

# Public Document Pack



<b>COMMITTEE:</b>	<b>LICENSING AND REGULATORY COMMITTEE</b>
<b>DATE:</b>	<b>FRIDAY, 15 DECEMBER 2023 9.30 AM</b>
<b>VENUE:</b>	<b>ELISABETH FRINK ROOM, ENDEAVOUR HOUSE, RUSSELL ROAD, IPSWICH IP1 2BX</b>

<b>Members</b>		
<u>Conservative</u> Paul Clover Mark Newman	<u>Independent</u> Elisabeth Malvisi Alastair McCraw John Nunn  <u>Liberal Democrat</u> Lee Parker (Chair)	<u>Labour</u> Alison Owen  <u>Green</u> Leigh Jamieson (Vice-Chair) Daniel Potter Laura Smith

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## AGENDA

### PART 1

#### MATTERS TO BE CONSIDERED WITH THE PRESS AND PUBLIC PRESENT

Page(s)

- 1 **APOLOGIES FOR ABSENCE**
- 2 **DECLARATION OF INTERESTS**  
  
Members to declare any interests as appropriate in respect of items to be considered at this meeting.
- 3 **BLR/23/1 TO CONFIRM THE MINUTES OF THE MEETING HELD ON 9 DECEMBER 2022** 5 - 8
- 4 **TO RECEIVE NOTIFICATION OF PETITIONS IN ACCORDANCE WITH THE COUNCIL'S PETITION SCHEME**
- 5 **QUESTIONS FROM COUNCILLORS**
- 6 **BLR/23/2 REVIEW OF SCRAP METAL DEALERS LICENSING POLICY 2023** 9 - 36

Report from the Licensing Team

Report from the Licensing Team

**Date and Time of next meeting**

The next meeting is scheduled for Friday, 16 February 2024 at 9.30 am.

For more information about this meeting, including access arrangements and facilities for people with disabilities, please contact Committee Services on: 01473 296373 or Email: [Committees@baberghmidsuffolk.gov.uk](mailto:Committees@baberghmidsuffolk.gov.uk)

### **Introduction to Public Meetings**

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# Agenda Item 3

## BABERGH DISTRICT COUNCIL

Minutes of the meeting of the **LICENSING AND REGULATORY COMMITTEE** held in the Elisabeth Frink Room, Endeavour House on Friday, 9 December 2022 at 9.30am.

### **PRESENT:**

Councillor: Lee Parker (Chair)  
Sue Carpendale (Vice-Chair)

Councillors: Kathryn Grandon John Nunn

### **In attendance:**

Councillor(s): Elisabeth Malvisi

Officers: Licensing Projects Officer (NG)  
Corporate Manager Public Protection (TH)  
Legal Advisor (ND)  
Lead Officer Regulatory & Civic (KS)  
Lead Officer Members & Systems (MS)

### **Apologies:**

Jane Gould  
Margaret Maybury  
Mark Newman  
Adrian Osborne

## **25 DECLARATION OF INTERESTS**

1.1 There were no declarations of interest.

## **26 BLR/22/1 TO CONFIRM THE MINUTES OF THE MEETING HELD ON 10 DECEMBER 2021**

It was **RESOLVED:**

**That the minutes of the meeting held on 10 December 2021 be confirmed and signed as a true record.**

## **27 TO RECEIVE NOTIFICATION OF PETITIONS IN ACCORDANCE WITH THE COUNCIL'S PETITION SCHEME**

3.1 None received.

## **28 QUESTIONS BY COUNCILLORS**

4.1 None received.

**29 BLR/22/2 CONSULTATION OF A REVISED TABLE OF FARES FOR HACKNEY CARRIAGES**

- 5.1 Neil Gardiner, Licensing Projects Officer presented Paper BLR/22/2 to the Committee. The report referred to the consultation of a revised table of fares for hackney carriages operating in the Babergh and Mid Suffolk Districts, outlining the options under consideration and the responses received.
- 5.2 Local authorities have the power to fix the maximum rates of fares for hackney carriages within their District by virtue of section 65 of the Local Government (Miscellaneous Provisions) Act 1976.
- 5.3 The Licensing Projects Officer responded to Members questions in relation to the amended Recommendation contained in the Tabled papers and the reasons why it was not currently possible to amalgamate a new joint table of fares with Mid Suffolk.
- 5.4 Members discussed the proposed table of fares, how the tariffs were calculated, consultation with the taxi trade and responses received, and how the tariff compared to other neighbouring Local Authorities.
- 5.5 Members also discussed the differences in the way hackney carriage meters used in Babergh are calibrated compared with those used in Mid Suffolk district.
- 5.6 Councillor Grandon commented that the table of fares should be considered for review more regularly going forward.
- 5.7 Councillor Malvisi, Cabinet Member for Environment advised the Committee that the Taxi Policy would be reviewed next year.
- 5.6 Councillor Carpendale proposed Recommendation 3.1 and Recommendation 3.2 Option 2 as detailed in the Tabled Papers. Councillor Nunn seconded the proposal.

By a unanimous vote,

**It was RECOMMENDED TO CABINET:**

- 1. That a new tariff table of maximum fares be approved with the following changes:**
- i. Miles & 1/10th Mile, replacing yards.**
  - ii. Tariff 1 reverts to tariff 2 (+50%) at 22:30 hrs each day instead of 23:00 hrs.**
  - iii. Tariff 4 is shown as an extra, due to size of vehicle/time of day.**

**2. That Licensing & Regulatory Committee having considered the options contained in the report, recommend Option 2 to Cabinet to vary the tariff table of maximum fares that may be charged by Hackney Carriage proprietors using a new table – miles & 1/10th Mile:**

**ii. Increase the first mile and each 1/10th mile.**

The business of the meeting was concluded at 10.25 am.

.....  
Chair

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# Agenda Item 6

## BABERGH DISTRICT COUNCIL

<b>TO:</b> Licensing & Regulatory Committee	<b>REPORT NUMBER:</b> <b>BLR/23/2</b>
<b>FROM:</b> Licensing Team	<b>DATE OF MEETING:</b> 15 December 2023
<b>OFFICER:</b> Kate Pearsall, Licensing Team Leader Tracy Howard, Corporate Manager for Public Protection	<b>KEY DECISION REF NO.</b> N/A

### REVIEW OF SCRAP METAL DEALERS LICENSING POLICY 2023

#### 1. PURPOSE OF REPORT

- 1.1 To provide Members with information and guidance on a new draft Scrap Metal Dealers Licensing Policy attached at Appendix (a).
- 1.2 To seek Members approval of the draft policy for public consultation.

#### 2. OPTIONS CONSIDERED

- 2.1 To continue the licensing regime as it is currently, without the benefit of a policy as there is no statutory requirement to have one.
- 2.2 This option is not recommended as a policy provides an opportunity for the council to set out its approach, providing clarity for applicants, licence holders and other affected parties.

#### 3. RECOMMENDATIONS

- 3.1 That the Licensing and Regulatory Committee agree the draft policy for the purposes of consultation.
- 3.2 That the Licensing and Regulatory Committee agree a consultation period of 6 weeks with licence holders and key stakeholders.
- 3.3 That the Licensing and Regulatory Committee deem the policy approved to proceed to Cabinet if there are no representations, or objections made against the draft policy.

#### REASON FOR DECISION

The adoption of a policy supports the council's commitment to transparency, fairness and openness when determining applications and ensuring compliance with relevant legislation.

This policy will provide a framework for the process of licensing, auditing and enforcement of scrap metal dealers and collectors and ensure that the process is robust and fit for purpose.

#### **4. KEY INFORMATION**

- 4.1 In accordance with the Scrap Metal Dealers Act 2013 (SMDA), Babergh District Council, in its role as Licensing Authority, is responsible for licensing scrap metal dealers as defined within the Act.
- 4.2 Whilst there is no statutory requirement for a policy under the legislation, it is now considered appropriate to produce a single policy for both Babergh and Mid Suffolk District Councils which sets out a clear and consistent framework for the council's approach to scrap metal licensing.
- 4.3 The adoption of policy supports the council's commitment to transparency, fairness and openness when determining applications and ensuring compliance with the relevant legislation.
- 4.4 The Act and associated guidance issued by the Home Office sets out the principles that the Council must apply when exercising its powers and duties under the Act.
- 4.5 The draft policy sets out how the council proposes to exercise these powers and duties.
- 4.6 The SMDA makes it clear that the council must not issue or renew a licence unless they are satisfied that the applicant is a suitable person to carry on a business as a scrap metal dealer. The draft policy provides an opportunity to outline matters which the council will take into consideration when determining if someone is suitable to hold a licence.
- 4.7 The draft policy also gives the council an opportunity to set out how it will implement the Local Government Association's recommendations for good practice in relation to scrap metal licensing, such as carrying out compliance visits, partnership working with other agencies and intelligence sharing.
- 4.8 The policy will be reviewed as legislative changes occur and updated accordingly, ensuring it is fit for purpose. A formal review will be carried out at least every five years.

#### **5. LINKS TO CORPORATE PLAN**

- 5.1 Economy and environment – supporting the needs of businesses and attracting new businesses by providing clarity on the council's approach to the licensing of scrap metal.
- 5.2 Strong and healthy communities – the policy is a key component in tackling metal theft and so contributes to overall community safety.

#### **6. FINANCIAL IMPLICATIONS**

- 6.1 The fees are set on a cost recovery basis with the approval of the Licensing & Regulatory Committee. The council is committed to reviewing fees including those for Scrap Metal Licensing on an annual basis as part of the budget-setting process.

## 7. LEGAL IMPLICATIONS

- 7.1 The policy ensures consistency and proportionality of approach, and it is considered that the Council would be far less likely to be open to legal challenge where a policy is adopted which clearly sets out how applications will be considered, reasons for refusal and our approach to enforcement.

## 8. RISK MANAGEMENT

- 8.1 Key risks are set out below:

Key Risk Description	Likelihood 1-4	Impact 1-4	Key Mitigation Measures	Risk Register and Reference*
Legal Challenge Reputation	2	2	Policy ensures consistency and proportionality of approach and it is considered that the Council would be far less likely to be open to legal challenge where a policy is adopted which clearly sets out how applications will be considered, reasons for refusal and out approach to enforcement	Public Protection Operational Risk Register for Service Planning 2023/24 Reference 016

## 9. CONSULTATIONS

- 9.1 Should the Committee approve the draft policy for consultation, a period of six weeks is proposed for consultation. Appendix (b) lists the consultees. The draft policy will also be available on the council's website. Hard copies will be available on request.

## 10. EQUALITY ANALYSIS

- 10.1 Equality Impact Assessment (EIA) is not required. An Equality Impact Assessment Initial Screening Form was completed which concluded that there was no need to produce a full EIA.

## 11. ENVIRONMENTAL IMPLICATIONS

- 11.1 There are no environmental implications.

## 12. APPENDICES

Title	Location
(a) Draft Policy	Attached
(b) List of Consultees	Attached

### **13. BACKGROUND DOCUMENTS**

- 13.1 Scrap Metal Dealers Act 2013 - [Scrap Metal Dealers Act 2013 \(legislation.gov.uk\)](#)
- 13.2 Scrap Metal Dealers Act 2013 (Prescribed Documents and Information for Verification of Name and Address) Regulations 2013 - [The Scrap Metal Dealers Act 2013 \(Prescribed Documents and Information for Verification of Name and Address\) Regulations 2013 \(legislation.gov.uk\)](#)
- 13.3 Scrap Metal Dealers Act 2013 (Prescribed Relevant Offences and Relevant Enforcement Action) Regulations 2013 - [The Scrap Metal Dealers Act 2013 \(Prescribed Relevant Offences and Relevant Enforcement Action\) Regulations 2013 \(legislation.gov.uk\)](#)
- 13.4 Scrap Metal Dealers Act 2013 (Commencement and Transitional Provisions) Order 2013 - [The Scrap Metal Dealers Act 2013 \(Commencement and Transitional Provisions\) Order 2013 \(legislation.gov.uk\)](#)
- 13.5 Scrap Metal Dealers Act 2013: Determining suitability to hold a scrap metal dealer's licence - [Determining suitability to hold a scrap metal dealer's licence - GOV.UK \(www.gov.uk\)](#)
- 13.6 Scrap Metal Dealers Act 2013: Supplementary Guidance - [Scrap Metal Dealers Act 2013: supplementary guidance - GOV.UK \(www.gov.uk\)](#)

### **14. REPORT AUTHORS**

Kate Pearsall – Licensing Team Leader

Tracy Howard – Corporate Manager for Public Protection

# SCRAP METAL LICENSING POLICY

2024-2029



[www.babergh.com](http://www.babergh.com)

[www.midsuffolk.com](http://www.midsuffolk.com)

## Appendix A

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### 1. Introduction

1.1 Metal theft over the last few years has had a significant impact upon our communities, businesses, and local authorities. Such thefts have seen communications and the train networks disrupted, as well as significant costs to local authorities in relation to stolen drainage gully covers and stolen road signs.

The Scrap Metal Dealers Act 2013 (SMDA) has been introduced to address these issues, ensuring that the sale, collection, storage, and disposal of scrap metal, is carried out lawfully.

1.2 This policy outlines the requirements of the SMDA. It also provides guidance to new applicants, existing licence holders and members of the public as to how the council will undertake its role in the administration and enforcement of the act.

1.3 Babergh and Mid Suffolk District Councils (the licensing authority) may depart from its own policy if individual circumstances warrant such a deviation.

1.4 The council has consulted widely in the formulation of this policy, including the following:

- Suffolk Constabulary
- Environment Agency
- Babergh and Mid Suffolk District Councils' Environmental Protection
- All current licence holders
- British Metals Recycling Association
- British Vehicle Salvage Federation
- Vehicles Recyclers Association
- Suffolk Fire and Rescue Service
- Babergh and Mid Suffolk District Councils' Legal Services
- Babergh and Mid Suffolk District Councils' Health & Safety Officer
- Babergh and Mid Suffolk District Councils' Planning Service
- Local residents and businesses

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1.5 To ensure the policy remains fit for purpose, it will be reviewed as legislative changes occur and updated accordingly, with a formal review being carried out at least every 5 years. We may make minor amendments to this policy, with the agreement of the Chairperson of the Licensing & Regulatory Committee, Cabinet Member for Licensing and the Corporate Manager for Licensing.

## 2. Background

2.1 The SMDA received Royal Assent on 28<sup>th</sup> February 2013 and came into force on 1 October 2013, with its enforcement powers subsequently coming into force on 1 December 2013. It repeals previous legislation and creates a new regulatory regime for scrap metal recycling and vehicle dismantling.

2.2 The SMDA aims to raise standards across the scrap metal industry by:

- Requiring dealers to keep detailed and accurate records of transactions.
- Requiring dealers to verify the identity of those selling metal to them.
- Prohibition of cash payments for scrap metal.

2.3 A person carries on business as a scrap metal dealer if the person:

- (a) carries on a business which consists wholly or partly in buying or selling scrap metal, whether or not the metal is sold in the form in which it was bought, or
- (b) carries on business as a motor salvage operator (so far as that does not fall within paragraph (a))

2.4 This does not include manufacturing operations that sell metal as a by-product of the operation or because it has a surplus of materials. However, it does include the business of collecting scrap metal, i.e., door to door collectors.

2.5 The SMDA identifies local authorities as the principal regulator and gives them powers to regulate, refuse and revoke licences.

2.6 The SMDA states that “scrap metal” includes:



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- (a) Any old, waste, or discarded metal or metallic material, and
- (b) Any product, article or assembly which is made from or contains metal and is broken, worn out or regarded by its last holder as having reached the end of its useful life.

2.7 The following is not considered to be “scrap metal”:

- Gold
- Silver, and
- Any alloy of which two per cent or more by weight is attributable to gold or silver.

### 3. Types of Licence

3.1 For anyone to carry on a business as a scrap metal dealer, or collector they must have a licence. A licence is valid for three years from the date of issue. Trading without a licence is a criminal offence.

3.2 There are two types of licences specified in the Act:

#### Site Licence

A site is defined as any premises used in the course of carrying on business as a scrap metal dealer (whether or not metal is kept there). This means a dealer will require a licence for an office, even if they do not operate a metal store or yard from those premises.

This includes motor salvage operations which carries on a business which consists:

- (a) Wholly or partly in recovering salvageable parts from motor vehicles for re-use or sale and subsequently selling or otherwise disposing of the rest of the vehicle for scrap,
- (b) Wholly or mainly in buying written-off vehicles and subsequently repairing and reselling them,
- (c) Wholly or mainly in buying or selling motor vehicles which are to be the subject (whether immediately or on a subsequent re-sale\_ of any of the activities mentioned in paragraphs (a) or (b), or

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(d) Wholly or mainly in activities falling within paragraphs (b) or (c).

Skip hire companies may require a site licence depending on the circumstances. A company engaging in the buying or selling of scrap metal is likely to require a licence from the council unless the activity is considered a minimal or minor part of the business.

It is important to note that any person, agent, broker, or trader that buys or sells metal on paper/online without operating a physical scrap metal site is carrying on business as a scrap metal dealer and will require a licence.

Depending on the location of the site, Babergh or Mid Suffolk District Council is responsible for granting licences to any site located within the council's boundaries. All of the sites within the council's area from which the licence holder carries on the business as a scrap metal dealer must be identified. A site manager must be named for each site. A site licence holder can transport scrap metal from third party businesses by arrangement from any other local council area provided it is in the course of business from that site but cannot engage in the regular door to door collections of a licensed collector.

The site licence shall include the following:

- Name of the licensee
- Trading name
- Name of the authority (Babergh or Mid Suffolk District Council)
- All the sites in the authority's area at which the licensee is authorised to carry on business,
- Name of the site manager of each site,
- The date on which the licence is due to expire.

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### Collector's Licence

A collector is defined as a person who carries on a business as a scrap metal dealer otherwise than at a site, and regularly engages in the course of that business in collecting waste metal including old, broken, worn out or defaced articles by means of door-to-door collections. Scavenging for metal can be classed as making door to door collections.

The licence allows the holder to collect scrap metal within the area of the issuing local authority, (Babergh or Mid Suffolk District Council). The licence does not permit the holder to operate a scrap metal site, nor does it allow collection outside of the area of the issuing authority. If a person collects scrap from numerous local authority areas, a collector's licence will be required from each local authority they collect scrap within.

A mobile collector cannot store scrap metal at a premises. However, in the course of a collection, it is common practice for collectors to wait for their vehicle to be at capacity before unloading it at a scrap metal dealer's site. Babergh and Mid Suffolk Councils do not consider the storage of scrap metal on the collector's vehicle to render the premises the vehicle is stored at as a site, provided the vehicle is not unloaded at that location.

Those transporting metal to a scrap metal site for profit are required to be registered as a 'waste carrier'. Waste carriers must ensure that the waste goes to a properly licensed or exempt site; they must complete a waste transfer note which must include a description of the waste and be signed by the carrier and the person to whom the waste is given or sold. Details of licensed sites can be checked on the Environment Agency public register.

- 3.3 A dealer can only hold ONE type of licence in any one local authority area. They cannot hold both a site and mobile collectors' licence with one authority.

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### 4 Suitability of Applicant

- 4.1 The SMDA is clear that the council has to be satisfied that an applicant is a suitable person to carry on the business as a scrap metal dealer.
- 4.2 The council may have regard to any information which it considers to be relevant, this may include:
- (a) Whether the applicant or site manager has been convicted of any relevant offence; or
  - (b) Whether the applicant or site manager has been the subject of any relevant enforcement action; or
  - (c) Whether there has been any refusal of an application of the issue or renewal of a scrap metal licence, and the reasons for the refusal; or
  - (d) Whether there has been any refusal of an application for a relevant environmental permit or registration, and the reasons for the refusal; or
  - (e) If there has been any previous revocation of a scrap metal licence, and the reasons for the revocation; or
  - (f) Whether the applicant has demonstrated there will be adequate procedures in place to ensure compliance with the Act.
- 4.3 When establishing the applicant's suitability, the council may consult with the appropriate agencies.
- 4.4 Relevant offences or relevant enforcement action are those listed under the Scrap Metal Dealers Act 2013 (Prescribed Relevant Offences and Relevant Enforcement Action) Regulations 2013. [The Scrap Metal Dealers Act 2013 \(Prescribed Relevant Offences and Relevant Enforcement Action\) Regulations 2013 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukdsi/2013/0001/eng/schedules/sch-1)
- 4.5 Each application will be considered and determined on its own merits and on a case-by-case basis, having taken into consideration this policy and any statutory requirements and other relevant information.

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- 4.6 In accordance with the council's scheme of delegations, decisions relating to scrap metal licensing are made by authorised officers.

### 5 Supply of Information by the Authority

- 5.1 The council has a duty to pass on information in relation to an application for, or relating to a scrap metal licence when requested by;
- (a) Any other local authority;
  - (b) The Environment Agency; or
  - (c) An officer of a police force.

This does not limit any other power the authority has to supply that information.

### 6 Register of Licences

- 6.1 The Environment Agency will maintain a register of scrap metal licences issued by all local authorities in England. The register will include the following information:
- (a) name of the authority which issued the licence;
  - (b) the name of the licensee;
  - (c) any trading name of the licensee;
  - (d) the address of the site identified on the licence;
  - (e) the type of licence, and
  - (f) the date of expiry on the licence.

The register will be open for inspection by members of the public.

### 7 Display of Licence

- 7.1 Once granted, a copy of the licence must be displayed at each site identified on the licence, in a prominent place accessible to members of the public.
- 7.2 A copy of a collector's licence must be displayed on any vehicle that is being used during a dealer's business. It must be affixed to the rear of the vehicle. If a collector has multiple vehicles there will be an additional charge for each extra plate.

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- 7.3 A mobile collector and site manager must also have with them the prescribed form of identity available for inspection at all times that they are carrying out activities under the SMDA.

### 8 Verification of Supplier's Identity

- 8.1 Before receiving scrap metal, the dealer must verify a person's full name and address, by reference to documents or data from a reliable and independent source e.g. driver's licence, utility bill, council tax bill or bank statement.
- 8.2 In the course of collecting door to door, it may not be possible for a mobile collector to verify the name and address of the supplier if the waste materials are old, broken, worn out or defaced articles have been left on the roadside.
- 8.3 A mobile collector shall record the description of the metal, including its type (or types if mixed), form, condition, weight, and any marks identifying previous owners or other distinguishing features and the date and time of its receipt.
- 8.4 If suitable verification is not obtained the scrap metal dealer, or site manager, or person who has been delegated responsibility shall be guilty of an offence.

### 9 Payment for Scrap Metal

- 9.1 From 1 October 2013, cash cannot be used by any scrap metal dealer to buy scrap metal. It is an offence to buy scrap metal for cash under section 12 of the Act and there are no exceptions. Only payment by a non-transferable cheque or an electronic transfer of funds will be acceptable. This will mean that the payment will be linked to a readily identifiable account, for both the payee and the payer.

### 10 Records

- 10.1 The scrap metal dealer must keep three types of records:
- (a) Receipt of Metal
  - (b) Dispose of Metal
  - (c) Supplementary

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### 10(a) Receipt of Metal

10.2 If metal is received in the course of the dealer's business, the following must be recorded:

- (a) Description of the metal, including its types (types if mixed), form, condition, weight and any marks identifying previous owners or other distinguishing features;
- (b) Date and time of receipt
- (c) The registration mark of the vehicle it was delivered by;
- (d) Full name and address of the person delivering it, and
- (e) Full name of the person making payment on behalf of the dealer.

10.3 The dealer must keep a copy of the documents used to verify the delivery person's name and address.

10.4 If payment is by cheque a copy of the cheque must be retained.

10.5 If payment is by electronic transfer a receipt identifying the transfer must be retained, or the details of the transfer.

### 10(b) Disposal of Metal

10.6 Disposal under the Act covers metal:

- (a) Whether or not it is in the same form when it was purchased;
- (b) Whether or not it is to another person; or
- (c) Whether or not it is dispatched from a site

10.7 Disposal records must be recorded, including:

- (a) Description of the metal, including its type (types if mixed), form, weight
- (b) Date and time of disposal;
- (c) If to another person, their full name and address, and
- (d) If payment is received for the metal (sale or exchange) the price or other consideration received.

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10.8 If disposal is in the course of business conducted under a collector's licence, the dealer must record:

- (a) Date and time of disposal, and,
- (b) If to another person, their full name and address.

### 10 (c) Supplementary

10.9 The information collected during receipt and disposal must be recorded in such a manner that allows the information and the metal to which it relates to be easily identified.

10.10 The records of receipt must be marked to identify the metal to which they relate.

10.11 Records must be kept for a period of 3 years beginning on the day of receipt, or disposal (as may be).

10.12 If suitable records for the receipt or disposal of scrap metal are not kept, then the scrap metal dealer, or site manager, or person who has been delegated responsibility by the dealer or site manager for keeping records, shall be committing an offence.

10.13 A dealer or site manager may have a defence if they can prove arrangements had been made to ensure the requirement to keep records was fulfilled, or that they took all reasonable steps to ensure those arrangements were complied with.

### 11 Right of Entry & Inspection

11.1 An authorised officer of the council may enter and inspect a licensed site at any reasonable time, otherwise than on notice to the site manager if:

- (a) Reasonable attempts to give notice had been given or
- (b) Entry to the site is reasonably required for the purpose of ascertaining whether the provisions of the Act are being complied with or investigating offences under it, and, in either case, the giving of the notice would defeat that purpose.



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11.2 An authorised officer of the council is not entitled to use force to enter a premises, but may ask a justice of the peace to issue a warrant authorising entry, if they are satisfied there are reasonable grounds for entry to the premises is reasonably required for the purpose of:

- (a) Securing compliance with the provisions of the Act, or
- (b) Ascertaining whether those provisions are being complied with.

11.3 'Premises' under this section include:

- (a) Licensed site, or
- (b) Premises that are not licensed, but there are reasonable grounds for believing the premises are being used as scrap metal dealing business.

11.4 An authorised officer of the council may use reasonable force in the exercise of the powers under a warrant issued by the justice of peace, refer to point 11.2 of this policy.

11.5 An authorised officer of the council may require:

- (a) Production of, and inspect, any scrap metal kept at any licensed premises, and
- (b) Require production of, and inspect, any records kept in respect of receipt and disposal of metal, and
- (c) To take copies of or extracts from any such record.

11.6 An authorised officer of the council must produce evidence of their identity, and evidence of their authority to exercise these powers, if requested by the owner, occupier, or other person in charge of the premises.

## 12 Application Procedure

12.1 An application form, available from the relevant council's website or from the licensing team must be completed, together with the correct fee and a current Basic Disclosure of Criminal Convictions. A Basic Disclosure will be valid for 3 months from the date of issue.

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12.2 A licence once granted is valid for 3 years.

12.3 A renewal application must be received before the expiry of the current licence.

12.4 If a licence renewal application is refused, the licence expires when no appeal is possible, or no appeal is determined or withdrawn.

12.5 A licence may be varied from one type to another, i.e., site licence to collector's licence.

A variation application must be made to reflect changes to:

- (a) Name of licensee, site manager, or sites on a site licence, or
- (b) Name of licensee on a collector's licence.

A variation cannot be used to transfer the licence to another person, only to amend the name of a licensee. Application to vary must be made to the issuing authority.

12.6 When a renewal application is received prior to the expiry date of the licence, the licence continues in effect unless the application is subsequently withdrawn, and then the licence will expire on the day in which the application was withdrawn.

12.7 The council may request additional information is provided for the consideration of the application. Failure to provide such information may result in the application being refused.

12.8 The fee is set by the council under the guidance issued by the Home Office with the approval of the Licensing & Regulatory Committee.

12.9 Fees are set after considering the cost of processing, administering and compliance costs associated with the licence. The council is committed to reviewing fees on a regular basis.

12.10 If the council proposes to refuse an application, or to revoke, or to vary a licence by imposing conditions, a notice must be issued to the licence holder setting out the

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council's proposals and the reasons for their decision. The notice will indicate the time in which the applicant or licensee can either:

- (a) make representation about the proposal, or
- (b) Inform the council that the applicant or licensee wishes to do so.

The council will stipulate a period of 21 days for representations or intentions to be received.

- 12.11 If the applicant or licensee does not make representation or notify the council that they wish to do so, the council may refuse, revoke, or vary the licence.
- 12.12 If a notification is received that the applicant or licensee wishes to make representation, the council must allow a reasonable period for them to make their representation. The council will allow 21-days for written representations to be received from the date the application becomes contested, or the council receives notification of the applicant having a relevant offence. The applicant or licensee may wish to make an oral representation; if this is the case the person must notify the council within the 21-day period.
- 12.13 If this period lapses, without a written representation, or a request for an oral representation being received, the council may refuse, revoke or vary the licence.
- 12.14 Where there is a representation, a hearing will be arranged within 28 days, and the case will be presented before a panel of the Licensing and Regulatory Committee. The applicant or licensee will be invited to attend. The council will give at least 10 working days' notice of the date and time of the hearing to the applicant or licensee.
- 12.15 In the event of a refusal of an application, revocation or variation of a licence, notice outlining the council's decision and the reasons for it will be given to the applicant/licensee. The notice will include the appeal procedure.

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### 13 Revocation and Imposing Conditions

- 13.1 The council may revoke a scrap metal licence if it is satisfied the licence holder does not carry on a scrap metal business at any of the sites named on the licence.
- 13.2 The council may revoke a scrap metal licence if it is satisfied the site manager named on the licence does not act as a site manager at any of the named sites on the licence.
- 13.3 The council may revoke a scrap metal licence if it is no longer satisfied the licence holder is a suitable person to carry on the business.
- 13.4 If the licence holder, or site manager named on a licence is convicted of a relevant offence, the authority may impose one or both of the following conditions:
- (a) The dealer must not receive scrap metal except between 9am and 5pm on any day.
  - (b) All scrap metal received must be kept in the form in which it was received for a specified period, not exceeding 72 hours, beginning with the time when it was received.
- 13.5 A revocation or variation only comes into effect when no appeal under the Act is possible, or when such appeal has been determined or withdrawn.
- 13.6 If the authority considers the licence should not continue without the addition of one or more of the conditions in section 14.4 of this policy, the licence holder will be given notice:
- (a) that, until a revocation comes into effect, the licence is subject to one or both conditions, or
  - (b) that a variation comes into immediate effect.

### 14 Appeals

- 14.1 An applicant may appeal to the Magistrates' Court against a refusal of an application or variation.

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- 14.2 The licensee may appeal to the Magistrates' Court against the inclusion on the licence of a condition under Section 3(8) of the Act, or a revocation or variation of a licence under Section 4 of the Act.
- 14.3 The appeal procedure will be in accordance with the Magistrates' Courts Act 1980 and must be lodged within 21 days of receipt of the decision notice.
- 14.4 On appeal the Magistrates' Court may confirm, vary or reverse the council's decision, and give such directions as it considers appropriate having regards to the provisions of the Act.

### 15 Closure of Unlicensed Sites

- 15.1 If an authorised officer of the council is satisfied premises are being used by a scrap metal dealer in the course of their business and the premises are unlicensed, they may issue a closure notice.
- 15.2 A copy of the notice must be given to:
- (a) a person who appears to be the site manager, and
  - (b) any person who appears to be a director, manager, or other officer of the business.
- 15.3 A copy may also be given to any person who has an interest in the business, a person who occupies part of the premises, or where the closure may impede a person's access to that other part of the premises.
- 15.4 After a period of 7 days, the authorised officer may apply to a justice of the peace for a closure order. The court must be satisfied the premises will continue to be used by a scrap metal dealer, or there is a reasonable likelihood that the premises will be.
- 15.5 A closure order may close the premises immediately, and the premises may remain closed to the public until the council makes a termination of closure order by certificate. The scrap metal dealer may be required to cease business

## Appendix A

immediately. It may require the defendant to pay a sum into the court, which shall not be released until the person has complied with the requirements of the order.

- 15.6 Such an order may have a condition relating to the admission of people into the premises or may include a provision the court considers appropriate.
- 15.7 A copy of the order must be placed on the premises in a prominent position by the council.
- 15.8 Once the requirements of the order have been complied with and the council is satisfied the need for the order has ceased, a certificate may be made. This ceases the order and the sum of money paid into the court is released.
- 15.9 A copy of the certificate must be given to any person the closure order was made against, give a copy to the court, and place a copy on the premises.
- 15.10 A copy must be given to anyone who requests one.
- 15.11 Anyone issued with a closure order may make representation to a justice of the peace. The court may discharge the order, if it is satisfied there is no longer a need for a closure order.
- 15.12 The licensing authority may be required by the court to attend and answer the representation made.
- 15.13 Notice of the hearing must be given to all people issued with the closure order.
- 15.14 Appeal may be made to the Crown Court against:
- (a) a closure order;
  - (b) a decision not to make a closure order;
  - (c) a discharge order; or
  - (d) a decision not to make a discharge order.

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15.15 Any appeal must be lodged within 21 days beginning on the day on which the order or decision was made.

15.16 Appeal a) and b) may be made by any person who was issued with an order.

15.17 Appeal c) and d) may be made by the Licensing Authority.

15.18 A person is guilty of an offence, if they allow the premises to be open in contravention of a closure order, without reasonable excuse, or fails to comply with, or contravenes a closure order.

15.19 An authorised officer of the authority may enter the premises at any reasonable time to ensure compliance with the order. They may use reasonable force if necessary.

15.20 An authorised officer must produce evidence of their identity or evidence of their authority to exercise the powers under the Act, if requested to do so.

### 16. Delegation of Functions

16.1 Where there are uncontested applications, or where there are no questions about the suitability of the applicant the determination should be dealt with by the council's licensing officers.

16.2 Contested applications where there is relevant information from any of the consultees, or queries regarding an applicant's suitability, revocation of a licence or the imposition of conditions will be presented to the Licensing and Regulatory Committee.

16.3 Table 1 below outlines the Delegation of Functions.

Table 1. Delegation of Functions			
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Matter to be dealt with	Licensing and Regulatory Committee	Corporate Manager or Team Leader	Officers
Determination of policies and strategies		All cases	Officers
New or renewal application	All cases where there are unspent relevant convictions or contested cases following receipt of information from other statutory bodies		All cases where there are no unspent relevant convictions or where cases are uncontested
Variation of licence by imposition of conditions following licence holder or site manager being convicted of a relevant offence			All cases
Revocation of licence	All cases	Some cases if urgent decision required	
Variation of licence under schedule 1/section 3			All cases

### 17 Enforcement

17.1 In order to ensure compliance with the legislation and any conditions imposed, premises will be inspected using a risk-based approach.



## Appendix A

17.2 The council will work with partner agencies to ensure that the provisions of the Act are complied with. Non-compliance may result in enforcement action being taken.

17.3 Appropriate enforcement action will be taken in accordance with the legislation, any guidance issued under that legislation and the council's enforcement policy.

### 18. Offences & Penalties

18.1 The following paragraphs are indicative of the general offences and penalties.

Independent legal advice should be sought for individual cases.

18.2 Offence relating to scrap metal dealing are described below under the relevant legislation.

18.3 Table of Offences -Scrap Metal Dealers Act 2013

Section	Offence	Maximum Penalty
1	Carrying on the business as a scrap metal dealer without a licence	Level 5
8	Failure to notify the authority of any changes to details given within the application	Level 3
10	Failure to display site licence or collectors' licence	Level 3
11 (6)	Receiving scrap metal without verifying persons full name and address	Level 3
11 (7)	Delivering scrap metal to a dealer and giving false details	Level 3
12 (6)	Buying scrap metal for cash	Level 5
13	Failing to keep records regarding receipt of metal	Level 5

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14	Failing to keep records regarding disposal of metal	Level 5
15 (1)	Failure to keep records which allow the information and the scrap metal to be identified by reference to one another	Level 5
15 (2)	Failure to keep copy document used to verify name and address of person bringing metal, or failure to keep a copy of cheque issued	Level 5
15 (3)	Failure to keep information and records for 3 years	Level 5
16	Obstruction to right of entry and failure to produce records	Level 3

18.4 Where an offence under the Act is committed by a corporate body and is proved

- (a) To have been committed with the consent or connivance of a director, manager, secretary or similar officer, or
- (b) To be attributable to any neglect on the part of any such individual, the individual as well as the body corporate is guilty of the offence and liable to prosecution and receive the appropriate penalty.

18.5 Where the affairs of the body corporate are managed by its members, any acts or omissions committed by that member will be treated as though that member were a director of the body corporate.

## Appendix B

All current licence holders	Parish / Town Councils
Environment Agency Legal Services Horizon House Deanery Road Bristol BS1 5AH <a href="mailto:LegalSupport@environment-agency.gov.uk">LegalSupport@environment-agency.gov.uk</a>	Mid Suffolk & Babergh Environmental Protection Endeavour House 8 Russell Road Ipswich IP1 2BX <a href="mailto:Environmental@baberghmidsuffolk.gov.uk">Environmental@baberghmidsuffolk.gov.uk</a>
Mid Suffolk & Babergh Health and Safety Endeavour House 8 Russell Road Ipswich IP1 2BX <a href="mailto:healthandsafety@baberghmidsuffolk.gov.uk">healthandsafety@baberghmidsuffolk.gov.uk</a>	Suffolk Fire & Rescue Service Endeavour House 8 Russell Road Ipswich IP1 2BX <a href="mailto:fire.admin@suffolk.gov.uk">fire.admin@suffolk.gov.uk</a>
Mid Suffolk & Babergh Legal Services Endeavour House 8 Russell Road Ipswich IP1 2BX <a href="mailto:legal.services@westsuffolk.gov.uk">legal.services@westsuffolk.gov.uk</a>	Mid Suffolk & Babergh Planning Service Endeavour House 8 Russell Road Ipswich IP1 2BX <a href="mailto:planning@baberghmidsuffolk.gov.uk">planning@baberghmidsuffolk.gov.uk</a>
British Metal Recycling Association 5 Ramsay Court Hinchingsbrooke Business Park Huntingdon Cambs PE29 6FY <a href="mailto:admin@recyclemetals.org">admin@recyclemetals.org</a>	Suffolk Constabulary Police Headquarters Martlesham Heath Ipswich IP5 3QS <a href="mailto:PoliceAlcoholLicensing@suffolk.pnn.police.uk">PoliceAlcoholLicensing@suffolk.pnn.police.uk</a>
British Vehicle Salvage Federation Chapel House Canterbury Road Brabourne Lees Ashford Kent TN25 6QS <a href="mailto:email@bvsvf.org.uk">email@bvsvf.org.uk</a>	Vehicles Recyclers Association PO Box 8409, Derby, DE1 9FR <a href="mailto:info@vrauk.org">info@vrauk.org</a>

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# Agenda Item 7

## BABERGH DISTRICT COUNCIL

<b>TO:</b> Licensing & Regulatory Committee	<b>REPORT NUMBER:</b> <b>BLR/23/3</b>
<b>FROM:</b> Licensing Team	<b>DATE OF MEETING:</b> 15 December 2023
<b>OFFICER:</b> Kate Pearsall, Licensing Team Leader Tracy Howard, Corporate Manager for Public Protection	<b>KEY DECISION REF NO.</b> N/A

### REVISION OF LICENSING OF SEX ESTABLISHMENTS POLICY 2024-2029

#### 1. PURPOSE OF REPORT

- 1.1 To provide members with information and guidance on a revised version of a single policy for the Licensing of Sex Establishments, attached at Appendix (a). This policy will be applicable to both Babergh and Mid Suffolk.
- 1.2 To seek member approval of the draft policy for public consultation.

#### 2. OPTIONS CONSIDERED

- 2.1 To make no changes to the current policy.
- 2.2 This option is not recommended as to ensure the policy is effective and reflects best practices and procedures across both Babergh and Mid Suffolk, it is important to review and amend as appropriate.

<b>3. RECOMMENDATIONS</b>
3.1 That the Licensing and Regulatory Committee agree the draft policy for the purposes of consultation.
3.2 That the Licensing and Regulatory Committee agree a consultation period of 6 weeks with licence holders and key stakeholders.
3.3 That the Licensing and Regulatory Committee deem the policy approved to proceed to Cabinet if there are no representations, or objections made against the draft policy.
<b>REASON FOR DECISION</b>
To ensure that the Licensing Authority has a single up-to-date policy to deal with applications and licences for sex establishments under the Local Government (Miscellaneous Provisions) Act 1982 (As amended by Section 27 of the Policing and Crime Act 2009).

#### **4. KEY INFORMATION**

- 4.1 The Policing and Crime Act 2009 amended the Local Government (Miscellaneous Provisions) Act 1982 Schedule 3 to introduce a new classification of sex establishment, namely sexual entertainment venues.
- 4.2 This brought a new licensing regime into force for lap dancing, pole dancing and other 'relevant entertainment' and allows the council to improve the regulation of sexual entertainment venue as there are increased powers to control numbers and the location of venues in the area.
- 4.3 Babergh Council adopted the existing policy on 14<sup>th</sup> June 2012, attached at Appendix (b).
- 4.4 The policy has not been reviewed since this date and it is now considered appropriate to produce a single policy for both Babergh District Council and Mid Suffolk District Council. Minor amendments have also been made to ensure the policy reflects legislative changes.

#### **5. LINKS TO CORPORATE PLAN**

- 5.1 Economy – Supporting the needs of new businesses by providing clarity on the council's approach to the licensing of sex establishments.
- 5.2 Environment – the policy is a key component in ensuring that any potential sex establishments are positioned in suitable locations to ensure there are no negative impacts on the environment.
- 5.3 Community – the policy is a key component in ensuring that any potential sex establishments do not have a negative impact on the community and that safeguarding measures are in place to protect overall community safety.

#### **6. FINANCIAL IMPLICATIONS**

- 6.1 The fees are set on a cost recovery basis with the approval of the Licensing & Regulatory Committee. The council is committed to reviewing fees including those for sexual entertainment licensing on an annual basis as part of the budget-setting process.

#### **7. LEGAL IMPLICATIONS**

- 7.1 This policy ensures consistency and proportionality of approach and should be treated as a live document. The proposed changes ensure that the policy remains up to date and reflects current legislation and best practices, thereby ensuring that the council would be far less likely to be open to legal challenge.

## 8. RISK MANAGEMENT

8.1 Key risks are set out below:

Key Risk Description	Likelihood 1-4	Impact 1-4	Key Mitigation Measures	Risk Register and Reference*
Legal Challenge Reputation	2	2	Reviewing and ensuring policies are up to date and reflect correct legislation.	Public Protection Operational Risk Register for Service Planning 2023/24 Reference 016

## 9. CONSULTATIONS

9.1 Should the Committee approve the draft policy for consultation, a period of six weeks is proposed for consultation. Appendix (c) lists the consultees. The draft policy will also be available for all on the Council's website.

## 10. EQUALITY ANALYSIS

10.1 An Equality Impact Assessment (EIA) was completed when the policy was first adopted in 2012. There have been no major amendments to the content of the policy other than to produce one single policy and update the wording to reflect this. An Equality Impact Assessment Initial Screening Form was completed which concluded that there was no need to produce a full EIA.

## 11. ENVIRONMENTAL IMPLICATIONS

11.1 Amenity: The legislation and policy allow for a licence to be refused if the grant or renewal would be inappropriate having regard to:

- the character of the relevant locality; or
- the use to which any premises in the vicinity are put; or
- the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.

Appropriate, responsible and proportionate conditions can be added to a licence which can address any potential environmental implications.

## 12. APPENDICES

Title	Location
(a) Draft Policy	Attached
(b) Current Policy	Attached
(c) List of Consultees	Attached

### **13. BACKGROUND DOCUMENTS**

13.1 Local Government (Miscellaneous Provisions) Act 1982 [Local Government \(Miscellaneous Provisions\) Act 1982 \(legislation.gov.uk\)](#)

13.2 Police and Crime Act 2009 [Policing and Crime Act 2009 \(legislation.gov.uk\)](#)

### **14. REPORT AUTHORS**

Kate Pearsall – Licensing Team Leader

Tracy Howard – Corporate Manager for Public Protection





# Sex Establishment Licensing Policy

2024-2029

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### About this Licensing Policy:

- The purpose of this policy is to provide a clearly outlined procedure and provide a framework that supports the decisions the council makes on the operation, administration, and licensing of sex establishments within the jurisdiction of the Babergh and Mid Suffolk Districts in accordance with the provisions outlined in the Local Government (Miscellaneous Provisions) Act 1982, as amended by the Policing and Crime Act 2009.
- This policy seeks to promote equality, diversity and inclusion while providing transparent, fair, and accountable guidelines for the licensing and functioning of sex establishments.
- The aim of this policy is to actively include and consult with relevant stakeholders, such as residents, businesses, community groups, and sex establishment operators, to achieve a thorough and inclusive approach to policy development and implementation.
- This policy gives an overview of the administrative process for licensing sex establishments, including premises' locations. It also includes the council's conditions for sex establishments for licenced premises in Babergh and Mid Suffolk Districts.
- This policy document also outlines the criteria the council will be guided by when assessing the suitability of the applicant(s)/operator, which is linked into the application process and based around the grounds for refusal specified by paragraph 12 of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982.
- To ensure the policy remains proportionate, it will be reviewed as legislative changes occur and updated accordingly, with a formal review being carried out at least every 5 years. We may make minor amendments to this policy without the need for consultation, with the agreement of the Chairperson of the Licensing & Regulatory Committee, Cabinet Member for Licensing and the Corporate Manager for Licensing.

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### **1. The Appropriate Authority**

- 1.1. The 'Appropriate Authority' is responsible for determining applications for sex establishment licences. For the purposes of the 1982 Act 'Appropriate Authority' means Mid Suffolk or Babergh District Council which have both passed a resolution under section 2 of that Act to adopt Schedule 3 in its area.

### **2. Committee or Sub-Committee (delegation of functions)**

- 2.1. Functions under Schedule 3 are the responsibility of Mid Suffolk and Babergh District Council's Full Council. Under section 101 of the Local Government Act 1972, local authorities may arrange for the discharge of these responsibilities by a committee or panel of the appropriate Authority.
- 2.2. With the exception of policy setting, which is set by the Cabinet upon recommendation from Licensing Committee, Mid Suffolk and Babergh District Council has delegated its functions under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 to its Licensing Committee - as set up to discharge licensing functions under the Licensing Act 2003. However, when dealing with an application for a sex establishment licence, the Members of the committee are not acting as the Licensing Committee under the 2003 Act and are instead exercising their functions under Schedule 3 of the 1982 Act. The Licensing Committee may establish a Panel for the purpose of determining individual applications.

### **3. Definition of Sexual Establishments**

- 3.1. The legislation has classified a sex establishment as comprising 'sex shop', 'sex cinema' and 'sexual entertainment venue'.

#### **Sex shops**

- 3.2. A sex shop is defined as any business which can be a premises, vehicle, vessel, or stall that primarily deals with selling, hiring, exchanging, lending, displaying, or demonstrating provision, or distribution of products, materials, or services related to relevant articles.
- 3.3. Relevant articles comprise of sex articles or acts of force or restraint associated with sexual activity and other things intended for the purpose of stimulating or encouraging sexual activity.

#### **Sex cinemas**

- 3.4. A sex cinema is defined as premises used to a significant degree for the exhibition of moving pictures concerned primarily with relevant images.
- 3.5. Relevant material must deal primarily and not in part with;
  - sexual activity; or
  - acts of force or restraint which are associated with sexual activity;Or

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- are concerned primarily with the portrayal of, or primarily deals with or relate to, genital organs or urinary or excretory functions.

A sex cinema does not include dwelling-houses to which the public is not admitted.

### Sex entertainment venues (SEVs)

- 3.6. Section 27 of the Policing and Crime Act 2009 introduced a new category of sex establishment called 'sexual entertainment venue'.
- 3.7. A 'sexual entertainment venue' is defined as premises where relevant entertainment is provided before a live audience, with the primary purpose of financial gain for the organiser or entertainer involved.
- 3.8. There are two categories of relevant entertainment:
- live performance; or
  - live displays of nudity.

In each case, they must be of such a nature that they must reasonably be assumed to be provided solely or principally for the purposes of sexually stimulating any member of the audience whether by verbal or other means.

'Nudity' is the exposure of the pubic area, genitals, or anus and, in the case of women, their nipples.

- 3.9. The following premises are not sexual entertainment venues;
- Sex shops and sex cinemas
  - Premises which provide relevant entertainment on an infrequent basis

i.e., premises where –

- no relevant entertainment has been provided on more than 11 occasions within a 12-month period;
- no such occasion has begun within a period of one month beginning with the end of the previous occasions; and
- no such occasion has lasted more than 24 hours.

3.10. Examples of relevant entertainment will include, but not limited to:

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

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### 4. Application Forms

- 4.1. Applications for the grant, renewal, transfer or variation of a sex establishment licence must be submitted using the prescribed form which can be obtained on the Councils' website at: [www.babergh.gov.uk/licensing](http://www.babergh.gov.uk/licensing) and [www.midsuffolk.gov.uk/licensing](http://www.midsuffolk.gov.uk/licensing) or by contacting the Licensing team directly [licensingteam@baberghmidsuffolk.gov.uk](mailto:licensingteam@baberghmidsuffolk.gov.uk).
- 4.2. Applications must be submitted with the following information:
- Premises details - a site plan of the premises, drawings showing the front elevation as existing, drawings showing the front elevation as proposed. Note, the requirements of the layout plan are set out below
  - Copies of any proposed advertising displays/signs on the premises
  - Planning permission
  - Proof of applicant's identity and address
  - Proof of right to work if an applicant is an individual
  - Relevant fee
- 4.3. Requirements for layout plan:
- Layout of the premises including, stage, bars, cloakroom, WC's, performance area, dressing rooms.
  - The extent of the boundary of the premises outlined in red.
  - The extent of the public areas outlined in blue.
  - Uses of different areas in the premises, for example performance areas, reception.
  - Structures or objects (including furniture) which may impact on the ability of individuals to use exits or escape routes without impediment.
  - Location of points of access to and egress from premises.
  - Location of emergency exits.
  - Location and type of any fire safety and any other safety equipment.
  - Position of CCTV cameras.
- 4.4. Applicants for SEVs must also submit a copy of their 'club rules' and customer code of conduct. Such club rules must contain the required conduct of performers.
- 4.5. Such club rules will form part of the conditions of licence (if granted) and may be subject to amendment by the Council prior to approval.
- 4.6. With regards to online application tacit authorisation does not apply to applications for SEV licences. This means the application must wait for the Council to determine the application before they can operate a SEV.

### 5. Advertisement of Application

- 5.1. Applicants for a sex establishment licence must make their application public by publishing an advertisement in a local publication distributed within the Councils

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district. This advertisement should be published no later than seven days after the application is received.

- 5.2. Where the application relates to a premises, a notice must also be displayed on or near the premises in a location where members of the public can easily read it. The notice must be displayed for 21 days, beginning on the day the application is submitted.
- 5.3. The applicant must provide a copy to the chief officer of police within seven days of the application date.
- 5.4. The Council will engage with the police and any other appropriate authorities as needed.
- 5.5. Variation applications may be submitted in accordance with the Act. Officers will decide whether a variation application should be treated as a new or renewal application on a case-by-case basis. Public advertisement may or may not be required, depending on the scope of the modification.

## 6. Fees

- 6.1. Schedule 3 to the 1982 Act states that an applicant for the grant, renewal or transfer of a sex establishment licence shall pay a reasonable fee, as determined by the Licensing Authority.
- 6.2. When determining 'reasonable and proportionate' for fee purposes, the Council has due regard to 'The UK Guidance on the Provision of Services Regulations' when setting and administering local licence fees within the service sector. <https://www.gov.uk/government/publications/complying-with-provision-of-services-regulations-for-businesses-and-competent-authorities>
- 6.3. The application process involves paying a non-returnable application fee. The fee levels will be subject to annual review.
- 6.4. Separate fees will be charged for applying, varying, transferring and renewing a licence.

## 7. Waivers

- 7.1. The Council will not typically provide a waiver for a sex establishment licence but will assess applications on their own merits. Applicants must establish extraordinary circumstances for the licencing requirement to be relaxed.
- 7.2. Applications will be evaluated by the Licensing & Regulatory Committee, or a delegated Licensing Sub Committee thereof, and reasons for the decision will be provided.

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### 8. Objections

- 8.1. Any person who objects to an application for the grant, renewal, or transfer of a sex establishment licence must provide written notice no later than 28 days following the date of the application.
- 8.2. Objections received after this date may only be considered at the discretion of the Council if it feels that they are relevant. In determining whether to exercise the discretion to take late representations into account, the Council will have regard to the following:
  - How late the objection is.
  - Whether there is a good reason of the objection being late or whether the lateness was intentional.
  - Whether it introduces new grounds of objection or information or whether it merely repeats other objections which were made in time.
  - Whether consideration of the late objection would result in unfairness to the applicant or disrupt the Committee's procedures.
  - The seriousness of the objection information and whether there is potential likelihood of harm to persons.
- 8.3. Objectors should limit their objection to matters which are relevant to the statutory grounds for refusal as set in in the 1982 Act.
- 8.4. No weight shall be given by the Council to objections made on moral grounds or that are, in the opinion of the Council, frivolous or vexatious. In this policy, 'frivolous' and 'vexatious' have their ordinary meanings.
- 8.5. Where an objection is received, the applicant must be notified of the general grounds of the objection, prior to the application being determined by the Council.
- 8.6. Unless the objector consents to their details being released, the anonymity of the objectors shall be maintained.
- 8.7. Valid objections to any application will be considered by the Licensing & Regulatory Committee or delegated to a Licensing Sub Committee at the hearing to consider the application.

### 9. Hearings

- 9.1. Under paragraph 10(19) of Schedule 3, before refusing an application, all applicants shall be given the opportunity to appear before and be heard by the Licensing Committee that is responsible for determining the application.
- 9.2. Whilst Schedule 3 does not make explicit provision for objectors to be heard, and while local authorities are under no obligation to offer an oral hearing to objectors, they may do so at their discretion. Babergh & Mid Suffolk District Council shall normally offer this facility to allow objectors the opportunity to amplify or support their written representations, although the Council accepts that objectors may not wish their identity or address to be known to the applicant.



## Appendix A

9.3. Any hearing shall similarly be conducted under the general hearing procedures that apply to applications to determine Licensing Act 2003 premises or club applications. The hearing shall take the form of a discussion led by the Authority and cross-examination shall not be permitted unless the Authority considers it is necessary for it to consider all the relevant issues.

### 10. Determination of an Application

10.1. All new licence applications will be determined by the Licensing & Regulatory Committee or delegated to Licensing Sub Committee.

10.2. Non-contested renewal applications will be delegated to Licensing Officers.

10.3. Each application will be determined on its own merits. However, applications may only be refused on certain defined mandatory or discretionary grounds.

10.4. Mandatory grounds:

A licence **must not** be granted to a:

- person under the age of 18;
- 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;
- person, other than a body corporate, who is not resident in the United Kingdom or an EEA State or was not so resident throughout the period of six months immediately preceding the date when the application was made;
- body corporate which is not incorporated in the United Kingdom or an EEA State; or
- 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.

10.5. Discretionary grounds:

A licence **may be refused** where:

- the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason;
- 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 they made the application themselves;
- the number of sex establishments, or 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;
- 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

## Appendix A

(iii) to the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.

10.6. Any decision made by the Council to refuse a licence shall be relevant to one or more of the above grounds. Full and clear reasons shall be given, including in writing, for any decision taken.

### 11. Suitability of Applicant

11.1. In respect of 9.3(a) and (b) above with regard to the suitability of an applicant to hold a licence, the criteria for Members to consider include, but are not limited to:

- Whether the applicant(s), partners or directors have any relevant convictions, cautions or other relevant offences (and it may take into account 'spent' convictions for these purposes). The fact that an applicant or connected individual may have convictions will not automatically render them unsuitable as each case will be assessed on its individual merits. Serious offences involving violence, dishonesty or sexual offences will be of particular relevance as to whether an applicant is suitable to be granted a licence;
- The trading history and relevant experience of the applicant(s). Whether there has been any previous disqualification (beyond the mandatory limitations of paragraph 12 of Schedule 3);
- The steps and measures (including rules, policies and procedures) that the applicant(s) intend to take to ensure that they operate sensitively in the community and without any disproportionate negative impacts in the locality;
- Whether the business is for the benefit of any third party that would not be granted a licence;
- Whether the Police object on any reasonable grounds to any applicant(s), partners or directors being granted a licence;
- Whether the Police object on any reasonable grounds to any other person at a management or operational level being involved with the licensed operation;
- Whether there are any restrictions on an applicant's ability to reside or work in the UK; and
- Any other reasonable or relevant factors that may come to light.

### 12. Relevant Locality

12.1. Paragraphs 12(3)(c) and 12(3)(d) of Schedule 3 allow appropriate authorities to refuse applications on grounds related to an assessment of the 'relevant locality'. A licence may 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 Council 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.

12.2. Schedule 3 to the 1982 Act does not define 'relevant locality' further than to say that:

- in relation to premises, it is the locality where they are situated; and
- in relation to a vehicle, vessel or stall, any locality where it is desired to use it as a sex establishment.

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- 12.3. The decision regarding what constitutes the 'relevant locality' is a matter for the Council and it shall determine the 'relevant locality' on a case-by-case basis on the facts of the individual application and utilising its own knowledge of its area. This may also involve a site inspection.
- 12.4. When considering a particular application, the relevant locality need not be a clearly pre-defined area nor are local authorities required to be able to define its precise boundaries. Therefore, while the Council is not prevented from defining the exact area of the relevant locality, it is equally free to conclude that it simply refers to the area which surrounds the premises specified in the application and does not require further definition. Nevertheless, the Council shall endeavour to undertake a reasonable view of what constitutes a 'locality' on a case-by-case basis. Case law also indicates that a relevant locality cannot be an entire local authority area or an entire town or city.
- 12.5. Once the Council has determined the relevant locality in a particular case, it shall 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 views of the Planning Authority and other relevant bodies will be key to making this assessment, as will looking at the type(s) of use and nature of other premises in the locality.
- 12.6. Section 27 amends paragraph 12(3)(c) of Schedule 3 to allow local authorities to determine an appropriate number of sex establishments of a particular kind. In practice, this means that the Council may, for example, decide that a particular locality is suitable for a sex shop but is not suitable for a sexual entertainment venue or vice versa.
- 12.7. Babergh & Mid Suffolk District Council shall not apply a rigid rule to its decision making and shall determine each application on its individual merits. Although it recognises that it has powers to do so, the Council shall not pre-empt or specify in advance which specific locations may, or may not, be suitable for the operation of a sex establishment. It shall however keep this policy and its ability to use these powers under review.
- 12.8. In general, the Council shall not normally grant applications for sex establishment licences in locations, where relevant objections are raised and where those concerns may not be adequately overcome, that are in the vicinity of sensitive premises or inappropriate in the context of the uses/character of the location. Examples of 'sensitive premises or locations' for these purposes, may include but shall not be limited to –
- the fact that the premises are sited in a residential area;
  - the premises are sited near shops used by or directed to families or children, or no frontages frequently passed by the same;
  - the premises are sited near properties which are sensitive for religious purposes e.g. synagogues, churches, mosques, temples;
  - the premises are sited near premises or areas which are sensitive because they are frequented by children, young persons or families, including but not limited to educational establishments, leisure facilities such as parks, libraries or swimming pools, markets and covered markets;

## **Appendix A**

- the premises are sited near places and or buildings of historical/cultural interest, tourist attractions.
- the premises are sited near civic buildings

12.9. The operation should also have the correct planning consent for the use intended, and it will be the responsibility of the premises operator to check/obtain this.

### **13. Licence Conditions**

13.1. No condition will be imposed by the Council that cannot be shown to be appropriate, reasonable and proportionate to the application that has been submitted.

13.2. In the event that conditions are attached to the grant of a licence they will be adapted to the operating circumstances and requirements of the individual premises and may also take into account any objections, comments or observations received, particularly where they have been received from the Police.

13.3. The Council may attach any of those conditions shown in Part 1, 2 or 3 of this policy, which are relevant to the activities granted to the sex establishment licence applied for. These conditions are not exhaustive however and further conditions may be applied to the licence on the advice of the Police or may be attached by the Council following a hearing by Members of the Committee.

### **14. Duration of Licence**

14.1. The 1982 Act provides a maximum licence period of one year. The authority may grant a shorter licence if it thinks fit. A shorter period may be granted for example where a licensee wants a licence for a limited period for a trade exhibition or a show.

### **15. Renewal Applications**

15.1. Provided an application for renewal has been accepted by the Licensing Authority prior to the date of expiry, the licence shall be deemed to remain in force until such time as the renewal is determined by the Council, or the application is withdrawn.

15.2. The statutory requirements for advertising and giving notice, are the same as those applying to initial grants, which are dealt with at point 4 & 5 of the policy. Renewal applications will be dealt with by way of delegated authority to officers, unless there are any objections or other matters of concern, in which case, the application will be determined by the Committee.

### **16. Revocation of a Licence**

16.1. A licence can be revoked by the Council at any time on any one of the grounds set out in 10.4(a - e) or any one of the grounds set out in 10.5(a and b) of the policy.

16.2. The Council will not revoke a licence without the licence holder being given an opportunity to appear before the Licensing Sub Committee and be heard.

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16.3. Where a licence is revoked, the Council shall give the licensee a statement in writing of reasons for its decision within seven days of the request being made. Where a licence is revoked its holder will be disqualified from holding or obtaining a licence in the area of the Local Authority for a period of 12 months from the date of revocation.

16.4. When the authority revokes a licence, the decision does not take effect until the time for bringing an appeal has expired and if an appeal is brought until the determination or abandonment of that appeal.

### **17. Cancellation of a Sexual Entertainment Venue Licence**

17.1. The Council may at the written request of the licence holder cancel the licence.

17.2. If a licence holder dies, then the licence will be deemed to have been granted to the licence holder's personal representatives and will remain in force for three months from the date of the licence holder's death and will then expire.

17.3. The Council can, however, on the application of the licence holder's personal representatives extend the three month period if the Council is satisfied that an extension is necessary for the purpose of winding up the late licence holder's estate. The Council will only do so where there are no circumstances that make such an extension undesirable.

### **18. Variation of a Sexual Entertainment Venue Licence**

18.1. A licence holder may at any time apply to vary a term, condition or restriction of a licence or apply to change the location of a licensed vessel. The statutory requirements for advertising, giving notice, consideration by the Council, hearings and the giving of the reasons are the same as those applying to initial grants, which are dealt with at point 4 & 5 of the policy. On receiving such an application, the Council can either:

- make the variation as requested;
- make such variations as it thinks fit;
- refuse the application.

18.2. The applicant will be given an opportunity to attend a Licensing Sub Committee before a decision is made to make a variation other than that being applied for or to refuse the application.

18.3. Where the Council imposes some other term, condition or restriction other than one sought in the variation application, the decision does not take effect until the time for bringing an appeal has expired and if an appeal is brought until the determination or abandonment of that appeal.

### **19. Appeals**

19.1. The decisions against which a right of appeal lies are refusals for the grants, renewals, variations or transfers, the imposition of conditions and also revocation.

19.2. Appeals must be made to the Magistrates Court within 21 days, starting from the date the applicant is notified of the Licensing Authority's decision.

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19.3. It is important to note that appeals only lie against the mandatory refusals on the basis that the mandatory ground does not apply to the applicant/licence holder. Further, no appeal lies against the Licensing Authority's decision made on the discretionary grounds set out at paragraphs 10.5(c and d), namely:

- that it is inappropriate to grant or renew a licence on the grounds of the character of the locality or the number of premises in it;
- or the use of premises in the vicinity or the layout, character or condition of the premises.

19.4. The only discretionary grounds against which an appeal lies are those in paragraph 10.5(a and b) relating to the suitability of the applicant, the manager and/or the beneficiary of the operation.

## **20. Commitment to Equality, Diversity and Inclusion**

20.1. The Council is committed to supporting equality, diversity, and inclusion.

20.2. The Council recognises the significance of building an inclusive and non-discriminatory environment that respects and values the district's diversity.

20.3. The Council is committed to ensuring that all individuals within the districts have equal access to opportunities, services, and protection from discrimination.

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### **Part 1: Conditions which apply to all premises.**

#### **1. General**

- 1.1. A copy of the licence shall be exhibited in a position that can easily be read by all persons entering the premises.
- 1.2. The licensee shall remain in personal control of the premises at all times that it is trading or nominate in writing an individual over the age of 18 with the authority to direct activities within the premises.
- 1.3. The licensee shall notify the licensing authority in writing of any change in directors, trustees, partners, or other persons concerned in the management of the licensed premises and activities within fourteen days of such change.
- 1.4. The licensee shall keep and maintain at the licensed premises a written record of the names, addresses, and copies of photographic proof of age documents of all persons employed or performers permitted to operate within the licensed premises whether upon a full or part time basis and shall, upon request by an authorised officer of the Council or police officer, make such records available for inspection to them.
- 1.5. The licensee shall ensure that all persons employed or permitted to work within the licensed premises hold the appropriate rights to work and shall keep copies of any documentation used to verify the details of these rights where necessary.
- 1.6. The licensee shall admit authorised officers to the premises at all reasonable times and at any time when the premises are providing sexual entertainment. The licensee shall provide in a timely fashion, copies of any documents reasonably required by an authorised officer to prove compliance with this licence.
- 1.7. The licensee must give written notice to the Council if they wish to surrender the licence.

#### **2. Management**

- 2.1. A suitable and sufficient number of SIA door supervisors and trained staff will be employed (based on a risk assessment) when sexual entertainment is being offered. Their duties will include monitoring customers and performers to ensure that the code of conduct for dancers and the house rules are being obeyed and enforcing if necessary.
- 2.2. The licensee shall ensure all door supervisors employed or contracted to work on the premises are suitably licensed by the Security Industry Authority.
- 2.3. Where door staff are used, the licensee shall maintain profiles for all door staff that are, or have been, working at the premises in the last six months. The profile is to contain proof of identity (copy of passport /photo driving licence) and proof of address dated within the last six months (bank statement /utility bill). Separate proof of address is not necessary when the proof of identity is a photo driving

## **Appendix A**

licence. Proof must also be provided of their SIA registration. All profiles are to be made immediately available to Authorised Officers upon request.

2.4. The licensee shall prepare and implement a code of conduct for performers. The code shall be approved by the Council and will not be altered without consent from the Council.

2.5. The licensee shall prepare house rules governing the conduct of customers, refer to section 6 of this Policy. These rules shall be approved by the Council and will not be altered without consent from the Council.

2.6. The licensee is to implement a suitable policy for the safety of the performers when they leave the premises.

### **3. Premises**

3.1. The approved layout of the premises shall not be altered without prior consent of the Council.

3.2. The Licensee shall ensure that the interior of the Premises where sexual entertainment is offered shall not be capable of being seen from the outside of the Premises, and that the exterior is maintained with a suitable level of decorum (i.e. that it does not have anything that depicts, indicates or suggests that sexual entertainment takes place on the Premises)

3.3. CCTV shall be installed to cover the inside and the outside of the Premises, covering all public areas, including private performance areas and booths, entrances and exits, but excluding the interior of toilets. All cameras must be maintained in working order. All cameras shall continually record whilst the Premises are open to the public and the recorded images shall be kept available for a minimum of 31 days. Recorded images shall be made available to an authorised officer together with facilities for viewing. The recordings for the preceding 2 days shall be made available immediately upon request. Recordings outside this period shall be made available on 24 hours' notice.

3.4. A member of staff who is fully trained in the use of the CCTV system shall be on duty at all times when the premises are open until the premises are clear of customers.

3.5. CCTV cameras shall be installed and maintained at the locations shown on the attached plan, to the reasonable satisfaction of the licensing authority.

3.6. Members of the public may not enter or remain in the toilet cubicles in the company of any performer.

### **4. Advertising**

4.1. The Licensee shall neither cause nor permit the display of suggestive advertising content which is directed at or may be seen or heard by any person from within the Councils District:



## Appendix A

on any public highway, street, waterway or railway; in any place of general public use or access; or in publicly accessible areas of premises open to the public.

This condition shall apply to prevent suggestive advertising content being displayed on the exterior of the Premises or handed out as flyers on the street. It shall also apply to prevent suggestive advertising content being displayed on or in street furniture; telephone booths; hoardings, billboards, screens or projections; as well as advertising displayed on or within any vehicles located on or near the highway. The Licensee shall not permit any person to tout for business or encourage other persons to visit the Premises whilst on a public highway.

For the avoidance of doubt, this condition shall not be taken to prevent the Licensee from advertising the Premises using suggestive advertising content in media that restrict access to persons under the age of 18 years and would not reasonably be expected to be directed at persons in a public place (for instance, in adult magazines, websites or television channels).

- 4.2. Where the Council has given notice in writing to the Licensee objecting to an advertisement on grounds that it would offend public decency or be likely to encourage or incite crime or disorder, that advertisement shall be removed or not be displayed.

## 5. Admission to the Premises

- 5.1. No person under the age of 18 years shall be admitted to nor permitted to remain on the Premises when sexual entertainment is being offered, and a clear notice to this effect will be displayed at each entrance to the Premises.
- 5.2. The Challenge 25 proof of age scheme will be implemented, under which anyone suspected of being under the age of 25 will be required to present identification confirming they are over the age of 18. Only recognised photographic identity cards, such as a driver's licence or passport, are accepted forms of identification. Prominent notices must be clearly displayed to this effect at each entrance to the Premises.
- 5.3. The premises shall keep a refusals log in which any time a person is refused entry this shall be recorded and made available to an authorised officer upon request.
- 5.4. The content of the house rules will be made known to customers prior to their admission to the premises when sexual entertainment takes place.

## 6. House Rules

- 6.1. The Licensee shall prepare House Rules governing the conduct of customers.
- 6.2. The House Rules shall be prominently and legibly displayed at each entrance of the Premises.

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- 6.3. Signs must be displayed at appropriate locations advising that any customer attempting to make physical contact with a performer will be asked to leave.
- 6.4. No member of the public shall be admitted or allowed to remain at the Premises if they appear to be intoxicated or under the influence of illegal substances.
- 6.5. Customers may not be permitted to photograph, film or electronically record any performance.
- 6.6. The House Rules must be implemented and effectively enforced at all times when the premises are operating with sexual entertainment.

### **7. Performers**

- 7.1. Sexual entertainment will be given only by the performers engaged by or through the licensee and there will be no audience participation.
- 7.2. On days when sexual entertainment is provided, the licensee, or their representative, shall keep a record of those performers working at the premises on that day in a daily record. The daily record shall be immediately available for inspection by authorised officers.
- 7.3. The licensee shall ensure that each performer signs the code of conduct in their legal name, acknowledging that they have read and understood and are prepared to abide by the code of conduct, and signed copies be kept on the premises for inspection by authorised officers.

### **8. Fees**

- 8.1. The licensee shall prominently and legibly display the entertainment fee in the entrance area and at key locations within the Premises including entrances to any private performance areas and so far, as possible at the place(s) at which payment for any performance or service is transacted as marked on the attached plan. No charge shall be made, nor payment accepted by the Licensee for any services other than in accordance with the fees or clearly advertised discounts to the fees.
- 8.2. The licensee shall so far as reasonably practicable keep such records as are necessary to prove that the sums charged and payments taken are for products or services advertised on the relevant fee table at the amount shown on that fee. These records must be made available within a reasonable time if requested by an authorised officer.

### **9. Code of Conduct**

- 9.1. The licensee shall prepare and implement a suitable Code of Conduct for performers.
- 9.2. The Licensee shall ensure that each performer signs the Code of Conduct in their proper name, acknowledging that they have read and understood and are

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prepared to abide by the Code of Conduct, and signed copies be kept on the premises for inspection by authorised officers.

- 9.3. During a performance there shall be no intentional physical contact between a performer and the customer other than the transfer of money or token at the beginning, during and at the conclusion of a dance into the hand or a garter worn by the performer. For the avoidance of doubt nothing in this condition shall prevent Performers from acting to prevent, deter or counter any attempts of physical contact by a customer.
- 9.4. Without prejudice to standard condition 9.3 above, at the conclusion of a performance there shall be no intentional physical contact between a performer and the customer, save for a handshake. For the avoidance of doubt kissing is not permitted.
- 9.5. The Licensee must not permit gratuities or any other items to be thrown at performers.
- 9.6. During a performance there shall be no full body physical contact between performers, and they are not to touch each other's breasts or genitalia either with their bodies or with objects. Any performance shall be restricted to dancing and the removal of clothes. There must not be any other form of sexual activity, including but not limited to acts or the simulation of acts of personal stimulation.
- 9.7. Performers shall be provided with a changing room to which the public have no access.
- 9.8. Performers must remain fully dressed while on the Premises, except while performing in the sexual entertainment areas and in the changing rooms shown on the approved plan. [Without prejudice to this requirement, there is to be no display of nudity in the public areas of the Premises, other than during the course of a performance].
- 9.9. Performers must re-dress at the conclusion of a performance.

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### **Part 2: Conditions which apply to sex shops**

#### **1. General**

- 1.1. The business shall be carried on only in the name, style or title specified in the licence and at the premises mentioned therein.
- 1.2. The Licensee shall maintain a daily register in which shall be recorded the name and address of any person who is to be responsible for managing the sex shop in their absence and the names and address of all those employed in the sex shop. The register is to be completed each day of the sex shop opening for business and is to be available for inspection by an Authorised Officer.

#### **2. Opening Times**

- 2.1. The licensed premises shall not be opened for the purposes for which the licence is granted earlier than 10:00hrs and shall be closed no later than 22:00hrs.

#### **3. Management**

- 3.1. Neither the licensee nor any employee shall seek to obtain custom for the sex shop by means of personal solicitation outside or in the vicinity of the sex shop.
- 3.2. The licensee shall retain control over all portions of the Premises and shall not let, licence, or part with possession of any part of the Premises.
- 3.3. The Licensee shall maintain good order in the Premises.
- 3.4. No person under the age of 18 years shall be admitted to the Premises or employed in any position with regard to the business of a sex shop.
- 3.5. The Licensee shall ensure that the public are not admitted to any part of the premises other than those parts which have been approved by the Council.
- 3.6. The Licensee shall ensure that no part of the premises shall be used by prostitutes (male or female) for soliciting or for any immoral purpose.
- 3.7. The Licensee shall comply with all statutory provisions and any regulations made there under.

#### **4. Premises**

- 4.1. A sex shop shall be conducted primarily for the purpose of the sale of goods by retail.
- 4.2. The premises shall only be used as a shop.
- 4.3. No residential use shall be made of any part of the premises unless a separate access is provided from outside of the premises.

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- 4.4. All parts of the premise shall be maintained in good repair and in a clean and wholesome condition.
- 4.5. A notice will be displayed at the entrance to the premises such that no one could reasonably obtain access to the premises without being aware of its contents.
- 4.6. The interior of the premises shall not at any time be visible from outside and the window shall only bear a suitable display approved by the Council.
- 4.7. No display, advertisement, word, letter, model, sign, placard, board, notice, device, representation, drawing, writing, or any matter or thing (whether illuminated or not) shall be exhibited so as to be visible from outside the premises except: - Any notice of a size and in a form approved by the council which is required to be displayed so as to be visible from outside the premises by law, or by any condition of a licence granted by the council. Such display, advertisement, word, letter, model, sign, placard, board, notice, device, representation, drawing, writing, or any matter or thing as shall have been approved by the council.
- 4.8. A lobby area shall be provided at the entrance to the shop to ensure that the inside of the shop is not visible when the front door is opened.
- 4.9. Alterations or additions either internal or external and whether permanent or temporary to the structure, lighting or layout of the premises shall not be made except with the prior approval of the council.
- 4.10. No alcohol shall be consumed on the premises.

### **5. Goods Available in Sex Shops**

- 5.1. All sex articles and other things displayed for sale, hire, exchange, or loan within a sex shop shall be clearly marked to show to persons who are inside the premises the maximum prices to be charged.
- 5.2. All printed matter offered for sale, hire, exchange or loan shall be available for inspection prior to purchase and a notice to this effect shall be prominently displayed within the sex shop.

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### Part 3: Conditions which apply to Sex Cinemas

#### 1. General

1.1. The showing of films, videos, and DVDs to children under the age of 18 is restricted in accordance with any recommendation made by the British Board of Film Classification (BBFC) where the film has been classified by that Board, or by the Licencing Authority where no classification certificate has been granted by the BBFC.

1.2. No film shall be exhibited unless:

- (a) It has been classified as a U, PG, 12, 15, 18, or RESTRICTED (18) film by the British Board of Film Classification, and no notice of objection to its display has been received by the Council., or
- (b) The Council has rated the film as U, PG, 12, 15, 18, or RESTRICTED (18).

1.3. If the Council notifies the licence holder in writing that it objects to the display of a film, indicating the grounds of objection, the film shall not be exhibited.

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**BABERGH DISTRICT COUNCIL**

# **Sex Establishment Licensing Policy**

**Local Government (Miscellaneous Provisions) Act 1982**

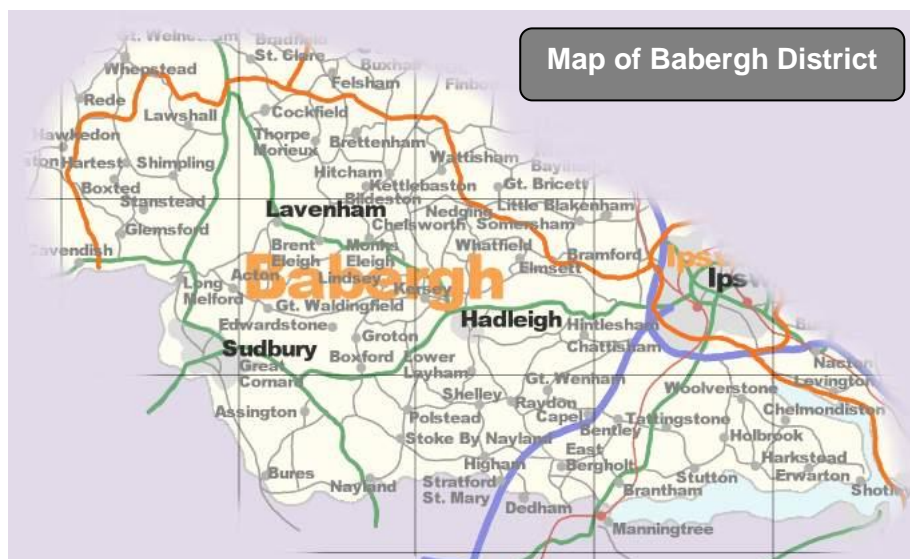
Adopted by Strategy Committee on 14 June 2012

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### THE BABERGH DISTRICT:



Babergh is an attractive district in the southern part of Suffolk and has a long border with the county of Essex. Whilst it remains predominately rural, it is within close and convenient distance of London and the Continent. The district has a population of approximately 87,000 residents divided between 76 parishes. It covers an area of 230 square miles and contains several areas of historical significance, including the nationally renowned villages of Lavenham and Long Melford - both of which retain much of their original outstanding character and appearance.

The largest town in Babergh is Sudbury which, along with its neighbouring village of Great Cornard, has a population of approximately 20,500. The other market town of Hadleigh - where the Council's offices are currently located - has a population of approximately 8,500. Ipswich (10 miles from Hadleigh) is now spilling over into the district, and has a population in excess of 130,000 people.

Whilst there are no licensed sex establishments in the Babergh District as of November 2011, the highest concentrations of alcohol and (non-sexual) entertainment licensed premises are, predictably, within the Sudbury and Hadleigh town centre areas. The main licensing activity arises as a consequence of the large leisure and tourism industry. Most premises are under economic pressure within the community, as a result of which many are seeking to diversify and offer more flexibility and greater choice to the consumer. This may in due course extend to seeking relevant entertainments as regulated by Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982.

As well as sex shops and sex cinema, a new category of sex establishment called 'sexual entertainment venue' may also now be licensed by Babergh District Council. Whilst the Council will judge each case on merits, and the content of the entertainment shall primarily inform whether it should be regulated rather than the name it is given, it is expected that the definition of relevant entertainment would apply to the following entertainment activities as they are commonly understood:

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

## Appendix B



### **SEX ESTABLISHMENT LICENSING POLICY (V1)**

**(covering Sex Establishment Venues, Sex Cinemas and Sex Shops as defined by the relevant legislation)  
SCHEDULE 3 OF THE LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS ACT 1982)  
AS AMENDED BY SECTION 27 OF THE POLICING AND CRIME ACT 2009**

#### **About this Licensing Policy:**

- This policy document is to be read in conjunction with the provisions of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, as amended by section 27 of the Policing and Crime Act 2009, and the Home Office guidance on 'Sexual Entertainment Venues' issued March 2010 (as may be revised from time to time).
- Local Authorities are not required to publish a licensing policy relating to sex establishments. However, Babergh District Council considers that it is necessary to do so for:
  - (a) the benefit of operators, the public and other relevant authorities;
  - (b) ensuring transparency and consistency of approach; and
  - (c) guiding and focusing those with a decision-making role.

***It is important to note that nothing in this policy shall prevent any individual application from being considered on its individual merits at the time the application is made.***

- A licensing policy for sex establishments may include statements about where the Authority is likely to consider appropriate or inappropriate locations for sex establishments/venues. In this policy, Babergh District Council sets out in **general terms** the criteria it will ordinarily apply to its decision making by reference to neighbouring premises uses and character of locality, rather than more specifically by reference to a defined locality.
- Local authorities may also use a licensing policy to indicate how many sex establishments, or sex establishments of a particular kind, they consider to be appropriate for a particular locality. Babergh District Council has not set any specific limitations or quota controls in this policy document, but recognises that it has powers to do so and these shall be kept under close review.
- Local authorities may also produce different policies or a separate set of criteria for different types of sex establishment. This might be appropriate to reflect distinctions between the operating requirements of different sex establishments or the fact that the location that a local authority considers appropriate for a sex shop may be different to that of a sexual entertainment venue.
- This policy document also outlines the criteria Babergh District Council will be guided by when assessing the suitability of the applicant(s)/operator, which is linked into the application process and based around the grounds for refusal specified by paragraph 12 of Schedule 3.

***Each application shall be assessed and determined on its individual merits and this policy document may evolve and be revised from time to time in the light of practical experience, precedents, national guidance and any other relevant considerations.***

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### 1. The Appropriate Authority

- 1.1 The 'appropriate authority' is responsible for determining applications for sex establishment licences. For the purposes of the 1982 Act 'appropriate authority' means Babergh District Council which has passed a resolution under section 2 of that Act to adopt Schedule 3 in its area.

### 2. Committee or Sub-Committee (delegation of functions)

- 2.1 Functions under Schedule 3 are the responsibility of the full Council of Babergh District Council. 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.
- 2.2 With the exception of policy setting, which is set by the Council's Strategy Committee upon recommendation from Licensing Committee, Babergh District Council has delegated its functions under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 to its Licensing Committee - as set up to discharge licensing functions under the Licensing Act 2003. However, when dealing with an application for a sex establishment licence, the members of the committee are not acting as the Licensing Committee under the 2003 Act and are instead exercising their functions under Schedule 3 of the 1982 Act. The Licensing Committee may establish a Sub-Committee for the purpose of determining individual applications.

### 3. Adopting the Provisions

- 3.1 Section 27 of the Policing and Crime Act 2009 came into force in England on 06 April 2010. On 22 February 2011 Babergh District Council resolved to adopt Schedule 3 to the 1982 Act as amended by the 2009 Act so that it has effect in its area with effect from 31 March 2011 (the 'first appointed day'). For transitional purposes the 'second appointed day' was 31 October 2011 and 'third appointed day' 30 April 2012.
- 3.2 Although Babergh District Council had already adopted Schedule 3 to the 1982 Act for the licensing of sex shops and sex cinemas, on 12 July 1983 and effective from 01 September 1983, a further resolution was necessary before the provisions introduced by Section 27 took effect in the Babergh District Council area.
- 3.3 The procedure for local authorities to adopt Schedule 3 as amended by section 27 is set out in section 2 of the 1982 Act, and Babergh District Council has complied with these requirements:

(a) Firstly, Babergh District Council has passed a resolution specifying that the amendments made by section 27 of the 2009 Act to Schedule 3 of the 1982 Act that Schedule, shall apply to its area and the day on which it came into force in the area was 31 March 2011 (the specified day being more than one month after the day on which the resolution was passed).

(b) Secondly, Babergh District Council has published notice that it has passed a under section 2 of the 1982 Act (or in Babergh District Council's case where Schedule 3 is already in force it is adopting the amendments made by section 27) paragraph 2(2) of Schedule 3 to the 2009 Act) for two consecutive weeks in a local newspaper that is circulated in its area. The first publication was not later than 28 days before the day specified in the resolution for the provisions came into force in the local authority's area. The notice stated the general effect of Schedule 3, and appeared in the East Anglian Daily Times on 01 March 2011 and 08 March 2011.

### 4. Requirement for a Sex Establishment Licence ('waiver' considerations)

- 4.1 Any person wishing to operate a sex establishment as defined by Schedule 3 requires a sex establishment licence, unless the requirement for a licence has been waived by the appropriate authority.
- 4.2 An applicant may apply for a waiver either as part of the application for a licence or separately. The Local Authority may grant a waiver if it considers that to require a licence would be 'unreasonable' or 'inappropriate'. Where a waiver is granted the Council shall inform the applicant that it has been granted.

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The waiver may last for such a period as that the Council thinks fit, and it may be terminated by the Council at any time subject to 28 days notice. Whilst each request for the grant of a waiver shall be assessed on its individual merits, the Council notes the exemption available for 'infrequent events' and any requests for waivers shall be considered carefully with the public interest as paramount to whether to require a licence would be 'unreasonable' or 'inappropriate'.

### **5. Premises that are deemed to be Sexual Entertainment Venues**

- 5.1 Paragraph 27A of Schedule 3 deems premises with licences to operate as sexual entertainment venues to be sexual entertainment venues whilst their licence remains in force, irrespective of how frequently they are or have been providing relevant entertainment. This remains the case even if premises operate within the exemption for infrequent events.
- 5.2 If an operator with a sexual entertainment venue licence is operating within the exemption for infrequent events and no longer wants their premises to be treated as a sexual entertainment venue (for example because they are no longer operating as a lap dancing club) they may write to the Council to request that their licence be cancelled. Upon receiving such a request from a licence holder the Council must cancel the licence in question.

### **6. Notices**

- 6.1 Applicants for a sex 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 7 days after the date the application is made.
- 6.2 Where the application relates to premises, a notice shall 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 day beginning with the date the application was made.
- 6.3 All notices shall be in the form prescribed by the Council 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. Babergh District Council provides a template notice for this purpose.

### **7. Application Forms**

- 7.1 There is no prescribed application form for an application made under Schedule 3 to the 1982 Act. However, the application must be in writing and contain the details set out in paragraph 10 of Schedule 3 along with such other details as Babergh District Council may reasonably require.
- 7.2 Babergh District Council provides an application form for this purpose, setting out all the details and information required, and makes provision for applications to be made electronically via the Council's website at [www.babergh.gov.uk](http://www.babergh.gov.uk) In addition to the information required by the form, the Council may also reasonably require submission of further information or clarification in respect of an individual application. Any such requests shall be made by the Council to the applicant(s) in writing. Applications can not be processed until they are considered by the Council to be complete.

### **8. Single Point of Contact**

- 8.1 Following amendments to sub-paragraph 10(14) made by the Provision of Services Regulations 2009, where an application for the grant, variation, renewal or transfer of a licence is made by means of a relevant electronic facility it shall be the responsibility of Babergh District Council (rather than the applicant) to send a copy of an application to the chief officer of police, not later than 7 days after the date the application is received.
- 8.2 Where an application is made by any other means the responsibility to send a copy of the application to the chief officer of police within 7 days of the application being made will remain the responsibility of the applicant.

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8.3 For the purpose of Schedule 3 a relevant electronic facility means the electronic assistance facility referred to in regulation 38 of the Provision of Services Regulations 2009 or any facility established and maintained by the Council for the purpose of receiving electronic applications under this Schedule.

### 9. Fees

9.1 Schedule 3 to the 1982 Act states that an applicant for the grant, renewal or transfer of a sex establishment licence shall pay a reasonable fee, as determined by the Licensing Authority. When determining 'reasonable' for fee purposes Babergh District Council has had due regard to The European Services Directive: Guidance for Local Authorities and Local Government Regulation (previously LACORS) Guidance on the impact of the Services Directive on Councils setting and administering local licence fees within the service sector.

9.2 The fee levels will be subject to periodic review and as of 14 June 2012, the following fee levels have been set by Babergh District Council:

Application fee for GRANT / VARIATION or RENEWAL	=	£3000
Application fee for TRANSFER	=	£1500

### 10. Objections

10.1 When considering an application for the grant, variation, renewal, or transfer of a sex establishment licence Babergh District Council shall have regard to any observations submitted to it by the Chief Officer of Police and any objections that they have received from anyone else within 28 days of the application. *Any person* may object to an application but the objection should be relevant to the grounds set out in paragraph 12 of Schedule 3 for refusing a licence.

10.2 Objections based on moral grounds/values can not be considered as relevant and the Council shall not 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. Objections should be sent in writing (which includes electronic submissions) to:



**BABERGH DISTRICT COUNCIL**  
Licensing Authority  
Corks Lane, Hadleigh  
IPSWICH  
Suffolk IP7 6SJ

 Tel: 01473 825719 or 826664

 e-mail: [licensingsection@babergh.gov.uk](mailto:licensingsection@babergh.gov.uk)

10.3 Where the Council receives notice of any objection it shall, before considering the application, give notice in writing outlining the general terms of the objection to the applicant. However, the Council shall 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, all **applicants** shall be given the opportunity to appear before and be heard by the Licensing Committee or Licensing Sub-Committee that is responsible for determining the application.

11.2 Whilst Schedule 3 does not make explicit provision for **objectors** to be heard, and while local authorities are under no obligation to offer an oral hearing to objectors, they may do so at their discretion. Babergh District Council shall normally offer this facility to allow objectors the opportunity to amplify or support their written representations, although the Council accepts that objectors may not wish their identity or address to be known to the applicant. Although the Council 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

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opportunity to deal with those objections. It may also dispense with a hearing where all parties consider that it is not necessary.

11.3 Any site visit deemed reasonably necessary to facilitate a fair hearing shall ordinarily follow the Council's established protocol as adopted under the Licensing Act 2003 provisions (as may be modified from time to time).

11.4 Any hearing shall similarly be conducted under the general hearing procedures that apply to applications to determine Licensing Act 2003 premises or club applications. The hearing shall take the form of a discussion led by the Authority and cross-examination shall not be permitted unless the Authority considers it is necessary for it to consider all the relevant issues.

### 12. Refusal of a Licence

12.1 Paragraph 12 of Schedule 3 sets out the grounds for refusing an application for the grant, variation, 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 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.

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.

12.2 Any decision made by the Council to refuse a licence shall be relevant to one or more of the above grounds. Full and clear reasons shall be given, including in writing, for any decision taken.

12.3 The Provision of Services Regulations 2009 amended Schedule 3 to the 1982 Act to state that, if having considered an application for the grant, renewal or transfer of a licence, the appropriate authority decides to refuse it on one or more of the above grounds, it must provide the applicant with reasons for the decision in writing.

12.4 When determining a licence application, the Council shall have regard to any rights the applicant may have - including under Article 10 (right to freedom of expression) and Article 1, Protocol 1 (protection of property) of the European Convention on Human Rights.

### 13. Relevant Locality

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13.1 Paragraphs 12(3)(c) and 12(3)(d) of Schedule 3 allow appropriate authorities to refuse applications on grounds related to an assessment of the 'relevant locality'. A licence may 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 Council 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. **Nil may be the appropriate number.**

13.2 Schedule 3 to the 1982 Act does not define 'relevant locality' further than to say that:

- (a) in relation to premises, it is the locality where they are situated; and
- (b) in relation to a vehicle, vessel or stall, any locality where it is desired to use it as a sex establishment.

13.3 The decision regarding what constitutes the 'relevant locality' is a matter for the Council and it shall determine the 'relevant locality' on a case-by-case basis on the facts of the individual application, and utilizing its own knowledge of its area. This may also involve a site inspection as referred to in paragraph 11.3 of this document.

13.4 When considering a particular application, the relevant locality need not be a clearly pre-defined area nor are local authorities required to be able to define its precise boundaries. Therefore, while the Council is not prevented from defining the exact area of the relevant locality, it is equally free to conclude that it simply refers to the area which surrounds the premises specified in the application and does not require further definition. Nevertheless the Council shall endeavour to undertake a reasonable view of what constitutes a 'locality' on a case-by-case basis. Case law also indicates that a relevant locality cannot be an entire local authority area or an entire town or city.

13.5 Once the Council has determined the relevant locality in a particular case, it shall 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 views of the Planning Authority and other relevant bodies will be key to making this assessment, as will looking at the type(s) of use and nature of other premises in the locality.

13.6 Section 27 amends paragraph 12(3)(c) of Schedule 3 to allow local authorities to determine an appropriate number of sex establishments of a particular kind. In practice, this means that the Council may, for example, decide that a particular locality is suitable for a sex shop but is not suitable for a sexual entertainment venue or vice versa.

13.7 Babergh District Council shall not apply a rigid rule to its decision making and shall determine each application on its individual merits. Although it recognises that it has powers to do so, the Council shall not pre-empt or specify in advance which specific locations may, or may not, be suitable for the operation of a sex establishment. **It shall however keep this policy and its ability to use these powers under review.**

13.8 In general the Council shall not normally grant applications for sex establishment licences in locations, where relevant objections are raised and where those concerns may not be adequately overcome, that are in the vicinity of sensitive premises or inappropriate in the context of the uses/character of the location. Examples of 'sensitive premises or locations' for these purposes, may include but shall not be limited to –

- Residential areas used by families or housing for sensitive/vulnerable groups (such as sheltered or refuge housing);
- Schools, pre-school nurseries/playgroups, other educational or community facilities and clubs;
- Residential care homes, hospitals and other medical facilities, places of religious worship;
- Facilities/attractions for children and sensitive/vulnerable groups;
- Places of cultural or historical significance, areas where tourism or regeneration are likely to be deterred by the presence of sex establishments;
- Areas with a known history of crime and disorder or, for example, a reputation of being a focal point for anti-social behaviour (e.g. congregation of youths) or with links to drugs or prostitution;
- Public open spaces such as parks, playgrounds or sports and family leisure facilities; or
- Areas which may make women feel threatened or uncomfortable.

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- 13.9 'In the vicinity' for these purposes will primarily focus on the likely impact on those living, working or using the area and likely to be directly affected by the operation of the licensed premises. However, wider factors may also be taken into account in specific circumstances such as if a proposed sex establishment is on a main pedestrian route, located in an area with a known history of crime and disorder or the character of the area may be negatively affected by the presence of an establishment of this nature. The operation should also have the correct planning consent for the use intended, and it will be the responsibility of the premises operator to check/obtain this.
- 13.10 The presence of a sexual entertainment venue may also stimulate development of further late night services in a particular locality. For example, the presence of a lap dancing/striptease establishment may lead to an increase in requests for late night alcohol or food establishments, or accommodation, to cater for the clientele likely to frequent such a venue (for example 'stag' or 'hen' parties). Those with a role in the licensing process will be mindful to carefully balance these wider considerations which, although may bring benefits to the night time economy, may also affect the character of a location and potentially impact on crime and disorder, public nuisance and protection of children and vulnerable adults. It may also have an impact on other services such as local transport provision/availability and policing of the night time economy.
- 13.11 When assessing an individual application on its merits, the Licensing Authority shall look at all relevant material factors, and these factors may include (but not exclusively):
- (a) the nature and character of the locality – is it a residential area, leisure area, retail or educational;
  - (b) the presence of sensitive uses – for example places of worship, school, youth and after school clubs, sports/community facilities, parks or play areas, care homes, hospitals or hospices etc;
  - (c) is it a night-time economy zone with sufficient sex-oriented uses;
  - (d) local views on the nature and character of the area;
  - (e) gender or other equality impacts – e.g. would this use deter male/female users from the locality;
  - (f) is crime, or fear of crime, a factor in the locality;
  - (g) views of other relevant authorities – for example planning or community safety partnership;
  - (h) level of genuine demand, excess supply impacts, does the size and nature of the area being proposed make it an appropriate or viable proposition; and
  - (i) the nature and condition of the premises itself – including capacity, external appearance, building and structure, advertising and proposed name.

## 14. Licence Conditions

- 14.1 The Council in granting a licence is able to impose terms, conditions and restrictions on that licence, either in the form of conditions specific to the individual licence under paragraph 8 of Schedule 3 or standard conditions made by the Council under paragraph 13 of Schedule 3 - applicable to all sex establishments or particular types of sex establishment.
- 14.2 Paragraph 13 provides examples of the matters that standard conditions may address which include but are not restricted to:
- The hours of opening and closing
  - Displays and advertisements on or in sex establishments
  - The visibility of the interior of a sex establishment to passers-by
  - Any change of use from one kind of sex establishment to another
- 14.3 Where the Council decides to produce standard conditions under paragraph 13 they shall apply to every licence granted, renewed or transferred by the authority unless they have been expressly excluded or varied.
- 14.4 Wherever possible, and so as to be consistent with the Licensing Act 2003 system, the Licensing Authority seeks to attach reasonable and proportionate controlling conditions that are generated by the applicant(s) themselves - whether considered as part of pre-application 'without prejudice' discussions, volunteered as part of the application or mediated during the licensing process. Consequentially, standard conditions which may otherwise apply may in some instances require exclusion or variation.



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14.5 Many sexual entertainment venues will require a Licensing Act 2003 authorisation as well as a sex establishment licence. Where this is the case, the Licensing Authority shall endeavour to avoid duplicating licence conditions and should ensure that any conditions attached to each licence are relevant to the activities authorised by that licence. For example, conditions relating to the sale of alcohol should only appear on a premises licence or club premises certificate and should not be imposed on sexual entertainment venue licence. Likewise, conditions relating to the provisions of relevant entertainment should appear on the sexual entertainment venue licence and not a premises licence or club premises certificate. The Licensing Authority shall also be diligent to avoid imposing conditions on either licence that are contradictory, and shall also be mindful of any relevant planning controls. For example, where existing planning controls specify the hours of operation the Licensing Authority will normally limit the licensed operation to within the same hours.

### **15. Duration of Licences**

15.1 Licences for sex establishments can be granted for up to one year. Babergh District Council, in granting a licence, will normally do so for one year to allow the operator a degree of certainty in relation to his/her business.

### **16. Enforcement**

16.1 Where necessary, enforcement action will be considered in accordance with the Compliance Code and the Council's General Enforcement Policy. These guidelines are available direct from Babergh District Council and may be subject to periodic amendment.

16.2 The emphasis will be upon a risk-assessed and targeted approach to inspections, concentrating on those premises which either:

- present a greater risk;
- have a history of non-compliance with conditions/regulation; or
- demonstrate poor management practice which undermines the licensing objectives.

16.3 The Licensing Authority will not normally undertake inspections routinely but may do so when and if they are considered by the Authority as reasonably necessary. The 1982 Act does not require inspections to take place save at the discretion of those charged with an enforcement role. The Local Authority may undertake joint inspections with partner authorities such as the Police.

16.4 Where expedient for the promotion or protection of the interests of the inhabitants of their area, the Council may also take action under Section 222 of the Local Government Act 1972, and other relevant provisions including Section 40 of the Anti-Social Behaviour Act 2003. The Council will also have due regard to section 17 of the Crime and Disorder Act 1998 whilst carrying out its functions.

### **17. Appeals**

17.1 In the event that the Council refuses an application for the grant, renewal or transfer of a sex establishment licence the applicant may appeal the decision in a Magistrates' Court, unless the application was refused under 12(3)(c) or (d), in which case the applicant can only challenge the refusal by way of judicial review.

### **18. Suitability of Applicant(s)/Operator**

18.1 The criteria the Licensing Authority will be guided by when assessing the suitability of the applicant(s)/operator, is linked into the application form requirements and based around the grounds for refusal specified by Paragraph 12 of Schedule 3.

18.2 An application will be refused where the mandatory requirements specified by Paragraph 12 of Schedule 3 are either not met, or not confirmed by the applicant to the satisfaction of the Licensing Authority. Incomplete applications cannot be processed.

18.3 In respect of discretionary grounds for refusal available to the Authority each case shall be determined individually and on its own merits. Where the Authority is minded to refuse a licence all applicant(s) shall be

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given the opportunity to a fair hearing before the final decision of the Authority is made, and also explore whether any remedial measures, for example licence conditions or exclusions, may adequately deal with the specific concerns.

18.4 Whilst the Authority can not anticipate every set of circumstances, in general terms the Council shall make a decision on applicant/operator suitability based on consideration of the following factors:

- (a) Whether the applicant(s), partners or directors have any relevant convictions, cautions or other relevant offences (and it may take into account 'spent' convictions for these purposes). The fact that an applicant or connected individual may have convictions will not automatically render them unsuitable as each case will be assessed on its individual merits. Clearly, serious offences involving violence, dishonesty or sexual offences will be of particularly relevance as to whether an applicant is suitable to be granted a licence;
- (b) The trading history and relevant experience of the applicant(s). Whether there has been any previous disqualification (beyond the mandatory limitations of paragraph 12 of Schedule 3);
- (c) The steps and measures (including rules, policies and procedures) that the applicant(s) intend to take to ensure that they operate sensitively in the community and without any disproportionate negative impacts in the locality;
- (d) Whether the business is for the benefit of any third party that would not be granted a licence;
- (e) Whether the Police object on any reasonable grounds to any applicant(s), partners or directors being granted a licence;
- (f) Whether the Police object on any reasonable grounds to any other person at a management or operational level being involved with the licensed operation;
- (g) Whether there are any restrictions on an applicant's ability to reside or work in the UK; and
- (h) Any other reasonable or relevant factors that may come to light.

## 19. Equality Analysis

19.1 Recognising its obligations under the Equality Act 2010, in the exercise of its licensing functions Babergh District Council shall have due regard to the need to eliminate discrimination, harassment and victimisation. It shall also have due regard to the need to advance equality of opportunity and foster good relations between the sexes.

19.2 Gender equality may well influence decision-making under the sex establishment licensing provisions of the Local Government (Miscellaneous Provisions) Act 1982:

- (a) The Authority shall use the licensing process – and in particular the attachment of conditions – to protect performers from harassment and any threat to their dignity, by requiring proper supervision and facilities.
- (b) Any suggestion that women would be less welcome in premises than men can be met by a protective condition.
- (c) The fears of women using the vicinity of premises may be reflected in decisions as to the location of such facilities. The importance of gender in relation to town centre planning is recognised by the Authority. In certain locations, lap-dancing and similar venues may make women feel threatened or uncomfortable.
- (d) Where relevant, these considerations shall be properly taken into account by the Authority at the decision-making stage and referenced within the policy.

19.3 The Authority recognises that equality duty is not confined to sex, and extends to religion or belief and disability. Any views expressed on these matters shall be duly considered by the Authority, unless they relate to moral grounds/values which are specifically excluded under the legislation. The needs of disabled customers may be reflected in decisions as to access and layout.

19.4 The limitation of a licence to a period of not longer than 12 months will afford adequate opportunity for the Authority to consider any representations/evidence relating to practices and impacts of the premises on equality considerations.

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### 20. Other legislation, strategies and guidance

20.1 When carrying out its functions the Local Authority has duties, responsibilities and considerations under other legislation and strategies, for example:

- (a) Crime and Disorder Act 1998 (in particular obligations under section 17 relating to the prevention of crime and disorder);
- (b) The European Convention on Human Rights, given effect by the Human Rights Act 1998;
- (c) Criminal Justice and Police Act 2001 (in particular the powers available under section 13 to make 'designated public place orders' or DPPO's to control the consumption of alcohol in a public place outside licensed premises);
- (d) Race Relations Act 1976 (as amended by the Race Relations (Amendment) Act 2000);
- (e) Anti-Social Behaviour Act 2003 (in particular powers available under sections 40 and 41 relating to the closure of premises on the grounds of public nuisance caused by noise);
- (f) Environmental Protection Act 1990 (as amended) (in particular investigation of, and any enforcement action in relation to, statutory nuisances – including by noise, light or odour);
- (g) Health and Safety at Work etc Act 1974;
- (h) Noise Act 1996 (as amended);
- (i) Health Act 2006;
- (j) Clean Neighbourhoods and Environment Act 2005 (including powers for the Local Authority to issued fixed penalty notices to licensed premises emitting noise that exceeds the permitted level between 11pm and 7am);
- (k) Policing and Crime Act 2009;
- (m) The Council's published procedure for dealing with petitions and its obligations under the Local Democracy, Economic Development and Construction Act 2009;
- (n) Equality and diversity obligations; and
- (o) European Union Services Directive.

20.2 The premises operators are normally responsible for compliance with any other separate statutory requirements which may apply, not dealt with directly by the Local Authority, for example compliance with the Regulatory Reform (Fire Safety) Order 2005.

20.3 The Licensing Authority will as far as possible seek to avoid duplication with other regulatory regimes when dealing with the licensing function. If other existing law already places certain statutory responsibilities on an employer or operator of premises, it cannot be necessary to impose the same or similar duties on the licence holder.

20.4 Other Local Authority and Government policies, strategies, responsibilities, and guidance documents may also refer to the licensing function, and the Licensing Authority may liaise with the relevant authorities or its directorates with regard to these.

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## Appendix C

All current licence holders (None)	Parish / Town Councils
Mid Suffolk & Babergh Communities Service Endeavour House 8 Russell Road Ipswich IP1 2BX <a href="mailto:communities@baberghmidsuffolk.gov.uk">communities@baberghmidsuffolk.gov.uk</a>	Mid Suffolk & Babergh Environmental Protection Endeavour House 8 Russell Road Ipswich IP1 2BX <a href="mailto:Environmental@baberghmidsuffolk.gov.uk">Environmental@baberghmidsuffolk.gov.uk</a>
Mid Suffolk & Babergh Health and Safety Endeavour House 8 Russell Road Ipswich IP1 2BX <a href="mailto:healthandsafety@baberghmidsuffolk.gov.uk">healthandsafety@baberghmidsuffolk.gov.uk</a>	Suffolk Fire & Rescue Service Endeavour House 8 Russell Road Ipswich IP1 2BX <a href="mailto:fire.admin@suffolk.gov.uk">fire.admin@suffolk.gov.uk</a>
Mid Suffolk & Babergh Legal Services Endeavour House 8 Russell Road Ipswich IP1 2BX <a href="mailto:legal.services@westsuffolk.gov.uk">legal.services@westsuffolk.gov.uk</a>	Mid Suffolk & Babergh Planning Service Endeavour House 8 Russell Road Ipswich IP1 2BX <a href="mailto:planning@baberghmidsuffolk.gov.uk">planning@baberghmidsuffolk.gov.uk</a>
Public Health Suffolk Endeavour House Endeavour House 8 Russell Road Ipswich IP1 2BX <a href="mailto:healthandwellbeing@suffolk.gov.uk">healthandwellbeing@suffolk.gov.uk</a>	Suffolk Constabulary Police Headquarters Martlesham Heath Ipswich IP5 3QS <a href="mailto:PoliceAlcoholLicensing@suffolk.pnn.police.uk">PoliceAlcoholLicensing@suffolk.pnn.police.uk</a>
Suffolk Safeguarding Partnership Endeavour House 8 Russell Road Ipswich IP1 2BX <a href="mailto:enquiries@suffolksp.org.uk">enquiries@suffolksp.org.uk</a>	

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