

Sex Establishment Licensing Policy 2020

- Sex Establishment Licensing Policy 2020
Local Government (Miscellaneous Provisions)
Act 1982 as amended

LONDON BOROUGH OF EALING



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affordable homes

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living incomes

A healthy,
great place

 FOR ALL

This policy is made by Ealing Council under the following statute:

- Local Government (Miscellaneous Provisions) Act 1982 as amended

This policy provide frameworks for the operation of the licensing regimes, assist applicants when making applications and guide the council and relevant committees when making licensing decisions. Revisions to the policy and it's publication were approved by the council on 21 July 2020. This policy is operative from 27 July 2020.

Section 1 – Sex Establishment Licensing Policy 2020

The Sex Establishment Licensing Policy 2020 is the council's statement of principles which it will apply when exercising such functions under the Local Government (Miscellaneous Provisions) Act 1982 as amended.

For any queries regarding these policies please contact the Licensing Team via licensing@ealing.gov.uk, Licensing Team, Ealing Council, Perceval house, 14-16 Uxbridge Road, Ealing , W5 2HL, or 020 8825 6655.

Foreword

The proposed 2020 London Borough of Ealing Licensing Policies enable the responsible licensing authority to influence the shape of our neighbourhoods and town centres. Informed by local needs, changing developments and circumstances we aim to enhance and sustain our local environments.

The communities in Ealing are one of the most diverse in the UK. This is reflected in a wide offer of activities from licensed premises. The policies will enable opportunities for developments and investment across the borough.

Following professional sector research, statutory public consultation and stakeholder engagement significant new and revised policies in the London Borough of Ealing are proposed including:

- Newly designated and extended Special Area Policy locations for off-licensed premises which will permit the licensing authority to consider appropriate applications and conditions for licensed premises predicated on statutory licensing objectives.
- Promotion of an enhanced art and culture led licensable activities.
- Determination that the appropriate number of licensed sexual entertainment establishments be set at zero.

The licensing policies promote opportunities, flexibility, and freedoms whilst creating an accountable and responsible policy framework for operators to provide a suitable offer that will have a minimal negative impact on thriving neighbourhoods.

Our ambition is to balance the needs of residents which may conflict with business operators and growth. We promote people's right to peace and quiet in their homes and neighbourhoods free from criminal and antisocial behaviours.

The open implementation of these policies support all the licensing regimes' statutory duties and will benefit all interests across the borough.

Councillor Anthony Kelly, Chair, Licensing Committee

Sex Establishment Licensing Policy 2020

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Introduction

1.1 The legal controls for sex establishment premises are contained in Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982, as amended to include sexual entertainment venues by the Policing and Crime Act 2009. These amendments were adopted by the Council during August 2010.

1.2 There are three types of sex establishments which fall into the licensing regime:

- sex shops (defined in the Local Government (Miscellaneous Provisions) Act 1982)
- sex cinemas (defined in the Local Government (Miscellaneous Provisions) Act 1982)
- sexual entertainment venues (defined in the Policing and Crime Act 2009)

1.3 The Council's role as licensing authority is to administer the licensing regime in accordance with the law. The Council does not make a moral judgment as to the appropriateness of sex establishments. The Council recognises that Parliament has made it lawful to operate a sex establishment and such businesses are a legitimate part of the retail and leisure industries.

1.4 This policy sets out the Council's approach to licencing applications and is intended to provide guidance for members of the licensing panel members, licence holders, applicants, objectors and the general public.

1.5 Applications will be considered in line with this policy, with the legislation and with Home Office guidance. The Council will also take into account relevant provisions of, amongst others, the European Convention on Human Rights and its Public Sector Equality Duty under the Equalities Act 2010.

1.6 Any application for a licence will be considered on its own merits. While this policy provides general guidance, applicants, and the Council, could depart from that guidance in certain circumstances and subject to suitable justification or to align with the Council's other strategies or plans including:

- a. The Council's Corporate Plan 2018-2022 sets out how elected Members' policy commitments will be delivered and is available on the Council's website at https://www.ealing.gov.uk/info/201033/council_and_local_decisions/300/council_plan
- b. The Night Time Economy Strategy focuses on strengthening and enabling a vibrant and resilient night time economy, for the benefit of residents, visitors and local businesses
- c. The Safer Ealing Partnership Strategy, available on the Council's website at https://www.ealing.gov.uk/info/201046/decision_making/350/local_strategic_partnership/6, focuses on keeping residents safe, preventing harm and addressing crime and anti-social behaviour

Application process

1.7 The Council will prepare application forms which will detail the information required for any application. This will include a detailed plan of the premises. The council may require additional information as appropriate.

1.8 The Council will determine applications in accordance with the Provision of Services Regulations 2009 (or later regulations).

1.9 The council is subject to a Public Sector Equality Duty as set out in s149 Equalities Act 2010. While the decision on the application of that duty is for the council, applicants will be expected, in their application, to demonstrate in detail how they will ensure that behaviours outlawed by the Equalities Act will be prevented. This might include staff policies, witness evidence, and "mystery shopper" evidence.

1.10 If an application is submitted electronically, we will send a copy to the licencing section of the local police.

1.11 Applicants must pay the appropriate fee before an application will be considered.

1.12 Applicants must advertise their application in a local newspaper no later than 7 days after applying for a licence. The council's preferred newspaper is the Gazette. Applicants must also display the council's A3 notice on their premises for at least 21 days.

1.13 The Council will have regard to any objections received from any party within 28 days of the application and may consider objections received outside that time. Objectors can request anonymity. Objections will only be considered if made on one of the grounds for refusal set out in the legislation and highlighted above. Objections on moral grounds will not be considered.

1.14 The Council has discretion to consider objections received late.

1.15 Any application will be considered by a panel of three elected members (for wards other than the one in which the applicant's premises are situated), whether any objection is made. The applicant may appear before and be heard by the panel. The panel will decide whether to hear in person from objectors. The panel is otherwise free to set its own procedural rules.

Grounds for refusal of a licence

1.16 The legislation sets out five mandatory requirements for licence applications. Failure to comply with those requirements will cause an application to be refused.

1.17 The legislation also allows the council to refuse a licence on four discretionary grounds. These are

- That the applicant is unsuitable to hold a licence
- The beneficiary of the licence would be somebody other than the applicant and that person would, if they applied, be refused a licence
- That the number of sex establishments already in the relevant locality is at or above the level which the council thinks is appropriate for that locality
- That the grant or renewal would be inappropriate, having regard to
 - The character of the locality

- Use of other premises in the locality
- The layout, character or condition of the establishment

Unsuitability of the applicant

1.18 The Council will refuse an applicant who does not meet the mandatory requirements set out in the legislation.

1.19 The Council will consider an applicant's suitability for a licence. As well as the application form, we may obtain information from the police, the Criminal Records Bureau, any departments within the council and any other sources we consider relevant. The Council may ask applicants to undertake an interview.

1.20 The Council will expect applicants to demonstrate that they are suitably experienced and that they have the management structure, business plan and staff in place to ensure compliance with the conditions of the licence.

1.21 The Council will normally refuse any application for licence made on behalf of a third party.

Limits on numbers

1.22 The council is committed to making Ealing a healthy and great place, working with residents to build strong, fair communities and keeping the borough a clean, safe and attractive place to live, striving to reduce crime and working to maintain the excellence of the streets we live in. This includes improving "residents' perception of safety and reduce concerns about crime and anti-social behaviour".

1.23 The Council has determined, through a review of the "Character of the Area" Profile that the number of sex establishments currently operating in the borough (nil) is equal to the number which is appropriate for any of the localities in the borough (nil). The Council does not support an increase in the numbers of premises that are providing these activities.

1.24 The Council will not pre-determine any application and each application for a licence will be considered on its own merits. Applicants must demonstrate, through provision of detailed documented evidence, why departure from the nil limit could be considered.

Character of Area

1.26 The Council has determined that the areas of Northolt, Greenford, Hanwell, Southall and Perivale, including their suburbs and district town centres, would be inappropriate areas for the operation of a sex establishment. This is because the need to minimise noise, odours, disturbance, nuisance and crime and the need for privacy are at their greatest where people live and that this need was inconsistent with the presence of a sexual establishment. The Council determined that any other predominantly residential areas in Ealing, Acton and Park Royal would be inappropriate for the same reason.

1.27 The Council determined that the industrial areas of Park Royal and other industrial areas throughout the borough were inappropriate for reasons of safety and the need to protect employment uses.

1.28 While Ealing and Acton town centres are not ruled out on character grounds, applicants must demonstrate, through provision of detailed documented evidence, that the particular location proposed could be appropriate.

1.29 All applications must demonstrate consideration of proposed developments that have been permitted and in particular future residential and community uses.

Use of other premises

1.30 While any application will be considered on its merits, proximity of a proposed site for a sexual establishment to the following other uses is likely to render that location inappropriate. This list is not exhaustive.

- A residential area or any sheltered housing for elderly or vulnerable persons

- Residential accommodation above commercial premises
- Family leisure centres or complexes
- Parks and children's play areas
- A school, nursery or other educational establishment used by children under 16 years of age
- Religious buildings and places of worship
- Community halls and public buildings such as swimming pools, leisure centres, youth centres, clubs etc.
- Conservation areas and similar areas with buildings of special architectural or historic interest
- Cumulative impact of other licensed premises in the vicinity
- Settings oriented around family activities

1.31 The Council will also take into account access routes to and from such areas.

Layout, character and condition of premises

1.32 The Council expects premises to:

- have an external appearance which is in keeping with the locality
- prevent the display outside the premises of sexual photographs or other images
- adequate lighting to allow monitoring of all public areas
- surveillance by CCTV of all areas, including private booths.

1.33 The Council expects licence applicants to have obtained planning permission for any proposed change of use of the premises before applying for a licence. Grant of a licence does not constitute planning permission or any other approval.

Licence conditions, duration, waiver, appeal

1.34 The council may impose conditions on the grant or renewal of any licence. The council may promulgate standard conditions to apply to all applications and may also impose specific conditions. Conditions will cover, as a minimum, opening hours, displays of adverts, visibility of the interior to passers-by and restrictions on changes

of use between different types of sex establishment. The council will strive to avoid duplication with the conditions of other licences, but any such duplication is not grounds for challenge.

1.35 The Council may also impose bespoke conditions on a licence deemed necessary and appropriate.

1.36 Licences shall last for no longer than 1 year and may be granted for a shorter period.

1.37 There are no general circumstances in which the council would expect to waive the need for an application, but any such request could be considered where compelling evidence warrants consideration.

1.38 Applicants may appeal a refusal of licence or imposition of a condition to the Magistrates Court or by way of judicial review, depending on the reason for refusal. There is no right of appeal for objectors.

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