

**PROPOSED VARIATION
TO THE STANDARD SEX SHOP LICENCE CONDITIONS**

SUMMARY

This report outlines proposals to vary the standard conditions currently applied to sex shop licences.

The Committee is requested to consider the proposals and provisionally approve the adoption of new standard conditions which, subject to consultation, should take effect from 1st February 2019.

1. BACKGROUND & INTRODUCTION

- 1.1. The Local Government (Miscellaneous Provisions) Act 1982 (LGMPA82) provides for local authorities to licence sex establishments. These include sex cinemas and/or sex shops.
- 1.2. Whilst there are no known sex cinemas in the Rushmoor area, there is one sex shop; these being any premises used for selling or displaying sex articles and/or other associated items to a 'significant degree'. The premises namely, The Private Shop, 266B High Street, Aldershot, Hampshire, GU12 4LT is operated by Darker Enterprises Ltd and has been continuously licensed by the Council since 2nd May 2001.
- 1.3. Whilst paragraph 8 of Schedule 3 of the LGMPA82 provides that the authority may grant and/or renew a sex establishment licence on such terms, conditions or restrictions as may be specified, paragraph 13 gives the Council the power - not a duty (i.e. a discretionary ability), to prescribe standard conditions to be applied to sex establishments licences. These may also include the terms, conditions and/or restrictions on or subject to which licences granted under this Schedule are in general to be granted, renewed or transferred.
- 1.4. The Council's standard conditions were last reviewed in 1999 when Committee considered and approved the then Head of Environmental Health Services report N^o: 29/99. Whilst a copy of these is given at **appendix A** for reference, these conditions have been applied to the above mentioned licence on renewal since initial grant.
- 1.5. Darker Enterprises Ltd have recently submitted a request seeking permission to modernise their premises. Consideration of this request has prompted a review of the standard conditions which, it is felt, also now need updating to take account of changes in the law and the experience of officers engaged in the regulation of the premises.

- 1.6. It is felt that the standard conditions also require update to ensure consistency of approach; whereby the existing conditions contain a notable degree of fire, health and safety-related content. Notably, as there is currently no similar policy in respect of sex establishment licensing (this will follow at a later date), this contrasts markedly with other Council licensing policies (e.g. Licensing Act 2003, Gambling Act 2005); whereby the Licensing Authority normally seeks to avoid the imposition of conditions that duplicate other regulatory requirements.
- 1.7. Under the Local Authorities (Functions & Responsibilities) (England) Regulations 2000, the imposition of conditions is not an executive function. Accordingly, the Committee is, subject to proposed consultation arrangements (see paragraph 2.3 below) asked to consider and provisionally approve the revised standard conditions drafted.

2. DETAILS OF THE PROPOSAL

2.1. Proposed Conditions

- 2.2. The proposed standard conditions are set out in **appendix B**. Following removal of conditions that duplicate other regulatory requirements these effectively consolidate the previous set of standard conditions and those of other authorities with licensed premises within the Hampshire & Isle of Wight Licensing Officers Group.

2.3. Proposed consultation

- 2.4. Whilst there is no requirement in law to carry out any public consultation in respect of any revision to the standard conditions, it is proposed, by way of transparency and consistency with other licensing regimes, that a 6-week consultation be undertaken in respect of the proposed changes. This would afford both the existing licence holder, interested parties and other Members an opportunity for comment.
- 2.5. It is further proposed, that where no representations are made on consultation, that the revised conditions take effect from **1st February**. However, any substantive feedback will be referred back to the Committee for consideration.

3. IMPLICATIONS OF PROPOSALS

- 3.1. Updating the standard conditions will ensure consistency of approach and that the local authority continues to have an effective means of control in respect of the existing licensed premises, and any premises which may become licensed in the future.
- 3.2. Given that the proposals largely consolidate existing arrangements and given that there is currently only one licensed sex shop in Rushmoor, the implications of the proposals are considered to be limited. However, the proposed consultation and, where appropriate, any reconsideration by Committee, should help identify and resolve any significant issues.

4. OTHER RELEVANT CONSIDERATIONS

4.1. Legal Implications

4.2. Whilst the Council is not obliged to prescribe standard conditions or consult on them, it is considered necessary in order to effectively regulate licensed sex shops within the borough.

4.3. Financial and Resource Implications

4.4. There are no direct financial implications associated with this report, aside from the costs of consultation (if appropriate), which can be borne from existing budgets.

4.5. Useful Guidance

4.6. While there is limited guidance available to Council's in respect of sex shop licensing conditions, an excerpt of the Home Office guidance on Sexual Entertainment Venues is given at **appendix C** for reference.

5. RECOMMENDATIONS

5.1. It is recommended that Committee provisionally approve the proposed standard conditions to be applied to licensed sex shops in Rushmoor. It is also recommended that such conditions be subject to public consultation. In the case that no substantive representations are made during the consultation period, it is recommended that the revised conditions take effect from 1st February 2019.

BACKGROUND DOCUMENTS: None

CONTACT DETAILS:

Report Author – Shelley Bowman, Principal Licensing Officer
Email: shelley.bowman@rushmoor.gov.uk, **Tel:** 01252 398162

Head of Service – James Duggin, Head of Operations
Email: james.duggin@rushmoor.gov.uk, **Tel:** 01252 398640

APPENDICES:

Appendix	Title
Appendix A	- Current standard sex shop licence conditions
Appendix B	- Proposed standard sex shop licence conditions
Appendix C	- Home Office Guidance on Sexual Entertainment Venues

CURRENT STANDARD SEX SHOP LICENCE CONDITIONS

- NOTES:**
- (i) Except where the context demands otherwise the singular includes the plural and masculine includes the feminine.
 - (ii) Nothing in these conditions shall be construed as interfering with (i) the discretion of the licensee or his representative regarding the admission of any person or (ii) the need to strictly comply with all relevant statutory requirements.
 - (iii) These conditions are divided into the following parts:
 - Part I General
 - Part II General conditions relating to management conduct etc.
 - Part III Conditions in respect of fire and safety.
 - Part IV Other safety conditions and conditions relating to sanitation and noise.
 - Part V Conditions which apply to sex shops.

Disabled People

It is the policy of the Council that there should be access and facilities for disabled people at sex shops. Licensees are therefore encouraged in the strongest possible terms to provide such facilities so as to enable the admission of disabled people and are reminded of the duties imposed by the Disability Discrimination Act 1995.

PART 1 – GENERAL CONDITIONS

1.0 Definitions

1.1 In these conditions, unless the context otherwise requires:

'Approval of the Council' or 'consent of the Council' means the approval or consent of the Council in writing.

'Approved', 'accepted', or 'permitted' means approved, accepted or permitted by the Council in writing.

'Approved arrangements' means the arrangement of the premises, fittings, installations, etc. as approved by the Council.

'Council' means Rushmoor Borough Council.

'Emergency lighting' means lighting, obtained from a source independent of the general supply for the building, provided to assist the public and staff to leave the premises without the aid of normal lighting.

'Licensee' means the holder of a sex shop licence.

'Non-combustible' material means material which is deemed to be non-combustible in accordance with BS 476: Part 4, or material accepted by the Council as being non-combustible.

'Officer' means any person authorised in writing by the Council. (This may include Police and Fire Officers).

'Premises' means any premises within Rushmoor licensed as a sex shop and includes all installations, fittings, etc.

'Sex Shop' and 'Sex Article' have the meaning given in Schedule Three to the Local Government (Miscellaneous Provisions) Act 1982.

2.0 Dispensation or modification of conditions

- 2.1 These conditions may be dispensed with or modified by the Council in any special case.
- 2.2 Where in these conditions there is any reference to the consent of the Council being required, such consent may be given on such terms and conditions and subject to such restrictions as may be so specified.
- 2.3 If the licensee wishes any of the terms of the licence to be varied an application must be made to the Council.

PART II - GENERAL CONDITIONS RELATING TO MANAGEMENT, CONDUCT, ETC.

3.0 Exhibition of Licence

- 3.1 The licence or a clear copy shall be prominently displayed at all times so as to be readily and easily seen by persons using the premises.

4.0 Hours of Operation

- 4.1 The premises shall not, for any purpose of the licence, be open to customers before the opening time or after the terminal hour as detailed on the front page of this licence.

5.0 Responsibility of Licence Holder

- 5.1 The licensee shall take all reasonable precautions for the safety of the public and employees and, except with the consent of the Council, shall retain control over all portions of the premises.
- 5.2 No poster, advertisement, photograph, sketch, synopsis or programme shall be displayed by or on behalf of the licensee at the licensed premises or at any other public place except in accordance with relevant legislation.
- 5.3 Other than that which is required in law, the only signage or wording etc visible on the shop frontage shall be the title of the shop ("Personal Lines"),

the telephone number of the shop and a contact email address, together with the opening hours. The statutory sign shall be prominently displayed on the second door of the lobby.

- 5.4 The premises may not be used under the terms of the licence unless and until any necessary permission and/or consents have been obtained in accordance with the relevant legislation.

6.0 Persons in charge of Licensed Premises

- 6.1 The licensee or some responsible person over 18 years of age nominated by him in writing for the purpose shall be in charge of, and upon, the licensed premises during the whole time that they are open to the public.

(a) Such written nomination shall be continuously available for inspection by a police officer or an officer authorised in writing by the Council.

- 6.2 The person in charge shall not be engaged on any duties which will prevent him from exercising general supervision and he shall be assisted as necessary by suitable adult persons to ensure adequate supervision. The person in charge should be conversant with these conditions, a copy of which should be held on the premises.

- 6.3 A notice showing the name of the person in charge of the premises at the time they are open under the licence shall be conspicuously exhibited in a position where it can be easily seen by customers.

7.0 Conduct of Premises

- 7.1 The licensee shall maintain good order in the premises.

- 7.2 The licensee shall ensure that the public are not admitted to any parts of the premises other than the ground floor retail shop.

- 7.3 The licensee or any other person concerned in the conduct or management of the premises shall not seek to obtain custom by means of personal solicitation or touting from the premises, immediately outside the premises or in the vicinity of the premises, nor allow the premises to be used by prostitutes.

Note: Soliciting includes the distribution of leaflets.

- 7.4 No person under the age of 18 shall be admitted to any part of the premises which is used as a sex shop or be employed in the business of the sex shop.

- 7.5 No poster, photograph, sketch, painting or any form of advertisement or display shall be displayed by or on behalf of the licensee on, outside or within the premises in a position where it is visible to the public if the Council regards it as unsuitable for exhibition to the public.

(a) If the licensee is notified in writing that the Council objects under this rule to a poster, photograph, sketch, painting, advertisement or display, it shall be removed or completely obscured from sight.

8.0 Doorways, openings, windows etc.

- 8.1 The entrances to the premises shall be of a material or covered with a material which will render the interior of the premises invisible to passers-by.
- 8.2 The windows to the premises shall be glazed and shall be fitted with vertical handing blinds and secondary screening. All other openings shall be obscured.
- 8.3 The premises shall be provided with a two door entry lobby, each door fitted with a self closing device. The lobby and doors shall be constructed as to render the interior obscured to passers-by.

9.0 Change of Use

- 9.1 No change of use of any portion of the premises from that approved by the Council shall be made until all necessary consents have been obtained from the Council.

10.0 Alterations

- 10.1 No alterations (including temporary alterations) shall be made to the premises, without the prior written consent of the Council. This condition shall not require notice to be given in respect of routine maintenance works.
- 10.2 Where works necessitate the premises being closed for a period of time, the premises shall not re-open for the purpose of the licence until the licensee has been notified in writing by the Council of the satisfactory completion of the work.

PART III – CONDITIONS IN RESPECT OF FIRE AND SAFETY CONDITIONS

11.0 Maintenance

- 11.1 The approved arrangements shall be maintained at all times in good order, repair and condition.

12.0 Overcrowding

- 12.1 Overcrowding shall not be permitted in any part of the premises.
- 12.2 No more than 15 persons shall be allowed into this premises at any one time.
- 12.3 The licensee shall ensure that the limit specified in condition 12.2 is not exceeded.

13.0 Maintenance of Means of Escape

- 13.1 All exit routes shall be maintained with non-slip and even floor/step surfaces and be free of trip hazards at all times. Such exit routes shall be unobstructed and available for immediate use at all times.

13.2 All exit doors shall be available for immediate use, without use of a key or similar fastening, the whole time the public are in the premises. Only fastenings that have been approved by the Council in writing may be provided on such doors.

13.3 All fire doors shall be maintained effectively self-closing and not wedged open.

13.4 Any removable security fastenings approved by the Council shall be removed from the doors prior to opening to the public.

14.0 Curtains, Decorations etc

14.1 Where approval is given for curtains to be used, the curtains shall, where necessary, be periodically re-sprayed to maintain their fire resistance. Curtains shall be arranged so as not to obstruct EXIT notices and/or fire extinguishers or other fire fighting equipment.

14.2 Curtains where permitted across doors shall be in two halves on a free running rail to enable them to be parted easily. Such curtains shall have a clearance of at least 75mm between the bottom of the curtain and the floor.

15.0 Fire Alarms

15.1 Any fire alarm system shall be checked monthly to ensure it is fully operational. In addition, any system shall be serviced yearly by a qualified engineer and all results recorded in a log book to be retained on the premises.

16.0 Fire Fighting Equipment

16.1 All fire extinguishers and fire fighting equipment shall be checked yearly by a competent person and the test date recorded on the equipment, or in the case of hose reels and sprinkler systems, the test results shall be recorded in a log book retained on the premises.

16.2 Any extinguisher discharged shall be replaced or recharged immediately.

17.0 Outbreaks of Fire

17.1 The Fire and Rescue Service shall be called to any outbreak of fire, however slight. Suitable notices shall be displayed indicating how the Service can be summoned.

**PART IV – OTHER SAFETY CONDITIONS AND CONDITIONS RELATING TO
SANITATION AND NOISE**

18.0 Sanitation

18.1 The Licensee shall ensure that adequate sanitary accommodation is available in the premises for the use of staff and in particular shall:

- (a) maintain each sanitary convenience in a clean and efficient order.
- (b) ensure that any room which contains a sanitary convenience is suitably and sufficiently lighted and ventilated and is kept clean.
- (c) ensure that in the sanitary accommodation provided, there are installed and maintained suitable and sufficient wash-hand basins and that each basin is provided with an adequate supply of hot and cold water or of hot water at a suitably controlled temperature, together with an adequate supply of soap and suitable hand drying facilities.
- (d) the premises are so constructed with the adequate provision of efficient drains, suitable wall, floor and ceiling finishes, etc, that satisfactory sanitation can be maintained.

19.0 Lighting

19.1 All lighting (including emergency lighting) shall be maintained in full working order.

20.0 Electrical Installation

20.1 The electrical installation for the premises and any equipment used therein shall be maintained in a safe working condition as prescribed by the Electricity at Work Regulations 1989, and the current edition of the Regulations for electrical installations issued by the Institute of Electrical Engineers.

21.0 Emergency Lighting

21.1 Any emergency lighting installation shall be maintained and tested in accordance with the relevant health and safety standards.

22.0 Heating

22.1 The heating system and/or appliances used within the premises shall be fully maintained in good working order for use when required. Any guards required by the Council shall be securely held in position.

23.0 Gas and Electricity Meters

23.1 Gas and electricity/mains intake enclosures shall not be used for any other purpose (e.g. storage) and, where meters are not in an enclosure, the meters shall not be obstructed and shall be available for immediate access.

24.0 Paraffin and Mineral Oil

24.1 Paraffin or other mineral oil shall not be used in any lamp, stove or other appliance in premises except with prior written consent of the Council

25.0 Noise and Vibration

25.1 The licensee shall ensure that no noise shall emanate from the licensed premises or vibration be transmitted through the structure of the licensed premises which gives rise to a nuisance to the occupier of premises in the vicinity of the licensed premises.

(a) Without prejudice to the generality of this condition the licensee shall ensure that no form of loudspeaker or sound amplification equipment is sited on or near the exterior of the licensed premises or in or near any foyer, doorway, window or opening to those premises.

25.2 The licensee must ensure that appropriate measures are taken to prevent any nuisance which may be caused by the operation or use of ventilation or other equipment.

PART V - CONDITIONS APPLYING TO SEX SHOPS

26.0 Goods available in sex shops

26.1 All sex articles and other things displayed for sale, hire, exchange or loan within a sex shop shall be clearly marked to persons who are inside the sex shop with the respective prices being charged.

26.2 All printed matter offered for sale, hire, exchange or loan shall be available for inspection prior to purchase and a notice to the effect is to be prominently displayed within the sex shop.

26.3 No film or video shall be exhibited, sold or supplied unless it has been passed by the British Board of Film Classification or such other authority performing a similar scrutinising function as may be notified to the licensee by the Council, and bears a certificate to that effect and is a reproduction authorised by the owner of the copyright of the film or video film so certified.

PROPOSED STANDARD SEX SHOP LICENCE CONDITIONS

1. The sex shop licence or a certified copy shall be prominently displayed at the premises.
2. This licence permits the licence holder to operate the premises as a sex shop only. Any change of use of the venue shall require the permission of the licensing authority.
3. The premises shall not be open to customers at any time other than in accordance with the permitted hours detailed on the licence.
4.
 - (a) No person under the age of 18 years shall be permitted entry to the premise at any time.
 - (b) Anyone attempting to enter the premises who looks under the age of 25 shall be asked to provide photographic identification to prove that they are over the age of 18 years. If they cannot provide this they shall be refused entry to the premises.
 - (c) A written record shall be made of any refusal of entry to any individual. The records shall be kept at the premises to which they relate for a minimum of 12 months, and shall be made available to officers of the licensing authority on request.
 - (d) No person under the age of 18 years shall be employed in any capacity in relation to the business.
 - (e) Suitable signage outlining the age restriction requirements outlined in condition 4(a) above shall be prominently displayed on the exterior of the premises and on the second door of the entrance lobby.
5.
 - (a) The premises shall be fitted with a two-door entrance lobby, whereby each door is fitted with a self-closing device.
 - (b) The lobby shall be designed such that the interior of the premises is not visible to passers-by, when customers are entering / exiting the premises.
6.
 - (a) Only suitable signage, wording or images shall be displayed on the shop frontage that has been approved by the licensing authority in writing; whereby they have deemed that it is suitable, inoffensive and appropriate for passers-by.
 - (b) The entrances and windows of the premises shall be made from or covered with a material, which effectively prevents the interior of the premises from being visible to passers-by.

7. No poster or advertisement for the licensed premises, may be displayed at any public place without the approval of the licensing authority in writing, whereby they have deemed that it is suitable, inoffensive and appropriate for passers-by.
8. The licence holder or any other person related to the business shall not seek to obtain custom by means of personal solicitation, touting or the distribution of leaflets, from or in the vicinity of the premises.
9.
 - (a) A responsible person, over the age of 18 years, and nominated in writing by the licence holder, shall be present and in charge of the premises at all times that it is open to the public.
 - (b) The written nomination of the individual shall be kept at the premises, and made available to officers of the licensing authority immediately on request.
 - (c) A notice shall be displayed at the premises in a prominent position, notifying customers of the person in charge at all times that the premises is open to the public.
 - (d) The nominated person shall not be engaged in any duties which prevent him / her from exercising general supervision.
 - (e) The nominated person shall maintain good order in the premises at all times.
10.
 - (a) A suitable and sufficient digital CCTV camera system linked to a suitable recording facility, which captures images of evidential quality, shall, so far as is reasonably practicable, be operational at the premises during any period in which the premises is open to the public.
 - (b) CCTV recordings and footage must be retained for a minimum period of 31 (thirty-one) days and be made available for review by the Police upon request (subject to the requirements of the Data Protection legislation in force at the time).
 - (c) All CCTV recorded images / footage and copies thereof shall, so far as is reasonably practicable, display the correct time and date of each recording. The system clock shall be checked regularly for accuracy taking account of GMT and BST.
 - (d) Suitable and sufficient warning signs shall be displayed in the public areas of the premises advising that CCTV is in operation at the premises.
 - (e) A competent person conversant with the operation and retrieval of information contained in the CCTV system / footage shall be available to provide immediate copies of footage to the police on request. Any images recovered must be in a viewable format on either disc or VHS.

Footage supplied in a digital format on CD or DVD will also have a copy of the CCTV system software enabled on the disc to allow playback.

11. The licence holder shall retain control over all parts of the premises and shall not let, licence or part with possession of any part of the Premises.
12. No changes shall be made to the layout of the premises without the written consent of the licensing authority, on receipt of an updated premises plan.
13. Members of the public shall not be permitted to any other part of the premises other than the retail area, as defined by the premises plan attached to the licence.
14. No fastenings of any description shall be fitted upon any booth or cubicle within the Sex Shop nor shall more than one person (including any employee) be present in any such booth or cubicle at any time.
15. All products available for sale or hire shall be clearly marked with the purchase / hire price.
16. All printed matter offered for sale or loan shall be available for inspection prior to purchase, and a notice to that effect shall be prominently displayed at the premises.
17. No film shall be exhibited, sold or supplied unless it -
 - (a) has been rated by the British Board of Film Classification (BBFC);
 - (b) bears a certificate showing the given rating; and
 - (c) is a reproduction authorised by the owner of the copyright of the film
18. No speaker or other form of sound amplification equipment shall be positioned near to or facing external doors or windows.
19. Where the licence holder is a body corporate or an unincorporated body, the licensing authority shall be notified of any change of director, company secretary or other person responsible for the management of the body in writing within 14 days of such change.
20. All members of staff shall be made aware of the conditions of the licence by a mechanism in writing.

-oOo-

HOME OFFICE GUIDANCE - SEXUAL ENTERTAINMENT VENUES

Licence Conditions

- 3.39 Once the appropriate authority has decided to grant a licence they are 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 applicable to all sex establishments, or particular types of sex establishments, prescribed by regulations made by the appropriate authority under paragraph 13 of Schedule 3.
- 3.40 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
- 3.41 Where the appropriate authority decides to produce standard conditions under paragraph 13 they will apply to every licence granted, renewed or transferred by the authority unless they have been expressly excluded or varied.