

# BRISTOL CITY COUNCIL

## Local Government (Miscellaneous Provisions) Act 1982

### Control of Sexual Entertainment Venues

#### DRAFT POLICY FOR CONSULTATION

The Council welcomes your views on this draft policy. Please provide any general comments you wish to make. We would be grateful if at the same time you would respond to the following specific questions and would welcome the reasons behind your responses.

Please see Bristol Fawcett's comments and responses to the specific questions in red and underlined.

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#### 5. Determining applications

The Council will determine every application on its own merits.

We disagree with this approach. Please see our comments in our covering letter and in our previous submission on the council's powers to implement a nil cap in all wards across Bristol.

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#### 6. General obligations

There are a number of general obligations that apply whenever the Council is discharging any of its many functions. For the avoidance of doubt, the Council has screened this policy statement to ensure it is compatible with those obligations and will, through its information gathering powers, seek to ensure that relevant information may come forward through the application process to enable all of its general obligations to be satisfied in the discharge of the function of determining applications for sexual entertainment venue licences. Material that is relevant to the achievement of these obligations will be properly taken into account. There are many such general obligations applying to the work of a local authority, amongst which are (in no particular order of priority):-

- its fiduciary duties to the Council Tax payers of the City (protection of the public purse).
- its obligations to act compatibly with rights conferred under the European Convention of Human Rights
- its general and specific duties under Equalities Law
- its obligations under Crime and Disorder legislation

**Question 1: Are there any other general obligations that you consider should be specifically highlighted in the policy?**

We consider that the obligations under the gender equality duty should be specifically highlighted in the policy as they do not, in this context, deserve to be subsumed under 'general obligations'.

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## 7. Considering applications and representations

Applications have to be made in writing and must contain the particulars specified in paragraphs 10.2 to 10.5 of the third schedule (see hyperlink above) and such particulars as the appropriate authority may reasonably require in addition. The Council's application form will be designed to elicit information that enables its decision making to be guided by this policy, including information that is relevant to enabling it to meet all of its general obligations such as those referred to in the preceding paragraph.

Public notice must be given of all applications and that notice shall be in the form that the Council may prescribe. The Council intends to prescribe a form of application that facilitates public representations, including, for example, requiring applicants to identify the brand name under which the premises are intended to operate and other material information.

### **Question 2: Are there any specific questions you consider the Council should ask of all applicants?**

Questions should be asked as to previous convictions / previous licensing history: any prior applications made and their outcome. The application form should make clear that answers in this regard are required in the utmost good faith, namely that any false representation would automatically be regarded as invalidating the application.

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The Council will record that applications have been received on its licensing web pages. The Council will also display additional notices in the area making use of street furniture and community notice boards. It also intends to notify Ward Members about applications made within their areas and the relevant Neighbourhood Forum co-ordinator.

### **Question 3 : The statute requires the applicant to place a site notice on the premises and place an advert in a local newspaper. Bearing in mind the constraints on public expenditure, are there any other people you think should be routinely notified and by what means do you think this should be achieved?**

The Council's Scrutiny Commission on Community Cohesion and Safety should be routinely notified of any applications, as should local gender equality groups (e.g. Bristol Fawcett; Bristol Women's Forum; Bristol Feminist Network). The Safer Bristol Executive should be notified as should the NHS Public Health Directorate; Rape Crisis; Bristol University Centre for Gender and Violence Research; Bristol University Feminist Society.

The Council must also adopt a means of satisfying itself that potential objectors have been given a real opportunity of being made aware of such an application in good time before any deadline – hence the suggestion above, that specific interest groups should be directly notified. It is important to avoid the risk that applications may be (a) 'masked' by submission in the anodyne name of a management company, and (b) not adequately drawn to the attention of interested parties in good time. Whilst the law places limitations upon those entitled to object, the Council must acknowledge that it cannot know on any

case by case basis who may be entitled to object depending upon a number of factors. It is beyond doubt that the organisations mentioned in the preceding paragraph will always be relevant parties who may well have the locus to object and should therefore be routinely notified.

As we have stated in our covering letter, advice by email on what is estimated to be three or four occasions a year to this suggested group of interested parties will be far from onerous.

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Persons objecting to an application for the grant renewal or transfer of a licence must give notice in writing of their objection to the Council, stating in general terms the grounds of the objection not later than 28 days after the date of the application. Providing they comply with the statutory requirements their format of written objections is entirely a matter for the objector. However, to assist the public, the Council will make available a form for objectors to use if they so choose.

The Council will give an opportunity of appearing before and being heard by a committee or sub-committee:

- (a) before refusing to grant a licence, to the applicant;
- (b) before refusing to renew a licence, to the holder; and
- (c) before refusing to transfer a licence, to the holder and the person to whom he desires that it shall be transferred.

The Council will also usually permit objectors to address the Committee or sub committee in respect of the matters raised in their written objection (but no other matter)

The Council has arranged for hearings to take place before committees and sub-committees whose Members are accustomed to conducting such business in accordance with the rules of natural justice and other relevant obligations. Training has been made available to all Councillors concerned in the conduct of hearings and determination of such matters.

When considering applications the Councillors will usually enhance their existing local knowledge of the locality by use of maps and site visits.

#### **Question 4: Do you agree that maps and site visits will help the decision making process? Are there any other steps you think the Council should take to achieve this?**

There is no reason why the Council should not state that it will **always** permit objectors to address the committee or sub committee. This will ensure that the Council will be seen to be conducting a fair and democratic process in this regard.

We do not consider it sufficient that training is merely 'made available' to Councillors. We recommend that training in the conduct of hearings and determination of such matters is mandatory for all Councillors. We strongly recommend that training in gender equality is also a mandatory condition for membership of the Licensing Committee.

Regarding maps and site visits, the Council should produce a map for every application with all the types of premises outlined under *Discretionary Grounds d(ii)* of the draft policy and this map should be made available online at least fourteen days before the deadline for objections.

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## 8. Grounds for refusal

### **Mandatory grounds**

A licence shall not be granted where one of the mandatory refusal grounds applies, that is:-

- (a) to a person under the age of 18; or
  - (b) to a person who is for the time being disqualified by virtue of revocation in the previous year;
  - (c) to an individual applicant who has not been resident in the UK for the previous six months;
  - (d) to a body corporate which is not incorporated in an EEA state;
  - (e) to an applicant 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 was reversed on appeal.
- If the Council finds any of these grounds apply then it must refuse the application

### **Discretionary grounds for refusal**

A licence may otherwise be refused on one or more of the following grounds.

- (a) That the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or any other reason
- (b) That if the licence were to be granted, renewed or transferred the business to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant, renewal or transfer of such a licence if he made the application himself;
- (c) That 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. (Nil may be an appropriate number for these purposes)
- (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

If the Council finds any of these grounds apply then it may refuse the application

[Please see our comments in our covering letter and in our previous submission on the council's powers to implement a nil cap in all wards across Bristol.](#)

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## **Factors for consideration**

### **Discretionary grounds (a) and (b)**

In considering the suitability of those persons referred to in (a) and (b) above the factors the Council may take into account include:

- relevant experience;
- relevant criminal convictions;
- whether the person has committed relevant offences;
- relevant observations or findings by public authorities, including licensing authorities, in connection with the conduct of the person or their ability to manage and control premises;

- relevant findings by courts and tribunals in connection with the treatment of protected groups (within the meaning of the Equalities Act 2010)
- information germane to the person's ability to, among other things:
  - ensure the safety and wellbeing of performers;
  - ensure the proper protection of the public;
  - ensure the suitability of employees, performers and others using the venue;
  - prevent performance by or for those who may thereby be harmed, including minors;
  - understand and adhere to conditions imposed on any licence granted and ensure they are observed by others on the premises;
  - engage constructively with the Council and other relevant regulators

**Question 5: Do you agree that these factors could all be relevant to consideration of grounds (a) and (b)? Are there any other factors you consider should be included in this part of the policy?**

Yes we agree. In terms of the policy, we recommend that the policy be amended from "The Council **may** take into account..." to "The Council **will** take into account..."

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**Discretionary ground (c)**

The Council is mindful of its power to determine an appropriate maximum number of sex establishments, or of sexual entertainment venues, in the relevant locality at the time of application is determined. The Council will adopt the same approach to this issue when determining applications for sex entertainment venues as it has taken with respect to applications for sex shop licences. It will not seek to predetermine the localities that are comprised within the City of Bristol or predetermine the appropriate number for each such locality, but will consider this issue on a case by case basis. That is to say, it will decide what is the relevant locality as a matter of fact in each particular application and not by drawing boundaries on a map or some other method. Having established the relevant locality, in considering the issue in ground 'c' the Council will take into account all relevant considerations including:-

The character of the locality:

- residential
- leisure
- educational establishments

Other uses in the locality:

- faith / religious institutions
- churches
- family friendly facilities

Impact on regeneration

Impact on tourism, including considerations of the perception of the City at gateway locations

Impact on retail attraction

Risk of public nuisance

Whether the locality is subject of stress caused by a cumulative impact of premises authorised to provide licensable activities under the Licensing act 2003;

Impact on crime and disorder

Public perception of the safety of the locality and impact on that perception, e.g. typical footfall at material times, level of street lighting, use by lone females

Existence of social problems in the locality and impact on any initiatives to tackle them, e.g. kerb crawling, prostitution.

Levels of recorded crime

Levels of anti social behaviour

**Question 6: Do you agree that these factors could all be relevant to consideration of ground (c)?**

**Are there any other factors you consider should be included in this part of the policy?**

Please see our comments in our covering letter and in our previous submission on the council's powers to implement a nil cap in all wards across Bristol.

The implementation of a nil cap policy is by far the most effective and unchallengeable way to meet gender equality objectives. It is also the most efficient. As a nil cap is not challengeable by appeal it is the best way to ensure that the Council does not use its resources on legal costs resulting from an appeal.

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**Discretionary grounds (d)**

**For d(i)**

Having regard to the character of the locality (see ground (c ) above) the Council will consider whether the particular application is appropriate , taking into account:

- The size and appearance of the premises
- Their proximity to places where the public congregate for purposes other than use of the premises, such as bus stops and taxi ranks
- The nature of the relevant entertainment that is proposed
- The nature of the clientele it is likely to attract and their number
- The brand and its reputation
- The duration of the proposed licence/activity
- The manner in which the relevant entertainment is likely to be managed
- The risk of nuisance to others engaged in legitimate activity
- The proposed hours of operation.

**Question 7: Do you agree that these factors could all be relevant to consideration of ground (d) (i)?**

**Are there any other factors you consider should be included in this part of the policy?**

We do not consider that 'brand' and 'reputation' are relevant factors to be considered. The most established 'brands' have been shown repeatedly (e.g. see Channel 4 Dispatches documentary broadcast in October 2008) to breach their licensing conditions just as lesser known 'brands'. We recommend that these factors be removed from the list.

The Council needs to ensure that its criteria are not exploited by operators who may seize upon the proposition that they are a 'known brand', citing this factor as a consideration for rather than *against* the award of a licence. In order to avoid potentially undesired or unforeseen consequences it is important that these factors should be deleted. Evidence of poor reputation is plainly admissible in any event, in that it goes to the heart of the licensing objectives.

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**For d(ii)**

Whether premises in the vicinity are put to any of the following uses:

- residential, in particular homes occupied by families
- leisure
- educational establishments
- churches and other places of worship
- family friendly facilities
- other sex-oriented/adult premises (whether or not they are licensed/licensable)
- youth clubs
- womens refuges
- community centres
- parks and other open spaces
- swimming pools
- public transport

**Question 8: Do you agree that these factors could all be relevant to consideration of ground (d) (ii)?**

**Are there any other factors you consider should be included in this part of the policy?**

[Yes we have considered all these factors and agree that they are all relevant and should be included in the policy.](#)

[We refer you to our recommendation under Question 4 regarding maps.](#)

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**For d (iii)**

In considering these factors the council will take into account information concerning:-

- whether the premises are fit for the purpose proposed
- their planning status
- the general appearance to others using the locality
- whether premises are self contained
- means of access and egress, whether shared with other building users (if any)
- accessibility
- sightlines
- 'hidden' areas and other places where effective monitoring may hampered
- standard of decoration and "fit –out"
- visibility from the street
- facilities for smokers
- facilities for performers (changing, washing, wc, smoking areas etc) and whether
- they are adequately separated from those provided for customers

[Please refer to our comments on the conditions document.](#)

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9. The Council will usually make available the reasons for its Committee and sub committee decisions on its web pages. Rarely publication of reasons may be deferred where there is good reason (for example where relevant information is sub

judice or otherwise reasonably judged to be exempt from publication).

**Question 9: Do you agree that these factors could all be relevant to consideration of ground (d) (iii)?**

**Are there any other factors you consider should be included in this part of the policy?**

In order for the Council to be seen to be following a fair and democratic process, we recommend that the policy should state that:

- hearings should only be scheduled when there is sufficient time allowed in the committee's schedule for publication of the decision sheet within five working days of the decision being made
- hearings should start promptly at the advertised time
- when a licence is granted, there are no circumstances under which publication of reasons is deferred or exempt.

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## 10. Waiver

In circumstances in which the Council reasonably judges that it would be unreasonable or inappropriate to require a licence for the sexual entertainment venue concerned it may waive the requirement for a licence. An applicant for a waiver must submit the information prescribed in the legislation and such other information as the council may reasonably require. There are no advertising or publicity provisions governing waivers. If an application for waiver is allowed a waiver notice is given which can be for a specific period or open ended. When it is open ended the council, by giving at least 28 days Notice, can bring it to an end.

The Council will consider each waiver application received on its own merits. It is unlikely a waiver will be granted for relevant entertainment that includes a performance of nudity.

**Question 10: Do you agree with this policy on waivers?**

**(i) Are there any circumstances in which you consider the council should look favourably on waivers?**

**(ii) Are there any other areas where you consider the council should not look favourably on waiver applications?**

The policy on waivers is extremely problematic. In order for the Council to be seen to operate a fair and democratic process, this waiver clause must be tightly defined or illustrated – and its application must be strict. The policy should explain that the possibility of a waiver is limited to clearly defined situations. Whilst a policy may not foresee every possible circumstance, it is **absolutely vital** that waiver can never be considered as a means of circumventing normal licensing considerations and requirements for SEVs.

Any policy on waivers must make clear:



1. That in all cases there is a presumption against a waiver being granted and that it is for the applicant to establish on the balance of probability that the grant of a waiver is justified.
2. That any waiver will only be granted with all performer safety conditions required in the same way as specified in the standard SEV licensing conditions. Further, as many of the standard conditions as are capable of being complied with should be required by way of undertaking from the operator.
3. A waiver application can never be considered for the general operation of a SEV.
4. That no application for a waiver will be considered if the committee decides that it is intended to circumvent normal licensing considerations and requirements. No application should be considered unless the applicant has submitted the same basic information as for licence applications, together with such other particulars as the Council may reasonably require (see Schedule 3, para 7(3) and 10(2)-(5) of the Local Government (Miscellaneous Provisions) Act 1982).
5. It is recommended that the Council should be very mindful of the discussion as to Waiver in Chapter 10 of Kolvin (2010). Above all, it is submitted that the Council must be scrupulously alert to the risk of waiver applications being inappropriately made. It is also recommended that the Council should publish full statistical information as to the number of waiver applications received and either granted or refused on a yearly basis.