

Preface

This Statement of Licensing Policy sets out the council's requirements for premises to be licensed as sex establishments within the meaning of schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended).

Section 2 of the Act provides that local authorities may resolve that schedule 3 will apply to their area, which has the effect of requiring premises operating as sex establishments in that authority's area to be licensed. Adoption of schedule 3 also allows the council to set terms and conditions and fees for the grant, renewal, transfer and variation of such licences and the number of licences that may be issued in the area, including nil.

Rochford District Council has not imposed any restriction on the number of licences to be issued. The terms, conditions and fees have been published by the council since it adopted schedule 3 in November 1982.

However, in light of the European Services Directive Guidance for Local Authorities, issued by the Department for Business Enterprise and Regulatory Reform, the fees have been reviewed and revised and set at a level that is proportionate to the effective cost of the process.

It should be noted that at the time of drafting this policy, the Policing and Crime Bill proposes an amendment to schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 by replacing the current definition of a 'sex establishment' with the definition of a 'sex encounter venue'. This amendment, if made, will remove the exemption for premises to be licensed where a premises licence under the Licensing Act 2003, which authorises the provision of regulated entertainment, is in force.

Definitions of the different types of 'sex establishment' can be found in the Appendix A to this policy.

Any comments on the contents of this policy should be sent to:-

Rochford District Council
Licensing Unit
3-19 South Street
Rochford, Essex
SS4 1BW

or by e-mail to licensing@rochford.gov.uk

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Foreword

Rochford District covers an area of 65 square miles within an area bounded by the River Crouch in the north, the A127 Arterial Road in the south, the North Sea in the east and the A130 route in the west.

The area is predominantly rural in character with many smaller towns and villages and two main urban centres at Rochford and Rayleigh. It has a population of approximately 79,000 people.

The District offers a wide and developing variety of culture, history, recreation and dwellings with transport infrastructure provided by the mainline railway, to London and Southend, and local bus services.

The District currently has no premises licensed as sex establishments.

The Council will monitor the continuing expansion of the leisure industry, which provides an essential contribution to the local economy in jobs and revenue in the District, in order to maintain a balance between those interests and the interests of preserving the heritage of the area and protecting the interests of residents.

This 'Statement of Licensing Policy' sets out the policies the Council will generally apply when making decisions on applications. It also sets out information about the application process, what is expected of applicants and how people can make objections about applications. It also sets out the types of controls that are available to the Council when decisions are made about licence applications and explains what action can be taken if complaints are received.

1 Introduction

- 1.1 Rochford District Council resolved to apply Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 on 23 November 1982, providing that anyone wishing to operate a 'sex establishment' within the district must first obtain a licence from the council.
- 1.2 This Statement of Licensing Policy for Sex Establishments sets out the council's requirements for premises to be licensed as 'sex establishments' within the meaning of the Act (as amended).
- 1.3 The advice and guidance contained in the appendices attached to this Statement of Licensing Policy is intended only to assist readers in consulting the policy and should not be interpreted as legal advice or as constituent of Rochford District Council's Statement of Licensing Policy.
- 1.4 Readers are strongly advised to seek their own legal advice if they are unsure of the requirements of the Local Government (Miscellaneous Provisions) Act 1982 or schedules issued under the Act.

2 Definition of 'sex establishment'

- 2.1 A 'sex establishment' is defined under the Act as a 'sex shop', a 'sex cinema' or a 'sex encounter establishment'. Full definitions of those terms can be found in Appendix A to this policy.
- 2.2 It includes any premises, vehicle, vessel or stall used as a sex establishment but does not apply to the sale, supply or demonstration of articles which are manufactured for use primarily for the purposes of birth control or primarily relate to birth control.

3 Location of Licensed Premises

- 3.1 The council acknowledges that a concentration of licensed premises in a particular area can result in a potential fear of crime, anti-social behaviour, noise pollution and other disturbance to residents. In such cases the amenity of local residents can be placed under severe pressure.
- 3.2 Whilst the council have not imposed a limit on the number of premises that may be licensed in any area, and whilst treating each application upon its own merits, the council will not licence premises that are in close proximity to:
 - (a) a residential area;
 - (b) a school, nursery or any other premises substantially used by or for children under 16 years of age;

(c) a park or other recreational area used by or for children under 16 years of age;

(d) a church or other place of religious worship.

(e) A gateway to an identifiable locality.

3.3 Applications in respect of premises must state the full address of the premises. Applications in respect of a vehicle, vessel or stall must state where it is to be used as a sex establishment.

3.4 The council would normally expect that applications for licences for permanent commercial premises should be from businesses with planning consent for the property concerned.

4 Making an application

4.1 An application for the grant, renewal, transfer or variation of a licence must be made in writing to the council in accordance with the requirements shown in Appendix B.

4.2 In keeping with the Council's policy on the introduction of e-Government, the council consents to applications and other notices being given electronically. The address at which the council will accept applications and notices is:-

(a) by post/personal service to The Licensing Unit, Rochford District Council, South Street, Rochford, Essex, SS4 1BW;

(b) by e-mail to licensing@rochford.gov.uk;

(c) by facsimile to 01702 545737;

(d) on-line (when the facility becomes available).

4.3 A specimen application form and notice for public advertisement is attached in Appendix C.

5 Fees

5.1 The application process involves paying –

- a non-returnable application fee, including costs for inspections of the premises and processing the application;
- a fee to meet the costs of holding a hearing before a committee in the case of a contested application, which will be refunded where either an application is withdrawn before the need for a hearing arises, or where a hearing is not required.

5.2 The fees are reviewed annually against any rise in council costs of administering the licence regime.

5.3 A schedule of fees is shown in Appendix D

6 Advice and Guidance

6.1 The council will seek to liaise with applicants and/or mediate between applicants and others who may make objections, to achieve a satisfactory outcome for all involved, wherever possible and where resources permit.

6.2 Where an applicant considers that mediation and liaison may be likely or probable, it is recommended that the applicant discuss his proposal with the licensing section and those from who they think objections are likely prior to submitting their application.

7 Grant, renewal or transfer of licences

7.1 The council may grant to any applicant and renew a licence for the use of any premises as a 'sex establishment' on such of the terms and conditions specified by the council in Appendix E.

7.2 A licence will remain in force for one year, or such shorter period specified in the licence, unless previously cancelled or revoked.

7.3 The council may, if they think fit, transfer a licence to any other person upon application by that person.

7.4 Where an application for renewal or transfer of a licence is made before the date of expiry of the existing licence, the licence shall remain in force until such time as the application has been determined.

7.5 Where applications for licences have been granted, the council will send the licence to applicants by post.

8 Variation of licences

8.1 The holder of a licence may apply to the council to vary the terms, conditions or restrictions on or subject to which the licence is held.

9 Objections

9.1 Objections may be made to an application by any person.

9.2 An objection must be in writing and state the grounds on which the objection is made.

9.3 Objections may only be made within the period of 28 days following the date on which the application was given to the council.

- 9.4 The council will not consider any objection that does not contain the name and address of the person making it.
- 9.5 Where objections are made the council will provide copies to the applicant. The council will not divulge the identity of the objector/s to the applicant without their permission to do so.
- 9.6 Where objections are made and not withdrawn, a hearing before a Licensing Sub Committee will normally be held within 20 working days of the end of the period in which objections might be made, unless all parties agree a hearing is unnecessary.
- 9.7 In all cases, applicants and those making objections that are genuinely aggrieved by a decision of the council are entitled to appeal to the Magistrates' Court.
- 9.8 Where no objections are made, the council will grant the licence subject to the terms and conditions shown at Appendix E

10 Determining applications

- 10.1 When considering applications, the council will have regard to:
- (e) the Local Government (Miscellaneous Provisions) Act 1982
 - (f) any supporting regulations;
 - (g) this Statement of Licensing Policy.
- 10.2 This does not, however, undermine the rights of any person to apply for a licence and have the application considered on its individual merits, nor does it override the right of any person to make objections on any application where they are permitted to do so under the Act.
- 10.3 When determining applications, the council will take account of any comments made by the Chief Officer of Police and any objections made.
- 10.4 In all cases, the council reserves the right to consider each application on its own merit.

11 Conditions

- 11.1 The council recognises that all applications should be considered on an individual basis and any condition attached to such a licence will be tailored to each individual premises.
- 11.2 No condition will be imposed that cannot be shown to be necessary.
- 11.3 The conditions that may be attached to a licence are shown in Appendix F.

12 Refusal of licences

- 12.1 Except where the council are prohibited from granting, renewing, varying or transferring a licence, the council will not refuse a licence without first: -
- Notifying the applicant or holder of the licence in writing of the reasons;
 - Giving the applicant or holder of the licence the opportunity of appearing and making representations before a Licensing Sub Committee.
- 12.2 The circumstances in which the council must or may refuse a licence are shown in Appendix F

13 Revocation of licences

- 13.1 The council may revoke a licence: -
- on any of the grounds specified in paragraph 1 of Appendix F of this policy;
 - on either of the grounds specified in paragraph 3 (a) and (b) of Appendix F of this policy.
- 13.2 The council will not revoke a licence without first giving the holder of the licence the opportunity of appearing and making representations before a Licensing Sub Committee.

14 Cancellation of licences

- 14.1 The licence-holder may surrender the licence at any time and may request the council in writing to cancel the licence.
- 14.2 In the event of the death of a licence-holder, the licence will be deemed to have been granted to his personal representatives and will remain in force for 3 months from the date of death, unless previously revoked.
- 14.3 Where the council are satisfied that it is necessary for the purpose of winding up the estate of the deceased licence-holder, it may extend or further extend the period in which the licence remains in force.

15 Complaints

- 15.1 Where possible and appropriate the council will give early warning to licence holders of any concerns about problems identified at premises and of the need for improvement.

16 Enforcement

- 16.1 The council is responsible for the administration and enforcement of the licensing regime and will have regard to the Department of Business Enterprise & Regulatory Reform's Regulators' Compliance Code and the Better Regulation Commission's five Principles of Good Regulation. The council will carry out its regulatory functions in a fair, open and consistent manner.
- 16.2 Specifically, the council is committed to:
- (a) be proportionate – to only intervene when necessary and remedies will be appropriate to the risk posed;
 - (b) be accountable – to justify decisions, be subject to public scrutiny and allow opportunities to resolve differences before enforcement action is taken, unless immediate action is needed;
 - (c) be consistent – to implement rules and standards fairly;
 - (d) be transparent – to be open and to provide clear explanations of what is needed, by when and the rights of appeal.
 - (e) target its regulatory action at cases in which action is needed.
- 16.3 The council recognises the interests of both citizens and businesses and will work closely, with partners, to assist licence holders to comply with the law and the conditions attached to the licence.
- 16.4 However, proportionate but firm action will be taken against those who commit serious offences or consistently break the law or breach the conditions of the licence.
- 16.5 The council has set clear standards of service and performance that the public and businesses can expect. In particular, an enforcement policy has been created that explains how the council will undertake its role and how the principles of effective enforcement will be achieved.
- 16.6 This policy is freely available from the licensing section, as are details of the corporate complaints procedures, both of which can also be viewed on the Council's website: www.rochford-council.gov.uk