant that it has been granted. The waiver may last for such a period as that the Council thinks fit, and it may be terminated by the Council

at any time subject to 28 days notice. Whilst each request for the grant of a waiver shall be assessed on its individual merits, the Council notes the exemption available for 'infrequent events' and any requests for waivers shall be considered carefully with the public interest as paramount to whether to require a licence would be 'unreasonable' or 'inappropriate'.

5. Premises that are deemed to be Sexual Entertainment Venues

- 5.1 Paragraph 27A of Schedule 3 deems premises with licences to operate as sexual entertainment venues to be sexual entertainment venues whilst their licence remains in force, irrespective of how frequently they are or have been providing relevant entertainment. This remains the case even if premises operate within the exemption for infrequent events.
- 5.2 If an operator with a sexual entertainment venue licence is operating within the exemption for infrequent events and no longer wants their premises to be treated as a sexual entertainment venue (for example because they are no longer operating as a lap dancing club) they may write to the Council to request that their licence be cancelled. Upon receiving such a request from a licence holder the Council must cancel the licence in question.

6. Notices

- 6.1 Applicants for a sex establishment licence must give public notice of the application by publishing an advertisement in a local newspaper that is circulated in the local authority area no later than 7 days after the date the application is made.
- 6.2 Where the application relates to premises, a notice shall also be displayed on or near the premises in a place where it can be conveniently read by members of the public. The notice should be displayed for a period of 21 day beginning with the date the application was made.
- 6.3 All notices shall be in the form prescribed by the Council and identify the premises or, if the application relates to a vehicle, vessel or stall, specify where it will be used as a sex establishment. Babergh District Council provides a template notice for this purpose.

7. Application Forms

- 7.1 There is no prescribed application form for an application made under Schedule 3 to the 1982 Act. However, the application must be in writing and contain the details set out in paragraph 10 of Schedule 3 along with such other details as Babergh District Council may reasonably require.
- 7.2 Babergh District Council provides an application form for this purpose, setting out all the details and information required, and makes provision for applications to be made electronically via the Council's website at www.babergh.gov.uk In addition to the information required by the form, the Council may also reasonably require submission of further information or clarification in respect of an individual application. Any such requests shall be made by the Council to the applicant(s) in writing. Applications can not be processed until they are considered by the Council to be complete.

8. Single Point of Contact

- 8.1 Following amendments to sub-paragraph 10(14) made by the Provision of Services Regulations 2009, where an application for the grant, variation, renewal or transfer of a licence is made by means of a relevant electronic facility it shall be the responsibility of Babergh District Council (rather than the applicant) to send a copy of an application to the chief officer of police, not later than 7 days after the date the application is received.
- 8.2 Where an application is made by any other means the responsibility to send a copy of the application to the chief officer of police within 7 days of the application being made will remain the responsibility of the applicant.

8.3 For the purpose of Schedule 3 a relevant electronic facility means the electronic assistance facility referred to in regulation 38 of the Provision of Services Regulations 2009 or any facility established and maintained by the Council for the purpose of receiving electronic applications under this Schedule.

9. Fees

9.1 Schedule 3 to the 1982 Act states that an applicant for the grant, renewal or transfer of a sex establishment licence shall pay a reasonable fee, as determined by the Licensing Authority. When determining 'reasonable' for fee purposes Babergh District Council has had due regard to The European Services Directive: Guidance for Local Authorities and Local Government Regulation (previously LACORS) Guidance on the impact of the Services Directive on Councils setting and administering local licence fees within the service sector.

9.2 The fee levels will be subject to periodic review and as of [DATE 2011/12], the following fee levels have been set by Babergh District Council:

Application fee for GRANT / VARIATION or RENEWAL	=	£3000
Application fee for TRANSFER	=	£1500

10. Objections

10.1 When considering an application for the grant, variation, renewal, or transfer of a sex establishment licence Babergh District Council shall have regard to any observations submitted to it by the Chief Officer of Police and any objections that they have received from anyone else within 28 days of the application. Any person may object to an application but the objection should be relevant to the grounds set out in paragraph 12 of Schedule 3 for refusing a licence.

10.2 Objections based on moral grounds/values can not be considered as relevant and the Council shall not consider objections that are not relevant to the grounds set out in paragraph 12. Objectors must give notice of their objection in writing, stating the general terms of the objection. Objections should be sent in writing (which includes electronic submissions) to:



BABERGH DISTRICT COUNCIL
Licensing Authority
Corks Lane, Hadleigh
IPSWICH
Suffolk IP7 6SJ

Tel: 01473 825719 or 826664

e-mail: licensingsection@babergh.gov.uk

10.3 Where the Council receives notice of any objection it shall, before considering the application, give notice in writing outlining the general terms of the objection to the applicant. However, the Council shall not without the consent of the person making the objection reveal their name or address to the applicant.

11. Hearings

11.1 Under paragraph 10(19) of Schedule 3, before refusing an application, all **applicants** shall be given the opportunity to appear before and be heard by the Licensing Committee or Licensing Sub-Committee that is responsible for determining the application.

11.2 Whilst Schedule 3 does not make explicit provision for **objectors** to be heard, and while local authorities are under no obligation to offer an oral hearing to objectors, they may do so at their discretion. Babergh District Council shall normally offer this facility to allow objectors the opportunity to amplify or support their written representations, although the Council accepts that objectors may not wish their identity or address to be known to the applicant. Although the Council is under a duty to consider any objections made within 28 days of the application, it has discretion to hear later objections provided the applicant is given the

opportunity to deal with those objections. It may also dispense with a hearing where all parties consider that it is not necessary.

11.3 Any site visit deemed reasonably necessary to facilitate a fair hearing shall ordinarily follow the Council's established protocol as adopted under the Licensing Act 2003 provisions (as may be modified from time to time).

11.4 Any hearing shall similarly be conducted under the general hearing procedures that apply to applications to determine Licensing Act 2003 premises or club applications. The hearing shall take the form of a discussion led by the Authority and cross-examination shall not be permitted unless the Authority considers it is necessary for it to consider all the relevant issues.

12. Refusal of a Licence

12.1 Paragraph 12 of Schedule 3 sets out the grounds for refusing an application for the grant, variation, renewal or transfer of a licence.

A licence **must not** be granted:

- (a) to a person under the age of 18;
- (b) to a person who is for the time being disqualified due to the person having had a previous licence revoked in the area of the appropriate authority within the last 12 months;
- (c) to a person, other than a body corporate, who is not resident in an EEA State or was not so resident throughout the period of six months immediately preceding the date when the application was made; or
- (d) to a body corporate which is not incorporated in an EEA State; or
- (e) to a 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 for the premises, vehicle, vessel or stall in respect of which the application is made, unless the refusal has been reversed on appeal.

A licence **may be refused** where:

- (a) the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason;
- (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;
- (c) the number of sex establishments, or of sex establishments of a particular kind, in the relevant locality at the time the application is determined is equal to or exceeds the number which the authority consider is appropriate for that locality;
- (d) that 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.

12.2 Any decision made by the Council to refuse a licence shall be relevant to one or more of the above grounds. Full and clear reasons shall be given, including in writing, for any decision taken.

12.3 The Provision of Services Regulations 2009 amended Schedule 3 to the 1982 Act to state that, if having considered an application for the grant, renewal or transfer of a licence, the appropriate authority decides to refuse it on one or more of the above grounds, it must provide the applicant with reasons for the decision in writing.

12.4 When determining a licence application, the Council shall have regard to any rights the applicant may have - including under Article 10 (right to freedom of expression) and Article 1, Protocol 1 (protection of property) of the European Convention on Human Rights.

13. Relevant Locality

13.1 Paragraphs 12(3)(c) and 12(3)(d) of Schedule 3 allow appropriate authorities to refuse applications on grounds related to an assessment of the 'relevant locality'. A licence may be refused if either, at the time the application is determined the number of sex establishments, or sex establishments of a particular kind, in the relevant locality is equal to or exceeds the number that the Council considers appropriate for that locality; or that a sex establishment would be inappropriate having regard to the character of the relevant locality, the use to which any premises in the vicinity are put or the layout, character or condition of the premises. **Nil may be the appropriate number.**

13.2 Schedule 3 to the 1982 Act does not define 'relevant locality' further than to say that:

- (a) in relation to premises, it is the locality where they are situated; and
- (b) in relation to a vehicle, vessel or stall, any locality where it is desired to use it as a sex establishment.

13.3 The decision regarding what constitutes the 'relevant locality' is a matter for the Council and it shall determine the 'relevant locality' on a case-by-case basis on the facts of the individual application, and utilizing its own knowledge of its area. This may also involve a site inspection as referred to in paragraph 11.3 of this document.

13.4 When considering a particular application, the relevant locality need not be a clearly pre-defined area nor are local authorities required to be able to define its precise boundaries. Therefore, while the Council is not prevented from defining the exact area of the relevant locality, it is equally free to conclude that it simply refers to the area which surrounds the premises specified in the application and does not require further definition. Nevertheless the Council shall endeavour to undertake a reasonable view of what constitutes a 'locality' on a case-by-case basis. Case law also indicates that a relevant locality cannot be an entire local authority area or an entire town or city.

13.5 Once the Council has determined the relevant locality in a particular case, it shall seek to make an assessment of the 'character' of the relevant locality and how many, if any, sex establishments, or sex establishments of a particular kind, it considers appropriate for that relevant locality. The views of the Planning Authority and other relevant bodies will be key to making this assessment, as will looking at the type(s) of use and nature of other premises in the locality.

13.6 Section 27 amends paragraph 12(3)(c) of Schedule 3 to allow local authorities to determine an appropriate number of sex establishments of a particular kind. In practice, this means that the Council may, for example, decide that a particular locality is suitable for a sex shop but is not suitable for a sexual entertainment venue or vice versa.

13.7 Babergh District Council shall not apply a rigid rule to its decision making and shall determine each application on its individual merits. Although it recognises that it has powers to do so, the Council shall not pre-empt or specify in advance which specific locations may, or may not, be suitable for the operation of a sex establishment. **It shall however keep this policy and its ability to use these powers under review.**

13.8 In general the Council shall not normally grant applications for sex establishment licences in locations, where relevant objections are raised and where those concerns may not be adequately overcome, that are in the vicinity of sensitive premises or inappropriate in the context of the uses/character of the location. Examples of 'sensitive premises or locations' for these purposes, may include but shall not be limited to –

- Residential areas used by families or housing for sensitive/vulnerable groups (such as sheltered or refuge housing);
- Schools, pre-school nurseries/playgroups, other educational or community facilities and clubs;
- Residential care homes, hospitals and other medical facilities, places of religious worship;
- Facilities/attractions for children and sensitive/vulnerable groups;
- Places of cultural or historical significance, areas where tourism or regeneration are likely to be deterred by the presence of sex establishments;
- Areas with a known history of crime and disorder or, for example, a reputation of being a focal point for anti-social behaviour (e.g. congregation of youths) or with links to drugs or prostitution;

- Public open spaces such as parks, playgrounds or sports and family leisure facilities; or
- Areas which may make women feel threatened or uncomfortable.

13.9 'In the vicinity' for these purposes will primarily focus on the likely impact on those living, working or using the area and likely to be directly affected by the operation of the licensed premises. However, wider factors may also be taken into account in specific circumstances such as if a proposed sex establishment is on a main pedestrian route, located in an area with a known history of crime and disorder or the character of the area may be negatively affected by the presence of an establishment of this nature. The operation should also have the correct planning consent for the use intended, and it will be the responsibility of the premises operator to check/obtain this.

13.10 The presence of a sexual entertainment venue may also stimulate development of further late night services in a particular locality. For example, the presence of a lap dancing/striptease establishment may lead to an increase in requests for late night alcohol or food establishments, or accommodation, to cater for the clientele likely to frequent such a venue (for example 'stag' or 'hen' parties). Those with a role in the licensing process will be mindful to carefully balance these wider considerations which, although may bring benefits to the night time economy, may also affect the character of a location and potentially impact on crime and disorder, public nuisance and protection of children and vulnerable adults. It may also have an impact on other services such as local transport provision/availability and policing of the night time economy.

13.11 When assessing an individual application on its merits, the Licensing Authority shall look at all relevant material factors, and these factors may include (but not exclusively):

- (a) the nature and character of the locality – is it a residential area, leisure area, retail or educational;
- (b) the presence of sensitive uses – for example places of worship, school, youth and after school clubs, sports/community facilities, parks or play areas, care homes, hospitals or hospices etc;
- (c) is it a night-time economy zone with sufficient sex-oriented uses;
- (d) local views on the nature and character of the area;
- (e) gender or other equality impacts – e.g. would this use deter male/female users from the locality;
- (f) is crime, or fear of crime, a factor in the locality;
- (g) views of other relevant authorities – for example planning or community safety partnership;
- (h) level of genuine demand, excess supply impacts, does the size and nature of the area being proposed make it an appropriate or viable proposition; and
- (i) the nature and condition of the premises itself – including capacity, external appearance, building and structure, advertising and proposed name.

14. Licence Conditions

14.1 The Council in granting a licence is able to impose terms, conditions and restrictions on that licence, either in the form of conditions specific to the individual licence under paragraph 8 of Schedule 3 or standard conditions made by the Council under paragraph 13 of Schedule 3 - applicable to all sex establishments or particular types of sex establishment.

14.2 Paragraph 13 provides examples of the matters that standard conditions may address which include but are not restricted to:

- The hours of opening and closing
- Displays and advertisements on or in sex establishments
- The visibility of the interior of a sex establishment to passers-by
- Any change of use from one kind of sex establishment to another

14.3 Where the Council decides to produce standard conditions under paragraph 13 they shall apply to every licence granted, renewed or transferred by the authority unless they have been expressly excluded or varied.

14.4 Wherever possible, and so as to be consistent with the Licensing Act 2003 system, the Licensing Authority seeks to attach reasonable and proportionate controlling conditions that are generated by the applicant(s) themselves - whether considered as part of pre-application 'without prejudice' discussions, volunteered as part of the application or mediated during the licensing process. Consequentially, standard conditions which may otherwise apply may in some instances require exclusion or variation.

14.5 Many sexual entertainment venues will require a Licensing Act 2003 authorisation as well as a sex establishment licence. Where this is the case, the Licensing Authority shall endeavour to avoid duplicating licence conditions and should ensure that any conditions attached to each licence are relevant to the activities authorised by that licence. For example, conditions relating to the sale of alcohol should only appear on a premises licence or club premises certificate and should not be imposed on sexual entertainment venue licence. Likewise, conditions relating the provisions of relevant entertainment should appear on the sexual entertainment venue licence and not a premises licence or club premises certificate. The Licensing Authority shall also be diligent to avoid imposing conditions on either licence that are contradictory, and shall also be mindful of any relevant planning controls. For example, where existing planning controls specify the hours of operation the Licensing Authority will normally limit the licensed operation to within the same hours.

15. Duration of Licences

15.1 Licences for sex establishments can be granted for up to one year. Babergh District Council, in granting a licence, will normally do so for one year to allow the operator a degree of certainty in relation to his/her business.

16. Enforcement

16.1 Where necessary, enforcement action will be considered in accordance with the Compliance Code and the Council's General Enforcement Policy. These guidelines are available direct from Babergh District Council and may be subject to periodic amendment.

16.2 The emphasis will be upon a risk-assessed and targeted approach to inspections, concentrating on those premises which either:

- present a greater risk;
- have a history of non-compliance with conditions/regulation; or
- demonstrate poor management practice which undermines the licensing objectives.

16.3 The Licensing Authority will not normally undertake inspections routinely but may do so when and if they are considered by the Authority as reasonably necessary. The 1982 Act does not require inspections to take place save at the discretion of those charged with an enforcement role. The Local Authority may undertake joint inspections with partner authorities such as the Police.

16.4 Where expedient for the promotion or protection of the interests of the inhabitants of their area, the Council may also take action under Section 222 of the Local Government Act 1972, and other relevant provisions including Section 40 of the Anti-Social Behaviour Act 2003. The Council will also have due regard to section 17 of the Crime and Disorder Act 1998 whilst carrying out its functions.

17. Appeals

17.1 In the event that the Council refuses an application for the grant, renewal or transfer of a sex establishment licence the applicant may appeal the decision in a Magistrates' Court, unless the application was refused under 12(3)(c) or (d), in which case the applicant can only challenge the refusal by way of judicial review.

18. Suitability of Applicant(s)/Operator

18.1 The criteria the Licensing Authority will be guided by when assessing the suitability of the applicant(s)/operator, is linked into the application form requirements and based around the grounds for refusal specified by Paragraph 12 of Schedule 3.

18.2 An application will be refused where the mandatory requirements specified by Paragraph 12 of Schedule 3 are either not met, or not confirmed by the applicant to the satisfaction of the Licensing Authority. Incomplete applications cannot be processed.

18.3 In respect of discretionary grounds for refusal available to the Authority each case shall be determined individually and on its own merits. Where the Authority is minded to refuse a licence all applicant(s) shall be given the opportunity to a fair hearing before the final decision of the Authority is made, and also explore whether any remedial measures, for example licence conditions or exclusions, may adequately deal with the specific concerns.

18.4 Whilst the Authority can not anticipate every set of circumstances, in general terms the Council shall make a decision on applicant/operator suitability based on consideration of the following factors:

- (a) Whether the applicant(s), partners or directors have any relevant convictions, cautions or other relevant offences (and it may take into account 'spent' convictions for these purposes). The fact that an applicant or connected individual may have convictions will not automatically render them unsuitable as each case will be assessed on its individual merits. Clearly, serious offences involving violence, dishonesty or sexual offences will be of particularly relevance as to whether an applicant is suitable to be granted a licence;
- (b) The trading history and relevant experience of the applicant(s). Whether there has been any previous disqualification (beyond the mandatory limitations of paragraph 12 of Schedule 3);
- (c) The steps and measures (including rules, policies and procedures) that the applicant(s) intend to take to ensure that they operate sensitively in the community and without any disproportionate negative impacts in the locality;
- (d) Whether the business is for the benefit of any third party that would not be granted a licence;
- (e) Whether the Police object on any reasonable grounds to any applicant(s), partners or directors being granted a licence;
- (f) Whether the Police object on any reasonable grounds to any other person at a management or operational level being involved with the licensed operation;
- (g) Whether there are any restrictions on an applicant's ability to reside or work in the UK; and
- (h) Any other reasonable or relevant factors that may come to light.

19. Equality Analysis

19.1 Recognising its obligations under the Equality Act 2010, in the exercise of its licensing functions Babergh District Council shall have due regard to the need to eliminate discrimination, harassment and victimisation. It shall also have due regard to the need to advance equality of opportunity and foster good relations between the sexes.

19.2 Gender equality may well influence decision-making under the sex establishment licensing provisions of the Local Government (Miscellaneous Provisions) Act 1982:

- (a) The Authority shall use the licensing process – and in particular the attachment of conditions – to protect performers from harassment and any threat to their dignity, by requiring proper supervision and facilities.
- (b) Any suggestion that women would be less welcome in premises than men can be met by a protective condition.
- (c) The fears of women using the vicinity of premises may be reflected in decisions as to the location of such facilities. The importance of gender in relation to town centre planning is recognised by the Authority. In certain locations, lap-dancing and similar venues may make women feel threatened or uncomfortable.
- (d) Where relevant, these considerations shall be properly taken into account by the Authority at the decision-making stage and referenced within the policy.

19.3 The Authority recognises that equality duty is not confined to sex, and extends to religion or belief and disability. Any views expressed on these matters shall be duly considered by the Authority, unless they relate to moral grounds/values which are specifically excluded under the legislation. The needs of disabled customers may be reflected in decisions as to access and layout.

19.4 The limitation of a licence to a period of not longer than 12 months will afford adequate opportunity for the Authority to consider any representations/evidence relating to practices and impacts of the premises on equality considerations.

20. Other legislation, strategies and guidance

20.1 When carrying out its functions the Local Authority has duties, responsibilities and considerations under other legislation and strategies, for example:

- (a) Crime and Disorder Act 1998 (in particular obligations under section 17 relating to the prevention of crime and disorder);
- (b) The European Convention on Human Rights, given effect by the Human Rights Act 1998;
- (c) Criminal Justice and Police Act 2001 (in particular the powers available under section 13 to make 'designated public place orders' or DPPO's to control the consumption of alcohol in a public place outside licensed premises);
- (d) Race Relations Act 1976 (as amended by the Race Relations (Amendment) Act 2000);
- (e) Anti-Social Behaviour Act 2003 (in particular powers available under sections 40 and 41 relating to the closure of premises on the grounds of public nuisance caused by noise);
- (f) Environmental Protection Act 1990 (as amended) (in particular investigation of, and any enforcement action in relation to, statutory nuisances – including by noise, light or odour);
- (g) Health and Safety at Work etc Act 1974;
- (h) Noise Act 1996 (as amended);
- (i) Health Act 2006;
- (j) Clean Neighbourhoods and Environment Act 2005 (including powers for the Local Authority to issued fixed penalty notices to licensed premises emitting noise that exceeds the permitted level between 11pm and 7am);
- (k) Policing and Crime Act 2009;
- (m) The Council's published procedure for dealing with petitions and its obligations under the Local Democracy, Economic Development and Construction Act 2009;
- (n) Equality and diversity obligations; and
- (o) European Union Services Directive.

20.2 The premises operators are normally responsible for compliance with any other separate statutory requirements which may apply, not dealt with directly by the Local Authority, for example compliance with the Regulatory Reform (Fire Safety) Order 2005.

20.3 The Licensing Authority will as far as possible seek to avoid duplication with other regulatory regimes when dealing with the licensing function. If other existing law already places certain statutory responsibilities on an employer or operator of premises, it cannot be necessary to impose the same or similar duties on the licence holder.

20.4 Other Local Authority and Government policies, strategies, responsibilities, and guidance documents may also refer to the licensing function, and the Licensing Authority may liaise with the relevant authorities or its directorates with regard to these.



SEX ESTABLISHMENT LICENSING – APPLICATION

PART A: APPLICANT INFORMATION

SCHEDULE 3 OF THE LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982


- Before completing this application please read ALL guidance notes at the end of the form. If you are completing this form by hand please write legibly in block capitals. In all cases ensure that your answers are inside the boxes and written in **black** ink. Use additional sheets if necessary.
- It is recommended that you keep a copy of the completed form for your records.
- **Please note that the Licensing Authority or Police may make enquiries to independently verify / validate any information submitted as part of this application.**

I / We
(Insert name(s) of applicant(s) – please read guidance note 1)

apply for the **Grant / Renewal / Transfer*** of a Sex Establishment Licence for the premises described in Part 1 below ('the premises') in accordance with Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 (**delete as necessary*)

Part 1 - Premises Details *(Please read guidance note 2)*

Postal address (including trading name, post code and telephone number of premises). If a vehicle, vessel or stall state the location where it is to be used as a sex establishment:





 Tel:

Part 2 - Applicant Details

Please tick the relevant box to state whether you are applying for a licence as:

- a) an individual or individuals
- b) a person other than an individual
 - i. as a limited company
 - ii. as a partnership
 - iii. as an unincorporated association or
 - iv. other (for example a statutory corporation)



(A) Individual applicant details *(Please read guidance note 3)*

Mr <input type="checkbox"/>	Mrs <input type="checkbox"/>	Miss <input type="checkbox"/>	Ms <input type="checkbox"/>	Other Title	
Surname:			First names:		
Date of birth:		Applicants must be aged 18 or over			
Place of birth (Town/Country):					
National insurance number:					
Current <u>residential</u> address including post code:					
Telephone number:					
e-mail address:					
Are you ordinarily resident in the UK?		YES / NO If NO please state where:			
Have you any restrictions on your eligibility to reside and work in the UK?		YES / NO			
Mr <input type="checkbox"/>	Mrs <input type="checkbox"/>	Miss <input type="checkbox"/>	Ms <input type="checkbox"/>	Other Title	
Surname:			First names:		
Date of birth:		Applicants must be aged 18 or over			
Place of birth (Town/Country):					
National insurance number:					
Current <u>residential</u> address including post code:					
Telephone number:					
e-mail address:					
Are you ordinarily resident in the UK?		YES / NO If NO please state where:			
Have you any restrictions on your eligibility to reside and work in the UK?		YES / NO			

(Continue on separate page if necessary – ALL individual applicants must be stated)

(B) Other applicants (such as a registered company or unincorporated association)

Please provide name and registered address of applicant in full. Where appropriate please give any registered number and names/private addresses of all directors/partners:

Name:	
Registered or Principal Office address including post code:	
Registered company number:	
Description of applicant (eg. partnership, company etc.)	
Is this company incorporated in the UK?	YES / NO If NO please state where:
Telephone number:	
e-mail address:	
Names and private addresses of <u>all</u> company directors or partners:	<p>1: Director/partner full name (inc title):</p> <p>Private address (inc postcode):</p> <p>.....</p> <p>2: Director/partner full name (inc title):</p> <p>Private address (inc postcode):</p> <p>.....</p> <p>3: Director/partner full name (inc title):</p> <p>Private address (inc postcode):</p>

(Continue on separate page if necessary)

Part 3 – Declaration for Part A

I / We

(Insert name(s) of applicant(s))

Please tick ✓ to confirm yes

- Enclose the relevant **fee** (cheques are payable to 'Babergh District Council')
- Enclose **evidence of identity** containing a photograph in respect of each individual applicant / partner / director, as applicable
- For each individual/director enclose a **basic level criminal record disclosure** certificate or equivalent (this should be dated no older than one calendar month), and also enclose a declaration of convictions, cautions etc for each person as applicable (*see guidance note 9*)
- Understand that if the above requirements have not been satisfactorily complied with my application can not proceed and may be rejected
- Understand that the information given may be used in conjunction with other authorities for the prevention and detection of fraud, and will be held including electronically, subject to the Data Protection Act 1998.
- Confirm that the information supplied in this application is true to the best of my / our knowledge and belief.



IT IS AN OFFENCE FOR ANY PERSON TO MAKE A FALSE STATEMENT, OR A STATEMENT WHICH HE/SHE DOES NOT BELIEVE TO BE TRUE, IN OR IN CONNECTION WITH THIS APPLICATION. A PERSON GUILTY OF THIS OFFENCE SHALL BE LIABLE ON SUMMARY CONVICTION TO A FINE NOT EXCEEDING £20,000.

(C) Signatures *(Please read guidance note 4)*

Signature of applicant(s) or applicant(s') solicitor or other duly authorised agent. If signing on behalf of the applicant please state in what capacity.

Signature(s):	1: Name:..... Capacity:.....
	2: Name:..... Capacity:.....
	3: Name:..... Capacity:.....
Date:	

(D) Contact details to be used in connection with this application *(Please read guidance note 5)*

Contact name:	
Contact postal address including post code:	
Telephone number:	
e-mail address:	

SEX ESTABLISHMENT LICENSING – APPLICATION

PART B: PREMISES / OPERATIONAL INFORMATION

SCHEDULE 3 OF THE LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982

- Before completing this application please read ALL guidance notes at the end of the form. If you are completing this form by hand please write legibly in block capitals. In all cases ensure that your answers are inside the boxes and written in **black** ink. Use additional sheets if necessary.
- It is recommended that you keep a copy of the completed form for your records.
- **Please note that the Licensing Authority or Police may make enquiries to independently verify / validate any information submitted as part of this application.**

I / We

(Insert name/s of applicant/s – please read guidance note 1)

apply for the **Grant / Renewal / Transfer** * of a Sex Establishment Licence for the premises described in Part 1 below ('the premises') in accordance with schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (**delete as necessary*)

Part 1 - Premises Details *(Please read guidance note 2)*

Postal address (including trading name, post code and telephone number of premises). If a vehicle, vessel or stall state the location where it is to be used as a sex establishment.

 Tel:

(A) Description of Trading Activity *(see definitions at the end of the form and guidance note 10)*

The premises will trade as (tick ✓ whichever applies):						
a sex cinema <input type="checkbox"/>	a sex shop <input type="checkbox"/>	a sex entertainment venue <input type="checkbox"/>				
The premises is proposed to trade on the following days & between the following times:						
Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
From:	From:	From:	From:	From:	From:	From:
To:	To:	To:	To:	To:	To:	To:

(B) Operation of the venue and other relevant information

<p>Does the premises have the correct planning consent for the use intended? (If unsure you should check with the Planning Authority on 01473 825858)</p>	<p>YES / NO</p>
<p>Does the premises currently have a premises licence or club premises certificate under the Licensing Act 2003?</p>	<p>YES / NO</p>
<p>If the premises does hold a Licensing Act 2003 authorisation please give the licence or certificate number and enclose a copy of the licence/certificate.</p>	
<p>Please summarise the nature, style and activities of your proposed sex establishment. For example, give detail on the type of activities/entertainments, clientele, frequency of performances, number of staff and performers, capacity, type of articles sold etc.</p>	
<p>What measures/steps do you propose to take to ensure that your sex establishment operates in a suitable and appropriate manner in the locality you propose? For example you may wish to detail your arrangements for on-site and door supervision (including numbers/frequency/timings), management (including management structure), customer rules, welfare of performers, membership, dispersal and transportation, external appearance of the venue, advertising, training for staff, CCTV, notices and signage etc.</p> <p><i>(Continue on separate page if necessary)</i></p>	
<p>Do you agree to conditions being attached to your licence (if granted) that are consistent with the steps/measures you have proposed above? YES / NO</p>	
<p>Please provide a plan and a schematic to show the proposed external appearance of the venue (see guidance note 12)</p>	

Part 3 – Declaration for Part B

I / We

(Insert name(s) of applicant(s))

Please tick ✓ to confirm yes

- Enclose a **plan** of the premises and also a **diagram** of the premises frontage (this should also indicate window dressing/colour schemes/signage etc) *(see guidance note 12)*
- Enclose any **policies, rules, procedures** or other supporting documentary information in connection with this application
- Understand that if the above requirements have not been satisfactorily complied with my application can not proceed and may be rejected
- Understand that the information given may be used in conjunction with other authorities for the prevention and detection of fraud, and will be held including electronically, subject to the Data Protection Act 1998.
- Confirm that the information supplied in this application is true to the best of my / our knowledge and belief.

IT IS AN OFFENCE FOR ANY PERSON TO MAKE A FALSE STATEMENT, OR A STATEMENT WHICH HE/SHE DOES NOT BELIEVE TO BE TRUE, IN OR IN CONNECTION WITH THIS APPLICATION. A PERSON GUILTY OF THIS OFFENCE SHALL BE LIABLE ON SUMMARY CONVICTION TO A FINE NOT EXCEEDING £20,000.

(C) Signatures *(Please read guidance note 4)*

Signature of applicant(s) or applicant(s)' solicitor or other duly authorised agent. If signing on behalf of the applicant please state in what capacity.

Signature(s):	1: Name:..... Capacity:.....
	2: Name:..... Capacity:.....
	3: Name:..... Capacity:.....
Date:	

GUIDANCE NOTES TO ASSIST WITH COMPLETION OF THIS APPLICATION FORM

- 1) Insert the name(s) of individual applicant(s) or partners or the trading name under which the business operates.
- 2) Insert the postal address, including the name by which the premises to be used as a sex establishment is to be known.
- 3) The full name, date and place of birth, national insurance number and private address of each individual applicant and names and private addresses of all directors must be supplied together with photographic evidence of identity for each person (eg. passport or driving licence).
- 4) The application form must be signed. An applicant's agent (for example solicitor) may sign the form on their behalf provided that they have actual authority to do so. Where there is more than one applicant, all applicants or their respective agents must sign the application form.
- 5) This is the address that we shall use to correspond with the applicant(s) about this application.
- 6) A notice containing details of the application must be advertised on the premises to which the application relates for a continuous period of not less than 21 days from the day following the day on which it was given to the licensing authority, in a position from which it can be conveniently read by members of the public. The Council provides a template to assist with this requirement.
- 7) A notice containing details of the application must be published in a newspaper circulating in the local vicinity of the premises within 7 days of the application be given to the licensing authority. The Council provides a template to assist with this requirement.
- 8) Fee levels may change from time to time. Current fee levels can be obtained via the Council's website or by contacting the Licensing Team.
- 9) For this purpose a criminal conviction certificate (issued under section 112 Police Act 1997), a criminal record certificate (issued under section 113A Police Act 1997) or the results of a subject access search under the Data Protection Act 1998 (b) of the Police National Computer by the National Identification Service will be satisfactory. This may be obtained from Disclosure Scotland (Tel: 0870 609 6006 website: www.disclosurescotland.co.uk) or by contacting your local Police Station. Disclosures provided must be dated within one calendar month of the application date or else they will be rejected.
- 10) Specify the type of sex establishment you intend to operate. Multiple activities may require additional licences. Also indicate the times for each day of the week that you propose to operate as a sex establishment. Specify N/A if you do not intend to operate on a particular day.
- 11) The application form must be signed. An applicant's agent (for example solicitor) may sign the form on their behalf provided that they have actual authority to do so. Where there is more than one applicant, all applicants or their respective agents must sign the application form.
- 12) A plan of the premises must be submitted with the application, drawn to a legible scale (preferably 1:100) showing all external and internal doors and windows and the position of counters, display stands, booths, video / TV / film screens, exhibition areas, dance / performance / stage / restricted areas fixed seating and tables, bars / counters from which refreshments are available. Further a diagram showing the proposed external appearance/ frontage of the venue (this need not be professionally drawn) and this should include colour scheme, branding, advertising, window dressing, signage etc. Please note that the plan will form part of the licence and conditions.
- 13) Copies of the complete application together with a plan of the premises and any supporting documentation must be submitted to:
 - (a) Licensing Team, Babergh District Council, Corks Lane, Hadleigh, IPSWICH IP7 6SJ
licensingsection@babergh.gov.uk
 - (b) Chief Officer of Police, Stowmarket Police Station, Violet Hill Road, STOWMARKET IP14 1NJ
The Licensing Authority shall seek professional views on the application from other relevant authorities for example planning, environmental protection or trading standards officers.

Note: The Council may reasonably require the applicant(s) to provide additional documentation in connection with this application. All such requests shall be made in writing (including via email request).

CHECKLIST OF ALL DOCUMENTS TO PROVIDE WITH THIS APPLICATION

- 1: Any **continuation sheets** you have used in connection with this application form (please number, add your name and premises details to every additional sheet you have provided).
- 2: The **plan** of your premises showing the layout, fixtures, fittings and features requested. This need not be professionally drawn but must be to scale (preferably 1:100) clear and legible in all material respects.
- 3: A **diagram** showing the proposed external frontage of your sex establishment. This need not be professionally drawn but should be clear and legible in all material respects (indication of colour scheme and shop signage, naming and branding should also be included).
- 4: The correct **fee** for the application. Cheques should be made payable to 'Babergh District Council' and may not be refunded in the event your application is unsuccessful.
- 5: **Proof of address** for all individual applicants – for example a current utility bill or bank statement.
- 6: **Endorsed photographs** of all individual applicants. Photos must be full faced and passport style, and endorsed as a true likeness by a professional person of standing in the community such as a doctor, solicitor, teacher, fire officer, local government officer or councillor. The contact details for the person endorsing the photos should also be provided with the photographs as validation checks will be made.
- 7: **Photographic proof** of identity and age documentation for individual applicants – for example a passport or DVLA photocard driving licence containing a date of birth.
- 8: Any **policy or similar documents** you propose to operate at the sex establishment, provided in support of your application – for example performer vetting and welfare, customer rules, management and supervision policy/structure, details of membership of a trade association, details of previous relevant experience etc
- 9: **Criminal records basic level disclosure** or equivalent certificates – which should be no older than one calendar month. The Police may also conduct background checks of any person connected to this application.
- 10: **Any documentation relating to verification** of the entitlement of any applicant to reside or work in the UK (should this be applicable). It should be noted that the Council is registered with the Home Office Evidence and Enquiry Unit and may check the eligibility status of any individual connected with this application.
- 11: Copy of Licensing Act 2003 **premises licence or club premises certificate** if applicable.
- 12: **Serve the application**, together with accompanying documents, to both the Licensing Authority and Chief Officer of Police.

Note: The Council may reasonably require the applicant(s) to provide additional documentation in connection with this application. All such requests shall be made in writing (including via email request).

Definitions:

“sexual entertainment venue” means any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer.

In this paragraph “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).

“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,

but does not include a dwelling-house to which the public is not admitted.

“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.



SCHEDULE 3 TO THE LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982

SEX ESTABLISHMENT LICENSING STANDARD CONDITIONS

These conditions shall by default apply to all Sex Establishment licences in the Babergh District unless the conditions have been expressly excluded or varied. The Authority is also entitled to attach individual conditions to licences. The Authority encourages pre-application dialogue, and mediation where viable, to ensure that conditions are suitable to the activities, nature, style and locality of the individual premises.

It should be noted that offences are specified under paragraphs 20 to 23 of Schedule 3 and will not be replicated by the Licensing Authority as licence conditions. It will also not knowingly duplicate conditions on a Sex Establishment licence that apply to any linked Licensing Act 2003 licence.

Non-compliance with these conditions, without reasonable excuse, may result in revocation of the licence and/or prosecution for relevant offences.

PREMISES MANAGEMENT AND SUPERVISION:

1. The licence holder shall remain in direct control of the licensed premises at all times, or else nominate a responsible individual, who is aged 18 or over, in writing with the authority to direct and monitor relevant activities within the premises.
2. The name of the main individual acting as on-site manager, as nominated by the licence holder, shall be displayed and maintained prominently at the interior of the premises and near to the entrance. There shall be a minimum of one on-site manager nominated for the duration of time the premises is open for activities under the authority of this licence.
3. The licence holder, or their nominated representative, shall maintain a legible written record (whether manual or electronic) detailing the names of performers, any proof of identity or date of birth checks conducted, and start and finish times of performances. This record shall also include a record identifying the organiser of the relevant entertainment. This record shall be made available immediately upon reasonable request of the Police or Local Authority.
4. Prior to the first activity under the authority of the licence, the licence holder shall provide the Police and Local Authority with the names, position/role, date of birth of all persons employed, or engaged, at the premises during activities authorised by the licence in a supervisory, services, maintenance, management or other capacity where they may come into contact with the public and/or performers. Any changes, including additions or removals to these personnel, shall be notified by the licence holder to the Police and Local Authority as soon as possible and in any event within 14 days of the change.

The licence holder shall promptly provide further information concerning any particular individual or role at the licensed premises where it is reasonably requested by an authorised officer of the Police or Local Authority.

Note: Changes to licence holders will normally need to be made via the transfer process.

5. Where the Police raise any reasonable concerns about the deployment of a particular individual to a specific role then this will be raised promptly with the licence holder who shall be expected to work in partnership with the relevant authorities and take any proportionate remedial action, for example change of roles, additional training or exclusion, to the satisfaction of the Police and Local Authority.
6. Any individual employed on the premises to conduct a security activity (within the meaning of section paragraph 2(1)(a) of schedule 2 to the Private Security Industry Act 2001) shall be licensed by the Security Industry Authority.
7. The licence holder shall ensure that a suitable and sufficient number of adequately trained staff are employed, or engaged, to supervise the interior of the licensed premises ('floor supervisors') whilst relevant activities/performances are being carried on under authority of the licence.
8. The licence holder shall ensure that a suitable and sufficient CCTV is installed and maintained on the licensed premises to the satisfaction of the Chief Officer of Police, and that any images are (a) securely retained for a period of at least 31 days and (b) made available promptly upon request to a police officer or authorised officer of the Council. Recorded material shall only be disclosed to authorised persons. Notices shall be prominently displayed informing customers and performers of the presence of CCTV. Note: This condition may be adequately addressed by any relevant Licensing Act 2003 authorisation, and may be varied or detached from the SEV licence accordingly. The operator will also need to ensure they are familiar with any separate requirements with relation to CCTV management – for example any material published by the Information Commissioner.

GENERAL:

9. This licence permits use of the premises as a 'sexual entertainment venue' (as given meaning by paragraph 2A of Schedule 3) and shall NOT authorise the licensed premises to operate as a sex shop (as defined by paragraph 4 of Schedule 3) or sex cinema (as defined by paragraph 3 of Schedule 3). A further licence application will normally be required for any change in the nature of the licensed venue, which will be considered on its own merits. [Note: Wording will change dependent on type of licence].
10. No person under the age of 18 shall be admitted to the licensed premises or employed or engaged by the licence holder, or their operatives, to carry out duties or perform relevant activities at the licensed premises.
11. Customers who appear to be under the age of 25 shall be asked to provide a bona fide photographic proof of their age (for example a passport, driving licence or PASS card). The licence holder shall display and maintain prominent notices to this effect at each entrance/exit to the licence premises.

12. Performers shall not be under the age of 18. The licence holder shall securely maintain suitable and sufficient records of the names, contact details and dates of birth of performers and shall conduct diligent and adequate identity checks to verify the age of all performers.
13. The licence holder shall provide upon request copies of any documents reasonably required by an authorised officer of the Police or Local Authority in relation to compliance with this licence.

HOURS AND TIMINGS FOR RELEVANT ACTIVITIES:

14. The Local Authority shall normally impose a condition on all sexual entertainment venues limiting the hours of performances under reliance of the licence. Hours of licensed operation shall be set on a case-by-case basis, to take into account any reasonable and relevant factors (including any relevant representations or any restrictions on the premises trading hours imposed under planning, Licensing Act 2003 or other relevant controls). Within this general control, provision shall be made as part of the application process for the applicant to volunteer their own proposals on hours of operation as a sexual entertainment venue.

CONDITION OF PREMISES:

15. The *interior* of the premises shall be suitably and sufficiently screened from the view of passers-by, and there shall be any other advertisements, notices, articles, items or displays of a kind (other than any notices that may reasonable required by the Police or Local Authority – for example on the prohibition on under 18's) that may be reasonably considered as offensive, lewd or likely to cause public distress, generate complaints or impact on the protection of children and vulnerable persons. At no point may dancers/performers be visible from outside of the licensed premises.
16. Should the Police or Local Authority reasonably object to any specific display or any other material factor in this regard, likely to contravene these requirements, then the licence holder, or their nominated representative, shall immediately remove or suitably modify the display/item to the satisfaction of the Police and Local Authority.
17. The *exterior* of the premises shall be suitably and sufficiently maintained so as to be unobtrusive and reserved, so as to not cause public offence, distress or alarm. The exterior appearance of the premises shall not be altered from the original scheme approved with the original licence without the prior written approval of the Local Authority. When considering this matter the views of the local Planning Authority shall be taken into account and their comments shall be notified to the licence holder accordingly.
18. There shall be no suggestive or provocative music, which may reasonably be inferred as relating to sexual entertainments, played at the premises in such manner or volume so as to cause public nuisance, offence or distress.

ADVERTISING AND PROMOTIONAL MATERIAL:

19. The licence holders, or any persons associated with the operation of the licensed premises in any regard, shall not advertise, solicit or distribute any flyers, leaflets or promotional material in the vicinity of the licensed premises or anywhere else where it is likely to cause annoyance or concern to the public.
20. The premises name and branding shall be of a suitably discreet nature and shall not be of such name so as to reasonably be inferred as lewd, offensive or otherwise inappropriate, whether overtly or implied. Any proposed change to the name or branding of the licensed premises shall not be implemented without the prior written agreement of the Local Authority.

PERFORMER AND CUSTOMER CONDUCT/WELFARE:

21. Performers shall not be permitted to touch customers/staff, notwithstanding genuinely accidental contact or self-protection, nor shall customers or staff be permitted to touch performers. For these purposes 'touching' means whether directly or via other means such as an item of clothing, cushion or other object.
22. The licence holder shall implement a suitable and sufficient policy to ensure the safety of the performers, to include arrangements for how and when they leave the premises after a performance.
23. Performers shall only perform on the stage area, to seated customers or in such other areas of the licensed premises as may be authorised by the Council and identified in the plan attached to the licence.
24. Performers shall remain clothed in public areas of the premises and all other areas except while performing on stage or in other areas authorised by the Council as where sexual entertainments may be provided. Performers shall dress fully at the end of each performance.
25. Performers may not accept any telephone number, email address, address or contact information from any customer, except in the form of a business card which must be surrendered to the licence holder, or their authorised representative, before leaving the premises.
26. Performers must not engage in communications that could be deemed as acts of prostitution or solicitation, even if the performer has no intention of carrying out the act.
27. The licence holder shall make adequate provision so as to ensure that customers are not deterred from attending the licensed premises on grounds of their gender, religion, belief or disability.
28. The licence holder shall implement a suitable and sufficient set of customer rules, which shall be clearly and prominently displayed, maintained, available and advised to customers. These rules shall normally address/advise upon matters that include, but are not limited to:

- (a) No touching policy - including any policing/reinforcement measures such as a distance separation (for example one meter) between performers and audience;
- (b) Entry prices and any prices for compulsory purchases (such as beverages);
- (c) Deposit of contact details (which must be in accordance with condition 25 above);
- (d) Dispersal policy (to safeguard the welfare of performers and minimise the risk of public nuisance by noise, rowdiness etc);
- (e) Licence holder's policy on exclusion of individuals acting in an inappropriate, disorderly or offensive manner including maintenance of a refusals book;
- (f) Proof of age policy including the requirement to produce photographic identity where the individual appears to be under 25;
- (g) The conduct expected of patrons such as remaining seated during performances of relevant entertainment and appropriately clothed at all times;
- (h) Any membership requirements or similar controls;
- (i) Prohibition on photography and audience participation;
- (j) That the licence holder works in partnership with the local relevant authorities to promote licensing objectives.

SEX CINEMA AND SEX SHOPS:

In addition to relevant general conditions which apply to sex establishment licences the following additional standard conditions, as may be modified, shall apply to licensed Sex Cinema and Sex Shop venues:

- 29. No films may be shown at the premises unless they have been passed by the British Board of Film Classification (or any other successor Authority).
- 30. A film or video recording shall not be sold or supplied unless it has (a) been passed by the British Board of Film Classification (or any other successor Authority), (b) is a reproduction authorised by the owner of the copyright and (c) bears certificate to those effects.
- 31. In respect of Public Safety matters at Sexual Entertainment Venues/Sex Shop/Sex Cinema venues, the licence holder shall take all reasonable precautions to ensure the safety of the public and employees. The licence holder shall liaise with the local Health and Safety Authority and Fire Authority prior to the commencement of activities under authority of this licence and implement any safety measures recommended by those Authorities.