

Sexual Entertainment Venues – A rational decision that no venues should be granted licenses in a particular area will not breach human rights law

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Paragraph 12 of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 sets out the grounds for refusing an application for the grant, renewal or transfer of a licence. This includes the provision that a licence may be refused where “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.”

Government guidance makes clear that “nil may be the appropriate number.”^[1] The same guidance also makes clear that “it is reasonable and potentially useful to future applicants, for a local authority to decide in advance of receiving any applications that certain areas are, or are not, appropriate locations for a sex establishment or a particular number of sex establishments. Nevertheless, all applications must be considered on their individual merits.”

Local authorities must make some form of assessment of the character of the locality as the basis for any decision that nil is the appropriate number. However, as long as local authorities make some form of rational assessment of the character of the area this is highly unlikely (one could even go as far as to say almost impossible) to be subject to any kind of successful legal challenge. The courts have always given a great deal of discretion to public authorities in cases where they are exercising this kind of social control.^[2] Unlike in issues of fair trial or arbitrary detention, this is not an area where judges see themselves as particular experts, they therefore tend to defer to the greater knowledge and sensitivity of local decision-makers.

In the case of *Belfast City Council v Miss Behavin’ Ltd* (Northern Ireland) the House of Lords found that there was **no breach** of Article 10 (freedom of expression) or Article 1, Protocol 1 (right to property) of the European Convention of Human Rights because Belfast City Council had failed to grant a licence for a sex shop on the basis that the appropriate number of sex shops in the relevant locality was nil.

The judges in the House of Lords found that Article 10 and Article 1 Protocol 1 were engaged ‘but at a very low level’ – Access to pornography was not seen by the judges as a very important issue that needed high levels of

protection. This means that a local council will almost certainly be justified in restricting those rights as long as it makes its decision (e.g. that there should be nil SEVs) in a rational and reasonable way and in relation to each application it receives. The Court held that it would require ‘very unusual facts’ for a violation of these rights to be found. Lord Hoffman, who provided the leading judgment in the case stated “I find it difficult to imagine a case in which a proper exercise by the Council of its powers under the Order could be a breach of an applicant’s Convention rights.”^[3]

The Judges also made it clear that local authority did not have to explicitly consider Convention rights in coming to their decision.^[4] If they did explicitly consider Convention rights, however, this would clearly further strengthen their decision and make it even less open to challenge.^[5]

Therefore, as long as a decision that nil is the appropriate number for sexual entertainment venues (SEVs) in a particular locality is made rationally, then the Courts are not going to go against the views of the local decision-maker. Explicit consideration of Convention rights will only strengthen the decision further. A decision that nil is the appropriate number could reasonably be based on factors such as:

- That there are places in the locality frequented by children or families (shops, schools, playgrounds etc.)
- That there are places of worship in the area.
- That there are places in the locality where women are likely to be vulnerable to the higher levels of harassment associated with sexual entertainment venues

^[1] Home Office, *Sexual Entertainment Venues, Guidance for England and Wales* (March 2010), p.21.

^[2] See *Belfast City Council v Miss Behavin’ Ltd* (Northern Ireland) (2007) [2007] UKHL 19 para 16.

^[3] *Belfast City Council v Miss Behavin’ Ltd* (Northern Ireland) (2007) [2007] UKHL 19 para 12.

^[4] *Belfast City Council v Miss Behavin’ Ltd* (Northern Ireland) (2007) [2007] UKHL 19, para 13-15

^[5] *Belfast City Council v Miss Behavin’ Ltd* (Northern Ireland) (2007) [2007] UKHL 19, para 37