

AGENDA

LICENSING COMMITTEE MEETING



Date: Thursday 17 February 2011

Time: 6.30 pm

Venue: Town Hall, High Street,
Maidstone

Membership:

Councillors Parvin (Chairman), Brindle, FitzGerald,
Mrs Gibson, Mrs Hinder, Mrs Joy,
Naghi, Mrs Parvin, Sellar (Vice-
Chairman) and Warner

Page No.

1. Apologies for Absence
2. Notification of Substitute Members
3. Notification of Visiting Members
4. Disclosures by Members and Officers
5. Disclosures of Lobbying

Continued Over/:

Issued on 9 February 2011

The reports included in Part I of this agenda can be made available in **alternative formats**. For further information about this service, or to arrange for special facilities to be provided at the meeting, **please contact JANET BARNES on 01622 602242** To find out more about the work of the Committee, please visit www.maidstone.gov.uk

**Alison Broom, Chief Executive, Maidstone Borough Council,
Maidstone House, King Street, Maidstone, Kent ME15 6JQ**

6. To consider whether any items should be taken in private because of the possible disclosure of exempt information.
7. Minutes of the Meeting held on 18 November 2010 1 - 3
8. Hackney Carriage/Private Hire Issues (if any)
9. Report of the Head of Democratic Services - Street Trading Consent - Mr M Greenfield 4 - 16
10. Report of the Head of Democratic Services - Licensing Sexual Entertainment Venues and Draft Policy for Sexual Establishments 17 - 45

MAIDSTONE BOROUGH COUNCIL

LICENSING COMMITTEE

MINUTES OF THE MEETING HELD ON THURSDAY 18 NOVEMBER 2010

Present: Councillor Parvin (Chairman), and
Councillors Brindle, FitzGerald, Mrs Gibson,
Mrs Hinder, Mrs Joy, Naghi, Mrs Parvin, Warner and
B Mortimer

Also Present: Councillors Yates (observing)
Mr Denis Conyon (Hackney Carriage
Association)

36. APOLOGIES FOR ABSENCE

An apology for absence was received from Councillor Sellar.

37. NOTIFICATION OF SUBSTITUTE MEMBERS

The following substitution was noted:-

Councillor Mortimer for Councillor Sellar

38. NOTIFICATION OF VISITING MEMBERS

Councillor Yates attended the meeting as a Visiting Member to observe, but not to speak on any item.

39. DISCLOSURES BY MEMBERS AND OFFICERS

There were no disclosures by Members and Officers.

40. DISCLOSURES OF LOBBYING

There were no disclosures of lobbying.

41. EXEMPT ITEMS

RESOLVED: That the items on the Agenda be taken in public as proposed.

42. MINUTES OF THE MEETING HELD ON 26 AUGUST 2010

RESOLVED: That the Minutes of the Meeting Held on 26 August 2010 be approved as a correct record and signed.

43. MATTERS ARISING FROM THE MINUTES OF THE MEETING HELD ON 26 AUGUST 2010

Minute 31. Matters Arising – Annual Licensing Conference

The Committee were concerned at the way in which attendance at the licensing conference had been determined and expressed their frustration at the process involved. In addition the Committee felt that it was important that a presentation be given back to the committee on the licensing matters raised at the conference and that this included the views of the Members who attended so that a Member's perspective could be given.

It was agreed that the way in which the decision had been taken, on who should attend, would be reviewed by Democratic Services and the Committee were informed that the requested presentation would be organised for the next meeting.

44. HACKNEY CARRIAGE/PRIVATE HIRE ISSUES (IF ANY)

There were no hackney carriage/private hire issues in addition to those on the agenda.

45. HACKNEY CARRIAGE FARES INCREASE

The Committee considered the report of the Head of Change and Scrutiny reporting that a request for a Hackney Carriage fare increase had been received from the Maidstone Taxi Proprietors' Association. The request was for a 20p increase in the flag drop on tariff 1. The Hackney Carriage representative attended the meeting and was asked to put the reasons for the request to the Committee. It was noted that the cost of running a Hackney Carriage in Maidstone was higher than other areas due to the type of vehicle specified, the cost of diesel, of maintenance and vehicle insurance has risen and that a request had not been made in the previous year. By granting the request Hackney Carriage fares in Maidstone would remain in line with other Kent Authorities.

The Committee were concerned that the timing of the price rise was made to coincide with Christmas but were informed that fare increases could only be considered when requested by the Hackney Carriage Trade and as such the timing was as a result of that. Members indicated that the Association representative was present to note their views.

Members requested information on which publication would carry the public notice and whether there would be sufficient time to allow 14 days before the effective date. The Licensing Partnership Manager agreed to notify Members of this and put back the effective date if necessary.

RESOLVED:

1. That the table of fares as set out in Appendix C to the report of the Head of Change and Scrutiny be agreed; and
2. That the Head of Democratic Services be authorised to give public notice of the Council's intention to fix this table of fares for Hackney Carriages vehicles in accordance with Section 65(1) of the Local Government (Miscellaneous Provisions) Act 1976.

46. LICENSING SEXUAL ENTERTAINMENT VENUES AND DRAFT POLICY FOR SEX ESTABLISHMENTS

The Committee considered the report of the Head of Change and Scrutiny on the proposed adoption of powers to licence sexual entertainment venues and presenting a draft policy in respect of the Licensing of Sex Shops, Sex Cinemas and Sexual Entertainment Venues for consultation.

A number of necessary amendments were reported at the meeting and the Committee were asked if they were happy with the proposed delegation arrangements, whereby only a renewal of a licence with no objections received would be delegated to officers to grant. It was noted that the new powers would allow a wider range of conditions to be applied, and that the list provided with the report was not exhaustive so additional suggestions for conditions would be welcomed.

RESOLVED:

1. That an indication be given that the Council is minded to adopt the power to licence Sexual Entertainment Venues;
2. That the draft Policy for Sex Establishments, including Sex Shops, Sex Cinemas and Sexual Entertainment Venues be approved for consultation purposes; and
3. That the Head of Change and Scrutiny be given delegated powers to make minor amendments to the consultation documents and policy, including the changes outlined at the meeting, prior to consultation.

47. DURATION OF MEETING

6.30pm to 7.30pm.

Agenda Item 9

MAIDSTONE BOROUGH COUNCIL

LICENSING COMMITTEE

17 FEBRUARY 2011

REPORT OF THE HEAD OF DEMOCRATIC SERVICES

Report prepared by Lorraine Neale

1. STREET TRADING CONSENT – MR M GREENFIELD

1.1 Issue for Decision

- 1.1.1 To consider an application made by Mr Greenfield for consent to trade at the site of Ethos Public House Courtyard, Maidstone off King Street to sell Christmas paper from a stall.

1.2 Recommendation of the Head of Democratic Services

- 1.2.1 That Members give consideration to an application received for a street trading consent received from Mr M Greenfield.

1.3 Reasons for Recommendation

- 1.3.1 Mr Greenfield made enquiries on 26 October 2010 as to how to acquire Street Trading Consent and he also submitted a letter from Ethos offering a contract of employment to run a stall from their forecourt. (Appendix A)
- 1.3.2 On 1 November 2010 Mr M Greenfield made an application for consent to sell Christmas paper from a stall in the courtyard area of Ethos Public House, Maidstone. The days and hours of operation are Monday to Sunday from 9.00 a.m. to 6.00 p.m. (Appendix B).
- 1.3.3 In accordance with the Councils Street Trading Policy the following were consulted on Mr Greenfields application:-

Development Control Planning
Kent Highways
Property Services
Environmental Health
Kent Police

Local Ward Members

- 1.3.4 The only objection received was from Councillor Mrs Wilson and her objection is attached at (Appendix C)
- 1.3.5 On 30 November 2010, Mr Greenfield was informed that it was not possible to determine the application due to the objection received and then informed him of his right to be heard by Committee if he wished to do so in accordance with the Council’s Street Trading policy. Mr Greenfield indicated that he wished for the matter to come before the Committee.

1.4 Alternative Action and why not Recommended

- 1.4.1 The Committee needs to consider the application in accordance with our Street Trading Policy.

1.5 Impact on Corporate Objectives

- 1.5.1 There is no impact on Corporate Objectives

1.6 Risk Management

- 1.6.1 There are no Risk Management issues

1.7 Other Implications

1.7.1

1.	Financial	X
2.	Staffing	
3.	Legal	X
4.	Equality Impact Needs Assessment	
5.	Environmental/Sustainable Development	
6.	Community Safety	
7.	Human Rights Act	
8.	Procurement	
9.	Asset Management	

- 1.7.2 A refund will be required in the event of an unsuccessful application

1.7.3 The Council has an agreed Street Trading Policy which stipulates that any application receiving an objections must be referred to Committee for decision.

1.8 Relevant Documents

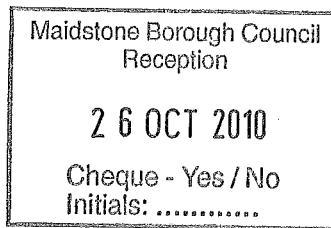
1.8.1 Appendices

- Appendix A Letter from Ethos referring to Contract
- Appendix B Application form
- Appendix C copy of Objection
- Appendix D Hearing Procedure

1.9.1 Background Documents

The application from Mr Greenfield and other correspondence held in files in the Licensing Section.

<u>IS THIS A KEY DECISION REPORT?</u>			
Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>
If yes, when did it first appear in the Forward Plan?			
This is a Key Decision because:			
.....			
Wards/Parishes affected:			
.....			



Ethos,
Gabriel's Leisure Ltd
9 Gabriel's Hill
Maidstone
Kent
ME14 6HL

Mark Greenfield
15A Higham road
Rochester
Kent
ME1 8BE

Dear Mark,

We are happy to offer you a contract of employment running our Christmas trade stall effective from 7th November 2010 until 23rd December 2010. As discussed we will pay you an hourly rate of £7 per hour and offer you a minimum of 37 hours per week.

Yours Sincerely,

Nicola Joyce

General Manager

**PROCEDURE FOR APPEAL AGAINST THE
REFUSAL OF THE HEAD OF DEMOCRATIC SERVICES OF AN
APPLICATION FOR A STREET TRADING CONSENT**

ORDER OF PROCEEDINGS

- a) **The Chairman will introduce those present at the hearing and ensure that everyone understands the procedure to be followed.**
- b) **The Head of Democratic Services will briefly describe the application and his reasons for refusal.**
- c) **The Applicant will be given an opportunity to present his/her case.**
- d) **The Objector will then be given an opportunity to state why the application should be refused.**
- e) **Members will then be given the opportunity to ask questions of the Applicant.**
- f) **Members will then ask the Objector any questions.**
- g) **The Applicant may then ask the Objector questions.**
- h) **The Objector may then ask the Applicant questions.**
- i) **Members may then ask any further questions from either party.**
- j) **Both parties will then be asked to sum up, the Objector first followed by the Applicant.**
- k) **Members will then ask the Head Democratic Services if there are any further matters to be raised before the matter is considered.**
- l) **The Committee will then decide the appeal and may ask the Applicant, Objector(s), Head of Democratic Services and any other parties to leave while they make their deliberations. If all parties are asked to leave, the Committee Clerk will be the only person apart from Members to be allowed to remain. Any representative of the Legal Services Manager (if present) may be requested to remain by the Chairman.**
- m) **After consideration all parties will be invited to return and the Chairman will announce the decision.**

From: Fran Wilson (Cllr)
Sent: 03 November 2010 13:29
To: Louise Davis
Subject: RE: Scanned copy of New Street Trading Applicatin- Mr Mark Greenfield to trade from the Courtyard Area of Ethos PH, King Street, Maidstone

Louise, thank you for such a comprehensive reply. Having considered the application with your comments I feel that I cannot support this licence application. There are several shops in the near vicinity selling wrapping paper and also the stall in Earl Street. I do not think therefore that there is a need for this additional stall and believe we should do all we can at the present time to support existing traders particularly those with premises overheads.

Regards
Fran

-----Original Message-----

From: Louise Davis
Sent: 03 November 2010 09:50
To: Fran Wilson (Cllr)
Subject: RE: Scanned copy of New Street Trading Applicatin- Mr Mark Greenfield to trade from the Courtyard Area of Ethos PH, King Street, Maidstone

Good morning Cllr Wilson

Mr Greenfield did originally complete his application form to trade from Monday to Saturday then decided to change it to include Sunday as he only planned on trading up until Christmas. The 9/6 refers to the hours he would like to trade, 9am until 6pm.

We only grant consent for the period of 1 year and I did ask Mr Greenfield if he intends to sell normal wrapping paper for the rest of the Consent period but he didn't seem to think so. That may change if his application is successful and Mr Greenfield would be made aware that his Consent would only cover him to sell wrapping paper.

I hope this answers the questions you have raised but please do not hesitate to contact me should you require any further clarification.

Kind Regards

Louise Davis
Licensing Section
Maidstone Borough Council, Maidstone House, King Street, Maidstone, Kent ME15 6JQ Direct Line 01622 602727

-----Original Message-----

From: Fran Wilson (Cllr)
Sent: 02 November 2010 14:18
To: Louise Davis
Subject: RE: Scanned copy of New Street Trading Applicatin- Mr Mark Greenfield to trade from the Courtyard Area of Ethos PH, King Street, Maidstone

Louise, before replying properly to this I would, if I may, like to ask some questions arising from the application. In the application he writes trading consent requested Monday to Sunday but then writes 9/6 which I presume to mean 9 hours a day for 6 days so which please is correct?

The application is also for Christmas paper but I cannot see anywhere where the application would be granted for the Christmas period only - is it the case that this would be so or would we be giving indefinite or permanent consent, in which case what does he propose selling instead of Christmas paper when the season has passed?

Thank you
Fran

-----Original Message-----

From: Louise Davis
Sent: 02 November 2010 09:48
To: 'neil.barnes@kent.pnn.police.uk'; Caroline Smith; Alan Howell;
'chris.seare@kent.gov.uk'; 'Martin.Burke@kent.gov.uk'; Lucy Stroud; Clive English (Cllr);
Denise Joy (Cllr); Fran Wilson (Cllr); Christopher Garland (Cllr)
Subject: Scanned copy of New Street Trading Applicatin- Mr Mark Greenfield to trade from
the Courtyard Area of Ethos PH, King Street, Maidstone

Good morning all

LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982 APPLICATION FOR NEW STREET TRADING
CONSENT PROPOSED SITE: ETHOS PUBLIC HOUSE (COURTYARD), 9 GABRIELS HILL, MAIDSTONE, KENT

An application for Street Trading Consent under the above Act has been received from Mr
Mark Greenfield of 15a Higham Road, Wainscott, Strood, Kent.

A copy of the application is attached to this email, and:-

Neil (Maidstone Police) - I shall be grateful if you will let me have any observations on
the following:-

- 1) the applicant
- 2) traffic movements
- 3) safety at the site

Alan - I shall be grateful if you will let me have any observations, relating to planning
matters, which you may wish to make,

Caroline - (this is not a food trader) I shall be grateful if you will let me have any
observations which you may wish to make,

Lucy - I shall be grateful if you will let me have any observations which you may wish to
make on behalf of Property Services and,

Chris/Martin (KCC Highways) - I shall be grateful if you will let me have any
observations, that regard highway matters, which you may wish to make.

In making your observations I would be grateful if you will inform me if there are any
Traffic Orders that may affect this site.

Councillors - I shall be grateful if you will let me have any observations that you may
wish to make regarding this application.

However, if you do not have any observations regarding this application would you please
confirm the fact in writing by 15 November 2010 at the latest.

Kind Regards

Louise Davis
Licensing Administrator
Licensing Services
T: 01622 602727 F:01622 602977
E: louisedavis@maidstone.gov.uk



**LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982
APPLICATION FOR A STREET TRADING CONSENT**

- 1. NAME OF APPLICANT a) SURNAME MR/MRS/MISS GREENFIELD
(BLOCK CAPITALS) b) FORENAME(S) MARK ANTHONY
- 2. ADDRESS OF APPLICANT
(BLOCK CAPITALS) ISA Higham Rd
Wain Scott Strood
KENT
- 3. TELEPHONE NUMBER (incl. mobile) 01634 296622 / 07811022987
- 4. DATE OF BIRTH 5/7/62
- 5. DETAILS OF THE ARTICLES/FOOD THAT YOU PROPOSE TO SELL CHRISTMAS paper
- 6. GIVE DETAILS OF THE EXACT SITE FROM WHICH YOU INTEND TO TRADE (ENCLOSE PLAN WITH SITE DETAILED) ETHOS pt 9 Gabriels Hill
- 7. STATE PRECISELY THE DAYS OF THE WEEK AND HOURS THAT YOU INTEND TO TRADE. Monday to ~~Saturday~~ SUNDAY
9/6
- 8. GIVE DETAILS:
 - a) IF A STALL/STRUCTURE/VEHICLE STALL
 - b) OF THE APPROXIMATE DIMENSIONS OF THE STALL/STRUCTURE/VEHICLE 2 FT wide 6 FT Long
 - c) THE VEHICLE REGISTRATION NUMBER(S) NA
 - d) COLOUR OF VEHICLE N/A
 - e) THE TRADING NAME YOU USE N/A
 - f) DO YOU INTEND TO USE CHIMES OR A LOUDSPEAKER NO

9. IF SELLING FOOD OR DRINKS:
 a) YOU NEED TO BE REGISTERED WITH THE ENVIRONMENTAL HEALTH DEPARTMENT IN RESPECT OF FOOD HYGIENE, ARE YOU SO REGISTERED? YES/NO *N/A*
 (IF REGISTERED ELSEWHERE, PLEASE STATE WITH WHICH LOCAL AUTHORITY)
- b) STATE WHERE YOUR GOODS WILL BE STORED *ETHOS PH* WHEN NOT BEING OFFERED FOR SALE
10. STATE WHERE TRADE REFUSE WILL BE DEPOSITED
 NOTE: UNDER THE 1990 ENVIRONMENTAL PROTECTION ACT YOU ARE UNDER A DUTY OF CARE TO DISPOSE OF ANY REFUSE IN A CORRECT MANNER, FOR WHICH A CHARGE CAN BE LEVIED. *N/A*
11. IF NOT TRADING ON THE HIGHWAY, STATE WHETHER CONSENT HAS BEEN GRANTED FOR USE OF LAND AND PROVIDE PROOF OF CONSENT *yes*
12. a) STATE WHETHER AN APPLICATION FOR A STREET TRADING LICENCE OR CONSENT HAS PREVIOUSLY BEEN MADE BY YOU (OR YOUR ASSISTANT(S) IF ANY) TO ANY OTHER LOCAL AUTHORITY. ~~YES/NO~~
- b) IF YES, STATE WHETHER SUCH LICENCE OR CONSENT HAS BEEN: (i) GRANTED (ii) REFUSED (iii) REVOKED
- c) IF ANY LICENCE OR CONSENT HAS BEEN REFUSED OR REVOKED GIVE DETAILS OF THE LOCAL AUTHORITY AND A BRIEF OUTLINE OF THE CIRCUMSTANCES *N/A*
13. HAVE YOU BEEN CONVICTED OF ANY OF THE FOLLOWING OFFENCES INVOLVING: VIOLENCE ~~YES/NO~~
 DISHONESTY/THEFT/HANDLING/BURGLARY ~~YES/NO~~
 CONSUMER PROTECTION OR FAIR TRADING ~~YES/NO~~
 PUBLIC HEALTH OR FOOD HYGIENE ~~YES/NO~~
 CONTRAVENTIONS ~~YES/NO~~
 PROHIBITED FROM RUNNING A FOOD BUSINESS ~~YES/NO~~
- IF YES, PLEASE SPECIFY DETAILS GIVING DATE AND PLACE OF CONVICTION AND SENTENCE IMPOSED. *N/A*
14. STATE THE NUMBER OF ASSISTANTS THAT WILL BE USED INCLUDING THEIR NAMES AND ADDRESSES AND DATES OF BIRTH. *NONE*
 IF NONE, PLEASE WRITE "NONE".
 ***(SEE NOTE (a) BELOW)
(Assistants must be accompanied and supervised by the Consent holder at all times)

15. ANY OTHER INFORMATION THAT YOU THINK IS RELEVANT TO THIS APPLICATION. NO

.....

.....

16. IF A CONSENT IS GRANTED AND YOU HAVE A MOBILE VEHICLE (NOT A TRAILER), DO YOU WISH TO BE INCLUDED ON THE KENT COUNTY COUNCIL'S EMERGENCY PLAN LIST?

~~YES~~/NO

(IN THE EVENT OF AN EMERGENCY YOU MAY BE CONTACTED AT SHORT NOTICE TO PROVIDE FOOD AND DRINK TO STRANDED LORRY DRIVERS PARKED ON THE M20 MOTORWAY IN MAIDSTONE. THIS WOULD BE SUPERVISED BY THE POLICE)

We are asking you to complete this section as part of our equal opportunities monitoring. We wish to ensure we are treating all sections of the population equally.

White	British	<input checked="" type="checkbox"/>	<i>✓ Please tick box</i>
	Irish	<input type="checkbox"/>	
	Any other white background including mixed white – Please state.....	<input type="checkbox"/>	
Mixed White	White & Black Caribbean	<input type="checkbox"/>	
	White & Black African	<input type="checkbox"/>	
	White & Asian	<input type="checkbox"/>	
	Any other mixed white background Please state.....	<input type="checkbox"/>	
Asian or Asian British	Indian	<input type="checkbox"/>	
	Pakistani	<input type="checkbox"/>	
	Bangladeshi	<input type="checkbox"/>	
	Any other Asian background Please state.....	<input type="checkbox"/>	
British African	Black or White African	<input type="checkbox"/>	
	Any other African background Please state.....	<input type="checkbox"/>	
Caribbean or Caribbean British	Black or White Caribbean	<input type="checkbox"/>	
Chinese or Other Ethnic Group	Chinese	<input type="checkbox"/>	
	Any other Ethnic Group Please state.....	<input type="checkbox"/>	

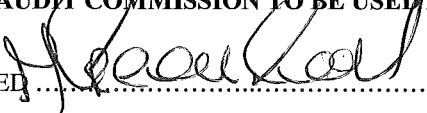
I, MARK GREENFIELD, HEREBY APPLY FOR THE GRANT OF A STREET TRADING CONSENT UNDER SCHEDULE 4 OF THE LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982 AND MAKE THE FOLLOWING DECLARATION:-

DECLARATION

- a) THAT IF A CONSENT IS GRANTED I UNDERTAKE TO COMPLY WITH THE TERMS AND CONDITIONS RELATING TO THE CONSENT. I UNDERSTAND THAT FAILURE BY ME OR ANY OF MY ASSISTANTS EMPLOYED BY ME, WITH OR WITHOUT PAYMENT, WILL RENDER BOTH ME AND MY ASSISTANTS LIABLE TO PROSECUTION AND MAY ALSO RESULT IN THE REVOCATION OF MY CONSENT
- b) THAT I AM OVER 17 YEARS OF AGE
- c) THAT THE ANSWERS TO THE QUESTIONS ARE TRUE AND COMPLETE IN EVERY WAY
- d) THAT THE POLICE MAY MAKE ENQUIRIES INTO THIS APPLICATION AND MAY DIVULGE THE RESULTS TO THE MAIDSTONE BOROUGH COUNCIL

- e) THAT I HAVE READ AND UNDERSTOOD THE NOTES ATTACHED TO THIS APPLICATION FORM.

I HEREBY GIVE PERMISSION FOR DETAILS OF THIS APPLICATION TO BE PASSED TO THE AUDIT COMMISSION TO BE USED AS PART OF THE NATIONAL FRAUD INITIATIVE

SIGNED  DATED 1/11/10

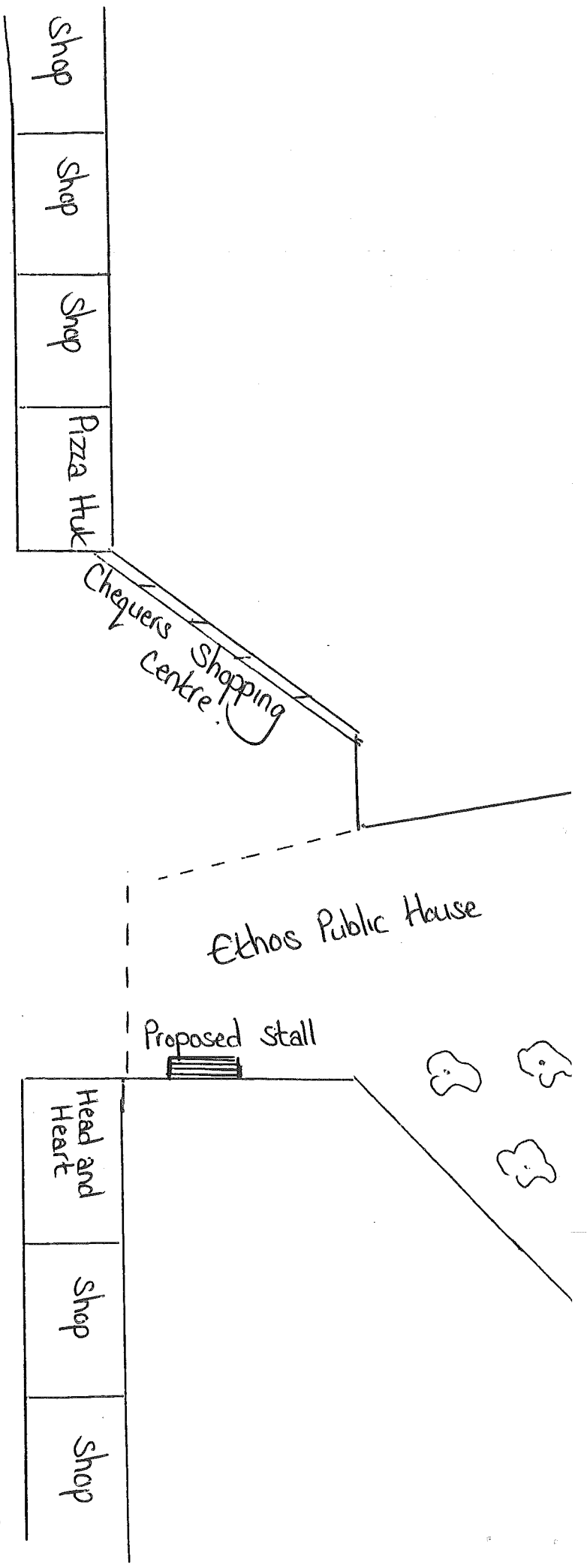
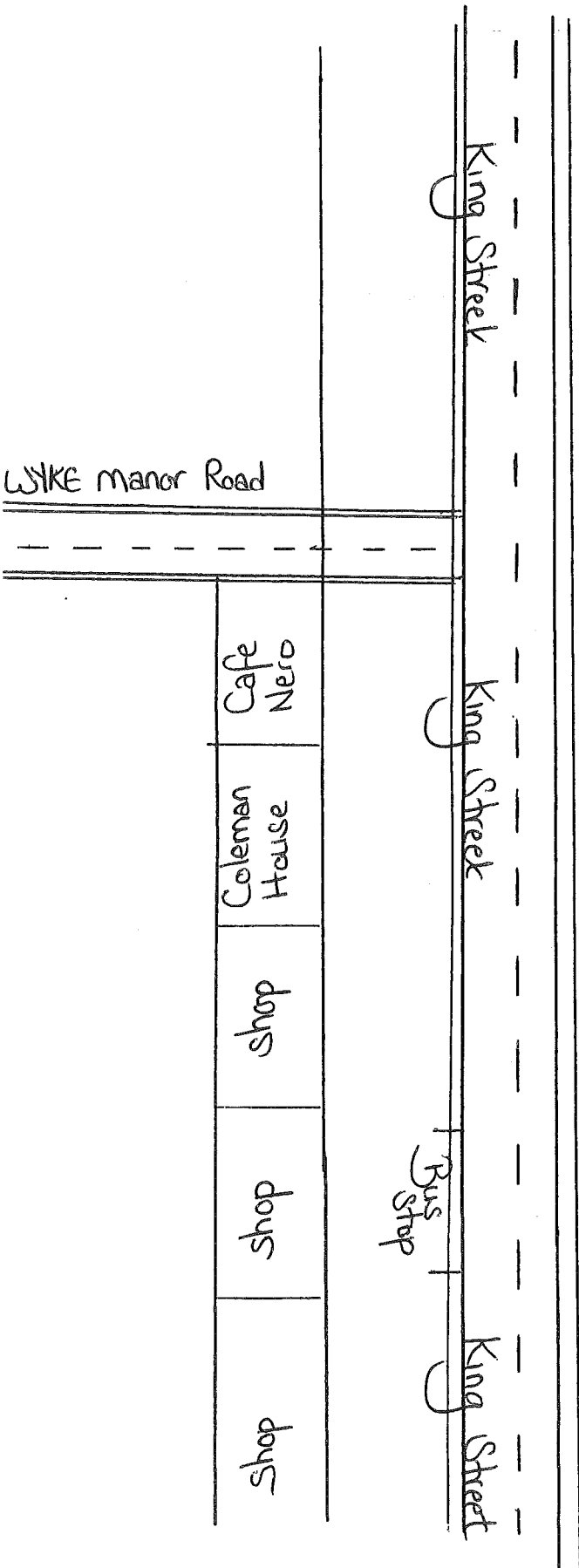
PLEASE CHECK THAT YOU HAVE PROVIDED THE FOLLOWING:-

- i) **A DETAILED PLAN SHOWING THE EXACT LOCATION ON THE HIGHWAY/ROAD WHERE YOU INTEND TO TRADE, ONE FOR EACH LOCATION**
- ii) **THE CORRECT FEE £351.00** Cheques should be made payable to Maidstone Borough Council

PLEASE BRING THE COMPLETED AND FEE TO: THE LICENSING SECTION, MAIDSTONE BOROUGH COUNCIL, MAIDSTONE HOUSE, KING STREET, MAIDSTONE, KENT ME15 6JQ.

ANY ASSISTANTS YOU PROPOSE TO EMPLOY SHOULD ACCOMPANY YOU.

WYKE Manor Road



MR GREENFIELD

Maidstone Borough Council
The Gateway
King Street
Maidstone
Kent
ME15 6JQ
Tel: (01622) 602888

Date: 01/11/2010 Time: 10:27

Account Reference : 961 C62 C207-NEW ST
MR

: NEW ST MR
Transaction Ref. : 01M/00028099
Fund (Description): 01(Miscellaneous)01
Payment Method : CASH

Amount Tendered : £351.00
Amount Paid : £351.00
VAT @ 0.0% : £0.00
Total Paid : £351.00
Change Given : £0.00

THANK YOU
FOR YOUR PAYMENT
VAT Registration No. 204268978

MAIDSTONE BOROUGH COUNCIL

LICENSING COMMITTEE

17 FEBRUARY 2011

REPORT OF HEAD OF DEMOCRATIC SERVICES

Report prepared by Neil Harris

- 1. LICENSING SEXUAL ENTERTAINMENT VENUES AND DRAFT POLICY FOR SEX ESTABLISHMENTS**
 - 1.1 Issue for Decision
 - 1.1.1 To consider the result of the consultation on the draft policy for sex establishments and the adoption of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended.
 - 1.2 Recommendation of Head of Democratic Services
 - 1.2.1 That Council be recommended to adopt Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended by section 27 of the Policing and Crime Act 2009 relating to sex establishments to take effect from 1 May 2011 which will be the first appointed day as set out in the legislation.
 - 1.2.2 That the Policy for Sex Establishments, including Sex Shops, Sex Cinemas and Sexual Entertainment Venues attached at Appendix A be adopted with effect from 1 May 2011.
 - 1.2.3 That the fee for an application for the grant, renewal variation or transfer of a sex establishment licence be set at £4000.
 - 1.3 Reasons for Recommendation
 - 1.3.1 At your last meeting the committee received and considered a detailed report on the changes to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 made by section 27 of the Policing and Crime Act 2009 which extended the provisions of that schedule to cover sexual entertainment venues as well as sex shops and other adult entertainment. The committee agreed that it was minded to adopt the amended schedule and also agreed to adopt for consultation purposes a policy which incorporated the extension to cover sexual entertainment venues.

- 1.3.2 In accordance with the wishes of the committee the consultation was undertaken for 8 weeks ending on 26 January and done as widely as possible by using the consultees on the Statement of Licensing Policy which includes licensing act licensees, all licensing act sexual entertainment venues, additional solicitors etc and to whom were added a number of local churches. The consultation document is set out at Appendix B and the results of the consultation together with officer comments at Appendix C.
- 1.3.3 In accordance with your decision the consultees were the same as with the Statement of Licensing Policy (over 460) and there were 9 responses received of which 3 made no comments, 5 agreed with the adoption of these provisions and 4 agreed with the approach of no numbers being set at this stage.
- 1.3.4 There are various comments on disabled issues which cover access and distance condition effect on visual impairment. Currently building control and equalities legislation is in place. Additionally members will have to consider layout, character and condition of the premises as part of their decision on individual applications. In respect of the distance condition consideration also has to be given to the conditions for performers and safety in the premises and a balance reached. This condition is currently used in such premises.
- 1.3.5 In respect of the comment on policing these premises have not been an issue in Maidstone and no comments on the consultation have been raised by the police. The police will also be consulted on all applications.
- 1.3.6 Mr Thomas, representing an existing operator, has raised a number of issues regarding the automatic granting of licenses to existing premises and that no new licenses for Sexual Entertainment Venues should be granted. The government considered whether there should be rights for existing premises and made provision that those licences will continue until at least 12 months after the effective date of adoption of the new legislation. Each application will be considered on its merits and previous history of the licensee and the premises will obviously form part of the overall decision. Each application being considered on its merits also means that applications for new premises will be considered in relation to the circumstances at the time of the decision and having regard to the adopted policy. It is not recommended that presumptions are made a part of policy as they could not bind a future committee in any event.
- 1.3.7 Two separate comments have raised the issues of locating in rural areas and in main streets. I would suggest that this view detracts from the policy and the need for transparency on how decision is made

rather than setting criteria before an application is received. Each application will be considered on its merits at the time of the decision.

1.3.8 In the light of these comments received to the consultation no amendments have been made to the policy agreed by the committee.

1.4 Alternative Action and why not Recommended

1.4.1 The Council does not need to adopt a policy but with the response from the consultees being supportive and it being best practice to adopt such a policy it would seem inappropriate not to do so.

1.5 Impact on Corporate Objectives

1.5.1 The decision will have an impact on the Council's priorities for Maidstone to be:

A place that has strong, healthy and safe communities – (see community safety implications (1.10.4) and carrying out a consultation involves the community in the policy making process;

A place to live and enjoy – this is a licensing objective for all licensing policies.

1.6 Risk Management

1.6.1 Whilst each individual application will be judged on its own merits a policy would ensure a transparent and consistent approach to licensing that would reduce the opportunity for challenge through the courts. Challenges to a particular decision are more likely to fail if we can demonstrate that we have adhered to our published policy and there is no justifiable reason to depart from it. Any departure from the policy will be based on material evidence and documented giving clear and compelling reasons for doing so.

1.6.2 The legislation may create the impression there are issues regarding this part of licensing in all areas. This is not the case in Maidstone where there has been no history of complaint or enforcement. It is not anticipated that adopting the legislation will lead to a rise in applications. However, this report sets out the reasons for adopting this more comprehensive regime.

1.7 Other Implications

1.7.1

1. Financial
2. Staffing

x

3.	Legal	
4.	Equality Impact Needs Assessment	X
5.	Environmental/Sustainable Development	X
6.	Community Safety	
7.	Human Rights Act	X
8.	Procurement	
9.	Asset Management	

1.7.2 Finance – The council will need to set fees for applications for licences and in determining a fee the council should follow the Home Office Guidance. The Guidance states that any fee set should be reasonable and advises that you follow the LACOR’s model. In addition the Council in setting any fee has to take into account the EU Services Directive and the guidance given by the Department for Business, Innovation and Skills which indicates that fees need to proportionate to the effective cost of the procedure. It is proposed that having used the LACOR’s model that the fee level for a new application should be £4000 and for a renewal application £2000 replacing the current fee structure of £4265 for a new application and £1602 for renewals and transfers. All first applications under this legislation will be treated as new applications.

1.7.3 Legal – the legal implications are dealt within the body of the report.

1.7.4 Equality Impact Needs Assessment – An equality impact needs assessment has been undertaken and has highlighted no negative impact arising from the introduction of this policy.

1.7.5 Community Safety – The introduction of a new licensing regime under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 gives the Council new powers to tackle any issues of concern to communities around sex establishments.

1.7.6 Human Rights – The committee in taking a decision needs to take account of the rights in Article 10 and Article 1 of the First Protocol when making a decision. However the human rights considerations do not prevent a decision being made in the wider public interest because a) a government minister has made the appropriate statement in accordance with the human rights legislation, b) weight accorded to

these rights is low level as supported by judicial comment, c) as long as any decision proportionately takes into account human rights of individuals and the public interest.

1.8 Relevant Documents

1.8.1 Appendices

1.8.2 Appendix A – Draft Maidstone policy and conditions
Appendix B – Consultation Document
Appendix C – Summary of Responses received

1.8.3 Background Documents

1.8.4 Home Office Guidance on Sexual Entertainment Venues

Draft



**Policy
in respect
of the
Licensing
Of
Sex Shops,
Sex Cinemas
and
Sexual Entertainment Venues**

1. Overview

- 1.1 The Local Government (Miscellaneous Provisions) Act 1982 (as amended by Section 27, Policing and Crime Act 2009) provides that a local authority may, by resolution, adopt schedule 3 to that Act.
- 1.2 The Maidstone Borough Council adopted Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 and the amendment under Section 27 of the Policing and Crime Act 2009.
- 1.3 The adoption of schedule 3 as amended will enable the licensing authority, within its area, to discharge its function in relation to the following:
 - sexual entertainment venues (providing relevant entertainment)
 - sex shops
 - sex cinemas
- 1.4 Schedule 7 to the Policing and Crime Act 2009 amends the Licensing Act 2003 to ensure that premises for which a sexual entertainment venue licence is required or held (or for which the requirement has been waived under paragraph 7 of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982) do not also require a premises licence, club premises certificate or temporary event notice in order to provide relevant entertainment. This is because such entertainment is expressly excluded from the definition of regulated entertainment found in the Licensing Act 2003. However, if the premises also carries on other licensable activities (e.g. the sale of alcohol or the provision of regulated entertainment) then this is not a provision of relevant entertainment and they will nevertheless continue to require a premises licence, club premises certificate or temporary events notice under the Licensing Act 2003 for those other activities, subject to any exceptions contained in that Act.
- 1.5 In practice this will mean that the vast majority of lap dancing clubs and similar venues will require both a sexual entertainment venue licence for the provision of relevant entertainment and a premises licence or club premises certificate for the sale of alcohol or provision of other types of regulated entertainment not covered by the definition of relevant entertainment.
- 1.6 Live music or the playing of recorded music which is integral to the provision of relevant entertainment, such as lap dancing, for which a sexual entertainment licence is required, is specifically excluded from the definition of regulated entertainment in the Licensing Act 2003. Therefore, a sexual entertainment venue will not require a premises licence or club premises certificate just because it plays recorded music for a performer to dance nor will providing entertainment facilities for the purposes of the provisions of relevant entertainment be regulated entertainment under the Licensing Act 2003.
- 1.7 If a local authority has not made a resolution to adopt the provisions introduced by section 27, Policing and Crime Act 2009 within one year of the Act coming into force it must, as soon as is reasonably practicable, consult local people about whether they should make such a resolution. The purpose of this duty is to ensure that local authorities consider the views of local people whether, for whatever reason, they have not adopted the provisions. This duty should be seen to be an extension to existing general duties on local authorities to consult and involve local people when exercising their functions.

- 1.8 The Licensing Authority have also taken into consideration the provisions of Section 17 Crime and Disorder Act 1998 that requires responsible authorities to consider crime and disorder (including antisocial behaviour and other behaviour adversely affecting the local environment) and the misuse of drugs, alcohol and other substances in the exercise of all their duties, activities and decision-making. This means that in all policies, strategies and service delivery there is a need to consider the likely impact on crime and disorder.
- 1.9 The Licensing Authority is also aware that, at the time of formulating this policy, there is no evidence of any crime or disorder directly attributable to the operation of such establishments in the Maidstone area.
- 1.10 This policy helps to promote efficient and effective approaches to regulatory inspection and enforcement which is in compliance with:
- a) The Regulator's Compliance Code (set out under the Legislative and Regulatory Reform Act 2006) not to impede progress by the regulations we set out and, particularly, to consider the impact of regulations on small businesses; and
 - b) The Provisions of Services Regulations 2009 to ensure requirements are:
 - i) Non-discriminatory
 - ii) justified by an overriding reason relating to the public interest
 - iii) proportionate to that public interest objective
 - iv) clear and unambiguous
 - v) objective
 - vi) made public in advance
 - vii) transparent and accessible
- 1.11 In certain instances we may conclude that a provision in the policy is either not relevant or is outweighed by other provisions. We will ensure that any decision to depart from the policy will be properly reasoned, based on material evidence and documented; giving clear and compelling reasons for doing so.
- 1.12 The Council sees the licensing process as an integral part of its approach to achieving its strategic and corporate objectives which encompasses the visionary goals of:
1. A place to achieve, prosper and thrive
 2. A place that is clean and green
 3. A place that has strong healthy and safe communities
 4. A place to live and enjoy
 5. A place with efficient and effective public services

2. Policy

2.1 The purpose of this policy is to:

- Set out the expectations of the local authority in meeting the requirements of the legislation
- Provide guidance on the process for making an application and the process the Council will follow in considering and determining an application.
- Assist any persons making representations in respect of an application to make properly directed and evidenced representations.

2.2 Notwithstanding this policy, each application will be assessed on its individual merit and granted or refused purely on that merit. Whilst this policy will set out the broad scope of

expectations, it should not be seen as restricting or predetermining the outcome of any application or representation in respect of the licensing of any premises.

3. Functions

- 3.1 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.
- 3.2 This authority delegates its functions to those who sit on its Licensing Committee, or a sub-committee appointed for the purpose, with the exception of a renewal of a licence to which no objections are received, which will be delegated to officers as set out in the Council's constitution.

4. Consultations

- 4.1 The Policing and Crime Act 2009 is not prescriptive about how local authorities should consult with local people in order to comply with this duty. The Council has extensive experience of engaging with local people and will utilise that knowledge to ensure that any consultation exercise carried out under this duty will be fair and meaningful. The Council will seek to make any relevant information available to local people in order to inform them of the legislation, criteria and outcomes of the consultation.
- 4.2 For the purpose of this duty 'local people' are defined as anyone who lives or works in the local authority area.
- 4.3 The council will seek to consult with all those consulted on the Licensing Act 2003 and current sex establishment licence holders. A full list of those consulted is attached at Appendix C.

5. Definitions

- 5.1 For the purposes of this policy the following definitions will apply:

5.2 Sex Shop

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.

No premises shall be treated as a sex shop by reason only of their use for the exhibition of moving pictures by whatever means produced

5.3 Sex Article

Anything made for use in connection with, or for the purpose of stimulating or encouraging—

- a) sexual activity; or

- b) acts of force or restraint which are associated with sexual activity; and anything to which sub-paragraph below applies.

This sub-paragraph applies

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

5.4. Sex Cinema

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.

No premises shall be treated as a sex cinema by reason only

- a) if they may be used for an exhibition of film (within the meaning of paragraph 15 of Schedule 1 to the Licensing Act 2003) by virtue of an authorisation (within the meaning of Section 136 of that Act), of their use in accordance with that authorisation.
- b) of their use for an exhibition to which section 6 of that Act (certain noncommercial exhibitions) applies given by an exempted organisation within the meaning of section 6(6) of the Cinemas Act 1985.

5.5. **Sexual Entertainment Venue:**

Any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer.

Exemptions from being a Sexual Entertainment Venue

The following are not sexual entertainment venues for the purposes of this policy:

- a) sex cinemas and sex shops;
- b) premises at which the provision of relevant entertainment is such that, at the time in question and including any relevant entertainment which is being so provided at that time
 - i) there have not been more than eleven occasions on which relevant entertainment has been so provided which fall (wholly or partly) within the period of 12 months ending with that time;
 - ii) no such occasion has lasted for more than 24 hours; and
 - iii) no such occasion has begun within the period of one month beginning with the end of any previous occasion on which relevant entertainment has been so provided (whether or not that previous occasion falls within the 12 month period mentioned in subparagraph (i));
- c) premises specified or described in an order made by the relevant national authority.

5.6. **Relevant entertainment:**

Any live performance or 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).

Home Office Guidance states relevant entertainment would therefore apply to the following forms of entertainment, as they are commonly understood:

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

However this list is not exhaustive and local authorities will judge each case on its merits. Decisions will be based on the content of the entertainment provided and not the name given to it.

5.7 **Nudity**

Schedule 3 sets out the definition of a 'display of nudity'. In the case of a woman, it means exposure of her nipples, pubic area, genitals or anus and, in the case of a man; it means

exposure of his pubic area, genitals or anus.

5.8 Spontaneous Entertainment

Where activities that would otherwise be considered to involve the provision of relevant entertainment take place, but are not provided for the financial gain of the organiser or entertainer, such as a spontaneous display of nudity or a lap dance by a customer or guest, the premises will not be considered a sexual entertainment venue by virtue of those circumstances alone. This is because the relevant entertainment must be provided for the financial gain of the organiser or entertainer. However, it should be noted that an organiser might be considered to have provided the entertainment where he has permitted the activity to take place, whether expressly or impliedly.

5.9 The 'Organiser'

Any person who is responsible for the organisation or management of the relevant entertainment or the premises at which the relevant entertainment is provided. In most circumstances, this will refer to the manager of the premises, but could also refer to someone who is responsible for organising the relevant entertainment on behalf of the persons responsible for the management of the premises.

The 'organiser' must be someone who is in a position of responsibility over the provision of the relevant entertainment and should not be interpreted to mean a member of staff who is merely employed to work during the provision of relevant entertainment. It is only necessary for one person to hold a sexual entertainment venue licence for premises, even if there is more than one person who is responsible for the organisation or management of the relevant entertainment or the premises.

6. Planning

6.1 The Licensing Authority will not normally undertake action where another, more appropriate, regime exists to resolve matters. Failure to obtain planning permission is not a ground for refusal of the grant of an application under the Local Government (Miscellaneous Provisions) Act 1982 and such a failure to obtain planning permission will normally be dealt with as part of the normal planning process.

6.2 Operators and persons making representations should be aware that in many cases there would be a need to obtain planning permission before a premise may be used for the purposes relevant to this policy. The Licensing Authority will not normally consider planning matters such as 'need' in determining a licence application as this is more appropriately dealt with by Planning legislation.

6.3 Applicants are advised to seek independent advice in relation to both planning and licensing prior to making any application under Schedule 3 Local Government (Miscellaneous Provisions) Act 1982

7 European Convention on Human Rights

7.1 The Local Authority fully supports the European Convention on Human Rights. When determining applications for licences under this policy the Licensing Authority will give consideration to any rights an existing operator may have under Article 1, Protocol 1 of the European Convention on Human Rights (ECHR) which entitles every person to the peaceful enjoyment of their possessions and Article 10 (freedom of expression).

- 7.2 The Secretary of State has certified that the Policing and Crime Act 2009 is covered by Section 19, Human Rights Act 1998 as being in compliance with the ECHR.
- 7.3 Whilst the rights under Article 1 and 10 may be activated the weight to be accorded to these rights in this context is low level. The right of freedom of expression to participate in the activities of sex shops, sex cinemas and sexual entertainment venues is not prohibited but may be controlled by licensing. Similarly the right to possession of an existing licence is proportionally protected subject to a fair balance of the rights of the holder and the public interest.

8. The Application Process

- 8.1 Applications for licences for sex shops, sex cinemas and sex entertainment venues must be made on the prescribed form and accompanied by the requisite fee.
- 8.2 A site plan of radius of $\frac{1}{4}$ of a mile (scale 1:500) clearly outlining the locality in which the proposed sexual entertainment venue will be situated. The plan should clearly identify the proposed sexual entertainment venue marking the site/premises boundary with a red line and define other types of businesses and residential properties around the site as listed at 12.11.
- 8.3 A plan of the premises (scale 1:100) showing the part(s) of the premises that it is proposed to licence as a sexual entertainment venue. All areas requiring to be licensed should be outlined in red on the plan. If a part of the premises is within a licensed premises under the Licensing Act 2003 which will have a dual purpose then the plan should show the site where facilities for the public are shared such as toilets and bar.
- 8.4 The plan of the premises must show the position of all CCTV cameras and shall be with the approval of Kent Police and in accordance with the CCTV code of practice.
- 8.5 Plans may be considered in other scales with prior agreement with the licensing authority.
- 8.6 The council will not usually determine an application for the grant of a licence, unless, the applicant allows an authorised officer a reasonable opportunity to enter the proposed sex establishment to make such examination and enquiries as may be necessary to determine the suitability of the premises.

9. Notices

- 9.1 Applicants for a sexual 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 seven days after the date the application is made.
- 9.2 Where the application relates to premises, a notice should 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 days beginning with the date the application was made.
- 9.3 All notices should be in the form prescribed by the appropriate authority as detailed in Appendix B 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.
- 9.4 The applicant is required to submit a copy of any application to the Chief Officer of Police for the area within seven days of submitting the original application to the local authority.

The requirement does not apply in the case of electronic applications as it is the duty of the local authority to send a copy to the police.

10. **Objections**

- 10.1 Any person can object to an application but the objection should be relevant to the grounds set out in paragraph 12, of Schedule 3, Local Government (Miscellaneous Provisions) Act 1982 for refusing a licence. Objections should not be based on moral grounds/values and local authorities cannot 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.
- 10.2 When considering an application for the grant, renewal or transfer of a licence the Licensing Authority will have regard to any observations submitted to it by the Chief Officer of Police and any objections that they have received from anyone else, (including statutory agencies such as Kent Fire and Rescue Service, UK Border Agency, The Local Safeguarding Childrens Board) within 28 days of the application.
- 10.3 Where the Licensing Authority receives notice of any objection the authority will, before considering the application, give notice in writing of the general terms of the objection to the applicant. However, the appropriate authority will 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, renewal or application to transfer a licence all applicants will be given the opportunity to appear before and be heard by the Licensing Committee or Sub-Committee that is responsible for determining the application.
- 11.2 Whilst Schedule 3 does not make explicit provision for objectors to be heard, this Council believes it right to offer an oral hearing to objectors. This does however remain within their discretionary powers. Although a local authority 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.
- 11.3 Persons making written objections will also be informed of the date and time of the licensing sub-committee hearing where they will be invited to address the committee and ask questions relating to the application.
- 11.4 All objectors and applicants are reminded that they can if they wish be legally represented at their own expense at the hearing. Alternatively they may if they wish ask a Councillor to represent them.
- 11.5 In determining an application the Licensing Committee (or Sub-Committee) will consider the applicant's presentation, the Council's authorised officer report, police observations and objections.
- 11.6 All parties may use witnesses and supporting documentation however, copies of documents and details of witnesses must be submitted to the Licensing Committee (or Sub-Committee) for consideration prior to the hearing and in special circumstances with approval of all parties at the hearing.

- 11.7 The Licensing Committee (or Sub-Committee) will consider all the evidence presented to it during the hearing and members may ask questions of officers, applicant and objectors. After the evidence has been presented all parties will be asked to leave to allow for Licensing Committee (or Sub-Committee) to come to a decision on the application.
- 11.8 When a decision is reached the Licensing Committee (or Sub-Committee) will inform the applicant and relevant parties of their decision and the reasons for coming to that particular decision.
- 11.9 The decision of the Licensing Committee (or Sub-Committee) will be confirmed, in writing, to the applicant within seven working days of the meeting at which the application was considered giving reasons for the decision.

12. **Refusal of a Licence**

- 12.1 Paragraph 12 of Schedule 3 sets out the grounds for refusing an application for the grant, 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 European Economic Area (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.
- 12.2 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.

12.3 A decision to refuse a licence must be relevant to one or more of the above grounds.

12.4 In making any determination to refuse an application, renewal or transfer the local authority will give consideration to:

a. Suitability of the applicant

In determining the suitability or otherwise of an applicant the local authority will consider any previous convictions and in particular those that have been imposed in respect of offences involving violence, dishonesty, drugs, offences of a sexual nature or a breach of the requirements of the legislation covering the type of establishment in respect of which the application is made.

Any other reasonable cause, arising from:

- previous knowledge and experience of the applicant
- any evidence of the operation of any existing/previous licence held by the applicant, including any licence held in any other local authority area
- any report about the applicant and management of the premises received from objectors

b. Business carried out on behalf of a person who would be refused

The local authority takes a serious view of any application that seeks to subvert the underlying principles of the Act. Where it is considered that the applicant is effectively operating the business on behalf of a person who would, for whatever reason, be refused or disqualified from the grant of a licence due to the mandatory or discretionary grounds for refusal there will be a presumption towards refusal unless overwhelming reasons are accepted for the contrary decision to be made.

c. The application exceeds the limit set on the number of the specific type of sex establishments generally or of a specific type in an area

d. Appropriateness having regard to character of locality, use of premises in the vicinity or layout, character or condition of premises

The local authority may refuse applications on grounds related to an assessment of the relevant locality. A licence can 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 authority 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.

12.5 Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 does not define 'relevant locality' further than to say that:

- In relation to premises, it is the locality where they are situated

- In relation to a vehicle, vessel or stall, any locality where it is desired to use it as a sex establishment.

- 12.6 Once the Council has determined the relevant locality, it should 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 Council may consider a particular locality is suitable for a sex shop but is not suitable for a sexual entertainment venue or vice versa.
- 12.7 Case law has indicated however that in defining the relevant locality the local authority should not seek to specify wide areas.
- 12.8 Although a ward area could be considered as a relevant locality it is determined that certain wards are substantial in size and would cover a wide area. It could also raise a problem with borders of other wards where there could be a cluster of sex establishments.
- 12.9 The Licensing Authority has determined not to set specific relevant localities in respect of each type of sex establishment, instead judging each application it receives on its own individual merits and the character of the locality at the time of the decision.

In determining the relevant locality each case will be decided on its merit having consideration to the individual circumstances of the application.

- 12.10 In licensing of sex entertainment venues the Licensing Authority will consider the impact of such premises and their operation on the character of an area. This would include but not be limited to:

- The type of location (residential, commercial, industrial)
- The likely effects of any increased footfall or vehicular traffic
- Any advertising or displays of an erotic or pseudo-erotic nature
- Localities where the cumulative impact of the venue, taken with other licensed premises or commercial interests, is likely to have an adverse effect on crime and disorder and public nuisance
- Any evidence of complaints about noise and/or disturbance caused by the premises
- The levels of crime and disorder in the area.

- 12.11 The Local Authority would consider use of other premises in the vicinity which would include but not be limited to:

- Establishments whose patrons are likely to be adversely affected by the operation of the premises
- The proximity of residential premises, including any sheltered housing and accommodation for vulnerable people
- The proximity of educational establishments to the premises
- The proximity of places of worship to the premises
- Access routes to and from schools, play areas, nurseries, children's centres or similar premises in proximity to the premises
- The proximity to shopping centres
- The proximity to community facilities/halls and public buildings such as swimming pools, leisure centres, public parks, youth centres/clubs (this list is not exhaustive)
- The proximity to conservation areas, historic buildings and tourist attractions
- The proximity of other sex establishments

12.12 When considering an application for the grant, renewal, variation or transfer of a licence the Council will also take into account the layout, character or condition of the premises including but not limited to the following

- The type of activity to which the application relates
- The duration of the proposed licence
- The days and hours of operation of the activity.
- Suitability of management systems to take into account the safety of its performers, customers and staff.

12.13 Visibility to passers by on retail thoroughfares or pedestrian routes. In more sensitive locations applicants should consider whether it would be appropriate to locate such premises at basement level or locate entrances away from retail thoroughfares or busy pedestrian routes.

13. Waivers

13.1 The amendments to Schedule 3, Local Government (Miscellaneous Provisions) Act 1982 allow for the Licensing Authority to waive the need for a sex entertainment venue licence under certain circumstances.

13.2 An applicant can apply for a waiver either as part of the application for a licence or separately. The Local Authority can grant a waiver if they consider that to require a licence would be unreasonable or inappropriate. Where a waiver is granted the appropriate authority should inform the applicant that a waiver has been granted. The waiver may last for such a period that the appropriate authority think fit, but can be terminated by the appropriate authority at any time with 28 days notice.

13.3 The Licensing Authority will consider applications for such waiving of the need for licences on an individual basis. However, it is felt that unless clear and unambiguous evidence can be produced to support such a waiving of licence, the default position will be that a licence will be required.

14. Conditions

14.1 The Local Government (Miscellaneous Provisions) Act 1982 allows the Licensing Authority to attach both standard and specific conditions to a licence. The Licensing Authority has set out standard conditions (APPENDIX A) in respect of each type of licensed premises for which conditions may be taken and provided a pool of conditions. However, this list is not exhaustive and is merely to give an indication of what may be considered necessary for any individual licence.

14.2 The standard conditions will be placed on the particular type of establishment and others may be applied only where a perceived necessity exists and in a manner that is both proportionate and reasonable to promote a safe and well managed premises. Each case will be dealt with on its individual merit.

14.3 Whilst conditions may be prescribed on any matter it is likely that the following considerations will attract the attachment of conditions:

- Hours of opening and closing
- Visibility of the interior of the premises
- Displays of advertisements
- Any change to the type of premises

- Minimum distance between audience and performers
- The control of access to changing room facilities
- The control of private viewings

14.4 The authority may specify other conditions specific to individual premises dependant on the type of activity undertaken. Such condition may not be listed in the pool of conditions.

15. Duration of Licences

15.1 Licences for sex establishments will be granted for up to one year.

16. Appeals

16.1 The Local Government (Miscellaneous Provisions) Act 1982, paragraph 27 permits appeals against the decision of the Council in relation to sexual entertainment venues. Appeals will be heard in the first instance by the Magistrates Court. An appeal must be made within 21 days of the decision of the Licensing Sub-Committee to the Magistrates Court.

16.2 An appeal can be made in the following circumstances:-

- Refusal of an application for grant, renewal or transfer of a licence
- Refusal of an application to vary terms, conditions or restrictions on or subject to which any licence is held
- A grievance relating to any term, condition or restriction on or subject to which a licence is held
- Revocation of a licence

16.3 There is no right of appeal for objectors.

16.4 There is no right of appeal against refusal on the ground that there are sufficient sex establishments in the locality or that to grant would be inappropriate having regard to the character of the locality, use of premises in the vicinity and the layout, character, condition and location of the premises.

16.5 A person wishing to appeal against the council decision is strongly advised to seek assistance from a solicitor.

Consultation on Maidstone Borough Council's Policy on licensing Sex Shops, Sex Cinemas, and Sexual Entertainment Venues

Introduction

The Council has already adopted the provisions of schedule 3 Local Government (Miscellaneous Provisions) Act 1982 in relation to sex shops and sex cinemas. The Policing and Crime Act 2009 has introduced new powers for local authorities to regulate sexual entertainment venues. Maidstone Borough Council is considering adoption of these powers and this consultation is designed to gather views on this possibility and a possible policy.

The purpose of a policy is to set out the expectations of the local authority in meeting the requirements of the legislation.

Venues that require licensing within this policy:-

Sex Shop

Any premises, vehicle, vessel or stall used for a business which consists to a significant degree of selling, hiring, exchanging, lending, displaying or demonstrating sex articles (anything for us in connection with or for stimulating or encouraging sexual activity or acts of force or restraint which are associated with sexual activity) or other things intended for use in connection with, or for the purpose of stimulating or encouraging sexual activity or acts of force or restraint which are associated with sexual activity. There are currently no such premises in the Maidstone Borough area.

Sex Cinema

Any premises, vehicle, vessel or stall used to a significant degree for the exhibition of moving pictures, by whatever means produced which are concerned primarily with the portrayal of, or primarily deal with or relate to, or are intended to stimulate or encourage sexual activity, acts of force or restraint which are associated with sexual activity or 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 to which the public is not admitted. There are currently no such premises in the Maidstone Borough area.

Sexual Entertainment Venue

Sexual entertainment venues are premises where live performance or displays of nudity take place for financial gain and for the purpose of sexually stimulating an audience. Examples of relevant entertainment would be those that provide lap dancing or pole dancing. Until adoption of the new powers any such premises would be licensed under the Licensing Act 2003.

Adoption of Legislation

From the date on which the powers come into force, which will be decided by the Council, if it adopts the amended legislation, sexual entertainment venue premises must be licensed, Premises on which relevant entertainment takes place infrequently, a maximum of eleven times in a twelve month period and on occasions at least one month apart, are exempt from the requirement for a licence. The Council may decide not to grant a licence if they consider that the location and layout of the premises is unsuitable and/or that the application is unsuitable. We may also decide how many licences should be granted in particular locations, which may be none.

If a licence is granted the Council may impose conditions, which could relate to such things as the outside appearance of the property, the management of the premises, internal layout and the nature of performances. The Council will also decide what the application process will be, the fees to be charged, specific conditions and how problems will be dealt with.

Consultation Process

The Council intends to consult members of the public, trade, and relevant enforcement agencies whether to adopt powers relating to sexual entertainment venues and on its draft policy. You may make your views known by completing all or any part of the following document.

Consultation Form

Reasons for refusal of licences are set out in the legislation and are not to be based on purely moral/religious grounds or values. This should be taken into account when commenting on this consultation.

You may make your submission by email or by post to:

Licensing Section
Maidstone House
King Street
Maidstone
Kent
ME15 6JQ

E-Mail: Licensing@maidstone.gov.uk

The closing date for submission is 26 January 2011

The council will take account of all views expressed during this consultation. The outcome of the consultation will be published on the Council's website.

Contact Details

Individuals' name, address, telephone and e-mail address details will remain confidential unless their release is confirmed below.

Name:	
Name of Premises/Relevant Enforcement Agency (if relevant)	
Address:	
Telephone Number:	
Email:	
Date:	
Signature	
Do you wish to release your details? (Individuals' details are assumed to be confidential unless confirmed otherwise)	

Section 1 – Adoption of Powers to Licence Sexual Entertainment Venues

Q1 – Do you agree that the Council should adopt the powers to allow them to license Sexual Entertainment Venues under the Local Government (Miscellaneous Provisions) Act 1982?	
Agree / Disagree	Please state reason(s)

Section 2 – Controlling the Location and Numbers of Establishments

The council may consider a particular locality is appropriate for a sex shop but is not appropriate for a sexual entertainment venue or vice versa.

The Licensing Authority has determined not to set specific relevant localities in respect of each type of sex establishment. Choosing instead to decide each application on its own individual merits but taking into account the impact of such premises and their operation on the locality in which they are situated.

We have considered and have listed the likely impact such premises may have on the following:-

Character of an Area:

- The type of location (residential, commercial, industrial)
- The likely effects of any increased footfall or vehicular traffic
- Any advertising or displays of an erotic or pseudo-erotic nature
- Localities where the cumulative impact of the venue, taken with other licensed premises or commercial interests, is likely to have an adverse effect on crime and disorder and public nuisance
- Any evidence of complaints about noise and/or disturbance caused by the premises
- The levels of crime and disorder in the area.

Use of other premises in the vicinity:

- Establishments whose patrons are likely to be adversely affected by the operation of the premises
- The proximity of residential premises, including any sheltered housing and accommodation for vulnerable people
- The proximity of educational establishments to the premises
- The proximity of places of worship to the premises
- Access routes to and from schools, play areas, nurseries, children's centres or similar premises in proximity to the premises
- The proximity to shopping centres
- The proximity to community facilities/halls and public buildings such as swimming pools, leisure centres, public parks, youth centres/clubs (this list is not exhaustive)
- The proximity to conservation areas, historic buildings and tourist attractions
- The proximity of other sex establishments

Q2 – Are there any other comments you would like to make about the location of sex establishments?

Q3 – Are there any areas that you consider more appropriate than others?
Q4 – Are there any areas that you consider are not appropriate?

The Licensing Authority believes that by judging each case on its own merits and on the character of the proposed area at the time of the determination it maintains its responsibilities to the community under the legislation whilst not stifling proper and well managed businesses. If numbers were to be set they would need to be reviewed when each application was determined in any event. A limit should not relate to a whole borough or large areas.

Q5 – Do you agree with not setting localities and numbers of premises?	
Agree / Disagree	If you disagree with this approach please explain why

Section 3 – Considering Applications

When considering an application for the grant, renewal, variation or transfer of a licence the Council will also take into account the layout, character or condition of the premises including but not limited to the following

- The type of activity to which the application relates
- The duration of the proposed licence
- The days and hours of operation of the activity.
- Suitability of management systems to take into account the safety of its performers, customers and staff

Q6 – Do you agree with this approach?	
Agree / Disagree	If you disagree with this approach please explain why

Section 4 – Controlling Sex Establishments by conditions and application process

Advertising

The council does not consider it appropriate for all types of sex establishments to have explicit displays outside of their premises. However, there is a need for there to be a clear indication of the type of entertainment that takes place within the premises. It is therefore, proposed that there would be conditions attached to the licence prohibiting explicit displays outside the premises.

Q7 – Do you agree with this approach?	
Agree / Disagree	If you disagree with this approach please explain why

Protection of Performers and Public

The council believes that it is appropriate to introduce conditions to protect both performers and the public in relation to 'relevant entertainment'. This will include distances between the audience and performers, facilities for performers such as changing rooms, public attending the entertainment will be able to see the performance and other persons within the building or outside the premises will not be able to gain entry or see into the venue whilst entertainment is taking place.

Q8 – Do you agree with this approach?	
Agree / Disagree	If you disagree with this approach please explain why

Management of Premises

The Council will engage with the management of premises (applicant) and will require them to provide evidence to demonstrate that they have suitable experience and understand the requirements of the business within the application process to demonstrate suitability to hold a licence.

Q9 – Do you agree with this approach?	
Agree / Disagree	If you disagree with this approach please explain why

Section 5 – Crime and Disorder

The Council has no evidence of any reported crime and disorder including anti-social behaviour, drug and alcohol misuses and other behaviour adversely affecting the local environment which was directly attributable to the operation of previously licensed sex shops and premises that currently hold 'relevant entertainment' in the area.

The Council believes that adopting legislation would give the community and relevant enforcement agencies the ability to make objections and for the local authority to refuse applications or impose restrictions/conditions on licences where they feel it is necessary, reasonable and proportionate. This will enable the licensing authority to put preventative measures in place to deal with any potential for crime and disorder in the future.

Q10 – Do you think the Council has addressed your concerns regarding the potential for crime and disorder in the future?

YES / NO	If you answer YES please explain why
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Q11 – Do you have evidence to the contrary that there is a problem with sex establishments in the area?

YES / NO	If you answer YES please explain why
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Section 6 – Any other comments

Q12 – Do you consider that the proposals to licence sex establishments will have an impact on equality issues? If so, please explain?

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Q13 – Do you have any further comments in relation to the policy?

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Feedback from **Maidstone Borough Council's Policy on Licensing Sex Shops, Sex Cinemas, and Sexual Entertainment Venues**

Date received	Contact	Comment	Document Ref	Officers comments and recommendation
6.12.10	Lisa Takel (on behalf Cathie Smith) Director BIAB	No Comments made	1	N/A
15.12.10	Sean Lewis, Environmental Planning Advisor for Natural England	No Comments made	2	N/A
20.12.10	Margo McFarlane. Clerk to Lenham Parish Council	<p>Section 1 Q1. Agree Section 2 Q2. No Q3. No Q4. As Listed Q5. Agree Section 3 Q6. Agree Section 4 Q7. Agree Q8. Agree Q9. Agree Section 5 Q10. Yes Q11. No Section 6 Q12. No Q13. No No Comments made</p>	3	Response agrees with Council policy
3.1.11	Alan Crocker. Clerk to Collier Street Parish Council	<p>Section 1 Q1. Agree Section 2 Q2. Q3. Q4. Q5. Agree Section 3 Q6. Agree Section 4 Q7. Agree Q8. Agree Q9. Agree Section 5</p>	4	Response agrees with Council policy

	<p>Q10. YessiQ11. No Section 6 Q12. Q13. No Comments made No comments made</p>		5	N/A	
5.1.11 5.1.11	<p>Lynda Holder. NHS West Kent Stephen Thomas Law on behalf Mr Pemble, Players, High Street, Maidstone</p>		6	<p>Automatic grant for existing premises is being requested. No licenses to be issued to any new premises of the type in Maidstone.</p>	
25.1.11	<p>Disability Audit Service Ltd</p>	<p>Section 1 Q1. Agree - Feel it is important that the Council has the power to license sexual entertainment venues to make sure that we do not end up with effectively a red light area of Maidstone. Also feels that if these premises are to exist they must be accessible throughout for disabled people and provide radar keyed wheelchair toilets. This in itself should not only contribute to equality but ensure that they have to provide all facilities irrespective of cost to them. Section 2 Q2. As per 1 Q3. Feels every case should be judged/considered on the surrounding properties and use. However feels it would be inappropriate for them to be based in rural areas. Q4. Rural areas. Q5. Agree Section 3 Q6. Disagree - Feels that in addition to the above points, a disability equality impact assessment should be carried out on each application to ensure they are fully accessible. Section 4 Q7. Agree</p>	7	<p>Number of points raised are dealt with in disabled legislation. The general comments given in response to a number of questions need to be considered by members in determining their view. However the general view is that these type of premises are well run and tend to cause only minor problems to licensing staff and the Police.</p>	<p>Comments that SEV's should not</p>

		<p>Q8. Disagree – although agree with all of the points raised feels that the Council give consideration to whether any of this would impact on disabled people. Would also raise the question of how to overcome the problems of disabled people who have a visual impairment and ensure that the show is still equal to all.</p> <p>Q9. Agree</p> <p>Section 5</p> <p>Q10. No - Firstly, I do not feel satisfied that these establishments will be made wheelchair accessible, especially, for example, if one was to be done on a boat. Secondly, often these types of establishments can lead to disturbances thereby incurring greater demands on the police. Who is going to pay for the extra policing costs and ensuring that they are not run as part of an organised crime syndicate?</p> <p>Q11. Slightly ambiguous, evidence there are problems. Not all existing premises have been made fully compliant with disabled peoples access to the their premises and their use</p> <p>Section 6</p> <p>Q12.</p> <p>Q13. I feel that as a county town it is bad enough that we have so many nightclubs which cause Maidstone to virtually be a no-go area to many of its residents. I feel that opening further sex establishments will only make this problem worse and we will end up with a reputation of just being the place to go for a stag do and hen night. This cannot be right for the majority of Maidstone Borough residents.</p>		be in rural areas.
26.1.11	Michelle Tatton. Clerk to Teston Parish Council	Agree that MBC adopt the powers allowing them to Licence SEV venues.	8	N/A
26.1.11	Jocelyn Walker. St Martins Church, Maidstone	<p>Section 1</p> <p>Q1 Agree - It means that these premises can be controlled and don't end up in unsuitable places. It means certain standards and compliance can also be maintained. It will help to protect employees and others who are vulnerable</p> <p>Section 2</p> <p>Q2 We think that consideration given to this seems fairly comprehensive.</p> <p>Q3 Less 'main street' areas.</p> <p>Q4 The list is quite comprehensive.</p> <p>Q5 Agree</p> <p>Section 3</p>	9	Agree with Council policy but feel that there should be less in the main street.

		<p>Q6 Agree Section 4 Q7 Agree Q8 Agree Q9 Agree Section 5 Q10 Yes Q11 No Section 6 Q12 No Q13 We appreciate being included in this consultation, and our only concerns are that the line sometimes gets blurred between what constitutes a sex shop/ premises – we were surprised to hear that there are no sex shops in the Maidstone Borough area and wonder whether that statement applies to past or present!</p>		
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