



**BABERGH DISTRICT COUNCIL**

# **Sex Establishment Licensing Policy**

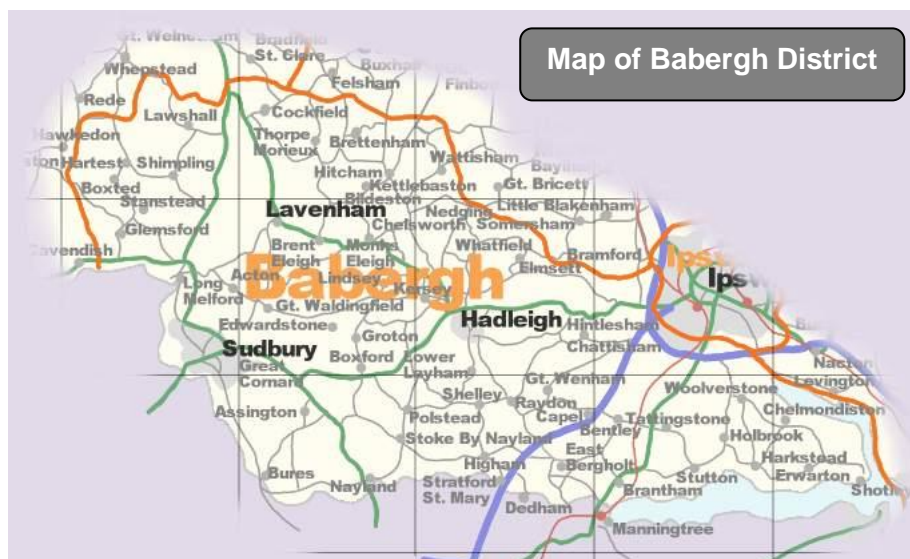
**Local Government (Miscellaneous Provisions) Act 1982**

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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

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### **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.