

 Council 5 December 2012		Agenda Item No. 14
Title	Sexual Entertainment Venues Consultation	
For further information about this report please contact	Tim Hepworth, Richard Jones	
Wards of the District directly affected	All	
Is the report private and confidential and not for publication by virtue of a paragraph of schedule 12A of the Local Government Act 1972, following the Local Government (Access to Information) (Variation) Order 2006?	No	
Date and meeting when issue was last considered and relevant minute number	October 24 th	
Background Papers		

Contrary to the policy framework:	No
Contrary to the budgetary framework:	No
Key Decision?	No
Included within the Forward Plan? (If yes include reference number)	No
Equality & Sustainability Impact Assessment Undertaken Will be undertaken at a future date to assess the impact of any policy changes proposed after consultation	No (If No state why below)

Officer/Councillor Approval		
Officer Approval	Date	Name
Chief Executive/Deputy Chief Executive	27/11/12	Chris Elliott
CMT		Chris Elliott, Bill Hunt, Andy Jones
Section 151 Officer		Mike Snow
Monitoring Officer		Andy Jones
Finance		Jenny Clayton
Consultation & Community Engagement		
<p>The primary function of this piece of work is to facilitate public and stakeholder consultation. This report sets out options for how the forthcoming consultation should be structured and where it should focus.</p> <p>It should also be noted that a meeting took place on the 22/11/12 with member representation from each of the three main parties. This outlined the early work on the approach, and members were broadly supportive of our proposals.</p>		
Final Decision?	No	
Suggested next steps (if not final decision please set out below)		
<p>Once this report and its recommendations have been considered, a decision will need to be made on how we conduct a public consultation and the content of such a piece of work. This will provide further information relevant to any final decision. Once the results of the consultation have been collated and analysed, a decision will then need to be made on whether or not we need to amend our SEV policy to match the wishes of the district populace.</p>		

1. **SUMMARY**

The purpose of this report is to:

- 1.1 present the current situation with regards to the applications and processes required for the establishment of a Sexual Entertainment Venue (SEV) in the district
- 1.2 detail the areas of influence the council has with regards to their regulation, and to show where the various processes interact
- 1.3 outline the legislative and policy requirements for each of these areas
- 1.4 look at the policies of other councils to consider whether any contain alternative policy approaches to our own
- 1.5 recommend which of a range of possible methods of consultation should be adopted
- 1.6 propose which broad areas in relation to SEVs could be included in the consultation.

2. **RECOMMENDATION**

- 2.1 It is recommended that Council asks the Overview & Scrutiny Committee's Task and Finish group (on SEVs) take this initial piece of work forward and, working alongside Officers, develop appropriate questions and areas of focus upon which a consultation can be conducted. Suggestions for the types of areas it is believed the group will need to consider are set out in paragraph 3.6 of this report.
- 2.2 The Council agrees that a public consultation should be undertaken by post; using a representative sample of circa 2,000 randomly selected residents, with an enhanced sample taken from residents living in the vicinity of the two SEVs currently operating in the district.
- 2.3 That consultation is also carried out with external stakeholders as set out in paragraph 3.4 of this report.
- 2.4 That officer support is available for the Task and Finish group to evolve options for the format and scale of consultation with other stakeholders.
- 2.5 That a budget of £5,000 is allowed for consultation costs to support this work to be taken from the contingency budget.

3. **REASONS FOR THE RECOMMENDATION**

- 3.1 This position statement has been compiled in response to the motion raised by Councillor Wilkinson and seconded by Councillor Rhead on the 24/10/12:
"We call upon this the Council to respond to the concern in our communities over the growing number of Sexual Entertainment Venues (SEVs) by consulting with interested parties and residents of Warwick District on whether there are any suitable locations or not for Sexual Entertainment Venues (SEVs) within the District".
- 3.2 It is recommended that the public consultation be conducted via a postal system in order to find the appropriate balance between costs and getting a sufficient and representative sample of local opinion. We make this recommendation following discussion with the Consultation & Customer Insight Manager at Stratford District Council (he has assisted WDC with other consultation work in the past and we anticipate using his specialist services to support this piece of work).

- 3.3 An enhanced sample of residents who live near the existing SEVs will allow us to see if the views of those living close to the establishments differ from the wider population
- 3.4 Consultation is also proposed to be carried out with external stakeholders, suggestions for which are as follows;
- Businesses and their employees operating in the vicinity of the existing venues
 - Current SEV licence holders in the District
 - Employees (both performers and otherwise) of existing SEVs
 - West Midlands Police
 - Child Protection
- 3.5 The Overview & Scrutiny Committee has established a Task & Finish Group to consider SEV's within Warwick District. It is recommended that this Group should take this work forward to avoid duplication of effort. This will allow a small focused group time to understand the complex legal situation and assist in the formulation of a final outcome. This will enable informal feedback through the political Groups. The membership of the Task and Finish Group will need to be determined by the Overview & Scrutiny Committee as will a full scope of the work to be undertaken. However, this report will provide the broad remit of the review which can be confirmed by the Committee in due course. The final report of the Task & Finish Group would go to the Overview & Scrutiny Committee who would pass the recommendations on to Council.
- 3.6 Suggestions for the types of areas it is believed the group will need to consider are:
- The general attitudes towards and knowledge of adult entertainment venues
 - The types of areas they would consider most suitable for the establishment of SEVs
 - Within those areas, whether it would be suitable to have some sort of cap on the number of venues within and at which level it should be set were a cap to be adopted
 - Elements within the licensing policy (for example; the definition of proximity)
- 3.7 If Council agrees this approach, an email asking for nominations to the Task & Finish Group will be sent out on 6 December with a view to Overview & Scrutiny Committee agreeing a membership, of no more than six Councillors, at their meeting on 11 December 2012.

4. **POLICY FRAMEWORK**

- 4.1 **Policy Framework** – The report does not impact on the Council's Policy Framework.
- 4.2 **Fit for the Future** – This report will potentially lead to a public consultation and, as a result, how we regulate SEVs in the district. In terms of the Fit for the Future strategy, the results of the public consultation will help us better understand the opinions of residents and their thoughts on the presence of SEVs in the district. As a result, policy can be formed around genuine customer desire instead of perceived wishes.

5. BUDGETARY FRAMEWORK

- 5.1 At this stage, no funds are committed to this report. At this early stage it is estimated that the consultation will cost no more than £5,000, and that this will come from the Contingency budget which currently stands at £189,200.

6. ALTERNATIVE OPTION(S) CONSIDERED

- 6.1 Other options considered for the consultation were as follows;

- A web survey placed on the council website.
It was decided that this form of consultation could attract a highly unrepresentative set of responses, especially with consideration to the polarised views and organised support/opposition groups that this issue attracts. It is thought that this method of approach could result in policy being formed around a highly vocal minority instead of the opinions of the wider public.
- A series of face to face interviews conducted with a representative sample of local residents.
This option is likely to provide a very representative picture of opinions in the district, and also provide a series of qualitative responses above and beyond what could be achieved via a postal system. However, the cost implications of this form of consultation would likely make it an unattractive option at this stage.
- A series of focus groups conducted with external stakeholders.
This option would be unsuitable for use with residents due to the large number of groups that would need to be assembled to achieve a representative sample – the cost would be too prohibitive. However, it should be noted that this option could be used in conjunction with the recommended postal survey in order to garner responses from non-resident stakeholders.
- A telephone survey.
This option is likely to provide a very representative picture of opinions in the district, and also provide a series of qualitative responses above and beyond what could be achieved via a postal system. However, whilst the cost implications of this form of consultation would be lower than face to face interviews, overall costs are still higher than a postal survey and make it an unattractive option at this stage.
- That no consultation is carried out, but that we instead utilise the array of research conducted by other authorities with regards to SEVs.
This would not necessarily provide the most accurate picture of the current attitudes of the district populace, but may have the potential to be extrapolated and may provide a reasonable representation of district opinion.
- That the consultation is delayed until the outcome of the Judicial Review (of the Shades decision) is known.
There are legitimate concerns that this piece of consultation could potentially affect the outcome of the Judicial Review and call into question the position of the Council. Advice has been sought from County Legal Services in relation to this, and their response is as follows;

“Provided that this is a normal review of policy that could reasonably have been expected to happen regardless of the “Shades” decision, then it should have no bearing on the JR proceedings.

It should, of course, be conducted completely transparently and essentially as if there was no Judicial Review going on. Difficulties may arise if the policy review was being unduly influenced by the on-going JR proceedings,

but provided that is not the case then I see no legal reason why the review should not proceed".

We have considered these points and the recommended consultation option complies with this advice. At this stage, we are merely undertaking a consultation exercise and making no recommendation about policy changes.

7. **BACKGROUND**

- 7.1 Details of current legislation, policies and processes which govern the establishment and control of SEVs are set out in Appendices I-VI.

APPENDIX

- I. General Considerations
- II. Summary Table of Legislation, Policies and Processes
- III. Planning Policy
- IV. Premises Licensing
- V. SEV Licensing
- VI. Options Presented by Other Councils

APPENDIX I – General Consideration

In order to establish an SEV, an applicant must satisfy four application processes;

- 1) Planning permission (if required for change of use)
- 2) Premises licensing for the sale of alcohol and use of regulated entertainment
- 3) SEV licensing for the showing of 'relevant entertainment'¹
- 4) Fire risk assessment

This report details only the first three of these areas as the latter is the domain of the fire service.

It is important to note that each of these four areas are independent of each other in law, and can exist in isolation.

As an example, a venue could have its premises license removed but continue to provide relevant entertainment without the sale of alcohol (see Appendix III for how this affects the playing of music).

Finally, a copy of the current WDC SEV policy is linked below. Please note that, with the exception of a cap, everything mentioned in this report is *already* included in our policy in one form or another. Whilst some things are not as strictly defined as they may appear in the policies of other councils, all conditions for refusing or granting licenses are present.

<http://www.warwickdc.gov.uk/NR/rdonlyres/7A90517D-309A-45D5-9085-D465068A6B2C/0/SexEstablishmentPolicy.pdf>

¹ See Appendix A (Definitions) of the council's SEV policy
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APPENDIX II – SUMMARY TABLE OF LEGISLATION, POLICIES AND PROCESSES

	Planning Permission	Premises License	Sex Establishment License
Main legislation governing	National Planning Policy Framework. Planning & Compulsory Purchase Act (2004)	Licensing Act 2003	Local Government (Miscellaneous Provisions) Act (1982) & Licensing Act (2003)
WDC published policy available?	Yes: Local Plan (1196-2011) and a series of supplementary planning guidance.	Yes	Yes
Pre-application advice	Available		
Application process	<ul style="list-style-type: none"> • Send WDC: <ul style="list-style-type: none"> ○ Application form ○ Plan(s) ○ Fee • Display notice at site. • Advertise in local paper (depending on location) 	<ul style="list-style-type: none"> • Send WDC: <ul style="list-style-type: none"> ○ Application form ○ Plan(s) • Send copy application to: <ul style="list-style-type: none"> • Police • County Fire Officer • Environmental Health • Enforcement for Health and Safety • Planning • Child Protection • Trading Standards • NHS/Public Health 	<ul style="list-style-type: none"> • Send WDC: <ul style="list-style-type: none"> ○ Application form ○ Premises plan ○ Fee • Display notice at site. • Advertise in local paper • Send copy application to Police.
Time to process			28 days
Statutory consultees	<ul style="list-style-type: none"> • Town/ Parish Council • Public: <ul style="list-style-type: none"> ○ Site notice ○ Letters to adjoining properties ○ Notice in newspaper (depending on location) 	<p>Those listed above by virtue of them being contacted.</p> <p>Public:</p> <ul style="list-style-type: none"> • Site notice • Local paper • Online (via council) 	<ul style="list-style-type: none"> Police Public (notice & advert above)
Other consultees	<p>Dependent upon the situation;</p> <ul style="list-style-type: none"> • Highway Authority • Environmental Health • Community Safety • Police 		<p>None, but policy indicates that we will also have consideration to planning and other areas of licensing.</p>

<p>Grounds for refusal</p>	<ul style="list-style-type: none"> • Contrary to policies of the National Planning Policy Framework or Local Plan; e.g. unacceptable adverse impact on amenity of nearby uses and residents; insufficient parking; unacceptable noise pollution where it could harm to sensitive receptors; or an inappropriate use of the building contrary to the designation within the Local Plan. 	<ul style="list-style-type: none"> • Prevention of crime and disorder • Public safety • Prevention of public nuisance • Protection of children from harm • Concern for suitability of applicant • History of noise, ASB, nuisance at premises 	<ul style="list-style-type: none"> • Unsuitable applicant • Number of SEVs exceeds any number the council considers appropriate for that locality. (Could be NIL) • Inappropriate having regard to: <ul style="list-style-type: none"> ○ Character of locality ○ Proximity of: <ul style="list-style-type: none"> § residential premises § Sheltered housing § Vulnerable people § Educational establishments § Places of worship § Access routes to schools, play areas, nurseries, children’s centres etc. § Shopping centres § Community facilities § Public buildings § Parks § Youth centres/clubs § Other SEVs ○ Any relevant planning considerations ○ Any planned regeneration of the area ○ <u>Evidence</u> of noise or disturbance caused by the premises ○ The nature & concerns of objectors <p><u>NB. Concerns based on ethical or moral beliefs cannot be considered.</u></p>
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APPENDIX III

PLANNING PERMISSION

Background Information

Planning permission will normally only be required if the applicant is seeking a change of use from the current planning use assigned to the intended premises.

Most SEV's will fall into a single planning group when applying for change of use; this use class is D2. This is assigned to leisure premises' such as cinemas, casinos, clubs, etc.

Nightclubs do not fall within D2 use as, in practice, they merge areas of different uses. This results in them having to apply for a '*sui generis*' use.

Occasionally, SEVs will be considered as *sui generis* as they *could* operate in much the same manner as more regular nightclubs.

There are areas listed in the Local Plan that have certain planning uses encouraged or discouraged (see below: *Considerations/Decisions*).

Layered onto this are areas subject to planning briefs. Very recently, Amara was refused planning permission as their proposed site was in an area covered by such a brief. This brief restricted new planning uses in the area (that is, leisure (D2 uses) sites were not being encouraged as part of the planning brief).

Additionally, there is no definition of a residential area.

There is no reference to the establishment of SEVs (beyond their status as leisure developments) in the Local Plan.

Planning uses have no 'shelf life'; once obtained they last until an applicant reapplies for further change of use.

Any refusal of planning permission does not affect the licensing processes or determination (as has recently been seen with the Amara situation – planning permission was refused but both premises and SEV licences were granted)

Consultees

There are statutory consultees for planning applications. In practice, for an application for a change of use to a SEV, the planning department would usually consult with; the local town / parish council, adjacent neighbours, the Highway Authority, Environmental Health, Community Safety and the Police.

They would also place site notices as required which would invite further comment and consultation from the wider public. Finally, there may also be public adverts placed in the local paper.

Considerations/Decisions

In terms of location, planning policy treats SEV's in the same manner as any other leisure / entertainment establishment; leisure developments within town centres are encouraged, whereas proposals outside of this designated area are generally resisted.

There is wording in the National Planning Policy Framework (paragraph 70) that recommends we plan positively for uses which fall within D2 (such as public houses). This is important to note as, if we're planning positively for this type of use, it becomes difficult to exclude some D2 uses and not others.

Planning permission is awarded with consideration to the evidence available at the time of the application. All applications are considered in light of whether the proposed development has an 'unacceptable adverse impact on the amenity of that area', so will look at issues such as;

- Movements to and from the premises and problems that they may cause
- Likely levels of noise coming from the activities within the premises
- Incidences of anti social behaviour linked to late night events
- Use and proximity of neighbouring premises
- Moral and ethical grounds can *never* be considered

Areas of Influence

Any influence the council wishes to have on the planning aspect of establishing an SEV will only be effective insofar as controlling the use available to the premises. They could, for example, prevent a leisure use from obtaining *sui generis* to be run as a nightclub, but could not, as a result of this, prevent the showing of sexual entertainment if it was deemed a D2 use.

Complaints/Reviews

As mentioned above, planning uses, if granted, do not have an expiry date. If an applicant wishes to change the use then they must reapply to the planning department, thus opening up the consultation phase again.

This is important to note as moving from *sui generis* to *sui generis* does require a fresh application for change of use. However, in practice this may be deemed a *de minimus* change. For example, a nightclub that decides to put on occasional sexual entertainment and would not be operating in a manner contrary to their existing planning use; enforcement may not be deemed expedient in this case.

Relationship with Other Council Departments

Environmental Health are involved in the planning process and have influence in terms of their risk based inspections of the site. Environmental Protection would have an input with noise and nuisance.

Community Safety will make comment on planning applications when they feel it necessary (as they would with any planning application), and will do so with regard to the movement of people within the area, and with regard to potentially issues that may arise from, for example, developing a block of residential flats next to an existing nightclub or vice versa.

Licensing do not, as a matter of course, get directly involved in the planning element of the establishment of an SEV.

APPENDIX IV

PREMISES LICENSING

Background Information

If awarded, a premises licence has no expiry date. It is, however, opened up to objection and decision once more if the licence holder applies for a variation of said licence.

Premises licences for SEVs are no different from those issued to pubs, clubs, etc.

Finally, it is also important to note that;

Live music or the playing of recorded music which is integral to the provision of relevant entertainment such as lap dancing for which a SEV licence is required is specifically excluded from the definition of regulated entertainment in the 2003 Act. Therefore, a SEV will not require a premises licence or club premises certificate just because it plays recorded music for a performer to dance to.

Consultees

Whilst the council does not need to actively consult with anyone when considering an application for a premises licence, the applicant is required to circulate their application form to the following responsible authorities as part of the process. This, in turn, serves as an invite to comment or object from these authorities.

- The Chief Officer of Police for the authority's area
- The County Fire Officer
- Environmental Health here in the district council
- Enforcement for Health and Safety here in the district council
- Planning here in the district council
- Child Protection
- Warwick County Council (Weights & Measures) – trading standards
- NHS/Public Health

Whilst a technicality, this means that the above authorities are statutory consultees of the applicant, not the licensing department.

If any of the consultees listed above has concerns about aspects of the application, they will provide advice of this to the Licensing Manager and negotiate with the applicant to try and resolve those concerns.

In addition, the applicant is also required to place a notice on the premises and in the local paper. The Licensing Authority must also now show the application on the website. Such a notice invites representation from members of the public as they see fit.

Considerations/Decisions

The following Licensing Objectives can be found in the Licensing Act 2003:-

- Prevention of crime and disorder;
- Public safety;
- Prevention of public nuisance; and
- Protection of children from harm.

In the licensing policy, the council recognises;

- That residents within, and visitors to the District need a safe and healthy environment to live, work and visit,
- That safe and well run entertainment premises are important to the local economy and vibrancy of the District.

Each licence application is given individual consideration on its merits.

The only other consideration that could affect the establishment of an SEV (or, indeed, any licensed premises) is the Cumulative Impact Zone. However, no distinction is made between SEVs and other forms of licensed properties.

The section of the policy that relates to the Cumulative Impact Zone does; “not operate a quota of any description including any special policy, that would pre determine an application. Each application will be considered on its individual merits. Proper regard will be given to the contrasting styles and individual characteristics of the premises concerned, and the differing impact they will have on the local community”.

Areas of Influence

Any influence the council wishes to have on the premises licence aspect of establishing an SEV will only be effective insofar as controlling the capacity of the venue to sell alcohol and/or restricted entertainment. They could, for example, prevent a venue from obtaining a premises licence, but could not, as a result of this, prevent the showing of sexual entertainment.

Complaints/Reviews

Environmental Health can become involved with things such as noise or light complaints, and it is important to note that such instances will almost always be a result of the premises licence, not the SEV licence.

As such, even should disciplinary action be necessary (or a review of the licensing), it would be the *premises* licence at risk, not the SEV licence. Since one is not connected to the other, the venue could remain open and offer sexual entertainment (albeit with changes to the way it operates).

They could also, potentially, get involved from the food and health and safety angle if there was a history of problems at the premises.

Health and Safety would only really become involved if concerns were raised with regards to an accident at work, a complaint from a customer.

Complaints over the operation of a venue that suggests a statutory noise nuisance can lead to an abatement notice (and potentially a financial penalty), or a licensing review panel being called to reconsider the premises licence.

It is also important to note that complaints relating to street noise (not noise issuing directly from a premises) cannot lead to the standard enforcement route of abatement notice; they can only be pursued through the licensing review route.

Relationship with Other Council Departments

As detailed in the ‘consultees’ section above, the following departments are involved in the application process for a premises licence;

- Environmental Health here in the district council
- Enforcement for Health and Safety here in the district council
- Planning here in the district council

Environmental Health have an influence in terms of their risk based considerations of the site.

SEVs are, typically, considered exceedingly low risk in terms of food safety (drinks served at a venue also fall into the category of 'food' for purposes of inspection). In practice they would not even register for regular inspections, though they are subject to a standard inspection once every five years. They would respond to any customer complaint about food or drink being served.

They will only submit objections to licence applications if there is a history (and evidence) of problems with a particular venue or location. They will also take into account the traffic movements of the area in terms of nuisance.

Health and Safety would only really get involved if concerns were raised with regards to an accident at work or a complaint from a customer.

APPENDIX V

SEXUAL ENTERTAINMENT LICENSE

Background Information

WDC has a current SEV policy; it is important to note that this policy is a set of guidelines, and is not legislation – each application must be heard and assessed on a case by case basis.

There is currently no cap on SEVs or Sex Establishments in the district; whether as a whole or within particular wards/locales.

At the time of writing, it appears that eleven councils in the country have adopted a nil cap (of which seven are London boroughs).

It is also important to note that the policy deals with Sex Establishments, of which SEVs are but one aspect (the others are sex shops and sex cinemas).

Caps can be introduced on establishments as a whole, or can be targeted at a particular sub-category.

If awarded, SEV licences last for no more than 12 months and must be renewed after that time.

When referencing 'relevant localities', please note that courts have held that it is not best practice for a local authority to determine that its entire administrative area is a 'relevant locality'. It would therefore be necessary to sub-divide the district into more than one such locality (e.g. 'Town Centre' and 'Outside Town Centre').

Consultees

There are no statutory consultees for the SEV licensing process. However, by virtue of the application process, the Police are invited to comment on such applications if they feel it necessary.

This is down to a requirement of the applicant to submit a copy of the form to the Chief of Police.

As a part of this, our own Community Protection team would get involved in the process via the police if they felt it necessary.

In addition, notices must be put up on the premises, and an advert put out in the local paper advising of the application. As a result, this invites further comment from the local population.

Finally, the council also publishes a summary of the application on the website. Please note, however, that this is not compulsory.

Considerations/Decisions

Objections or support for an SEV application cannot be based on moral or ethical grounds; any such objection received must be disregarded.

As a point of interest, those who make representation do not have a right of attendance to the hearing, though we do allow them to in the interests of transparency.

Each application for an SEV licence must be heard and a decision made upon the evidence available *at the time*. This is true even if a nil cap were to be introduced. That is, the SEV policy is only ever a series of guidelines to give a general indication to the public and potential applicants; it is not a block on the establishment of such venues.

As mentioned above, decisions must be made on the information available at the time of the hearing; that is, arguments regarding consistency of decisions should not come into the decision making process

Regarding caps (should they be introduced), the decision should be made on how many establishments are in operation at the time of the *application*.

Terms such as 'proximity' and 'residential area' are currently left open to interpretation.

Legislation (not policy) provides that the Council may refuse an application for an SEV licence if it considers that it would be inappropriate, having regard to the character of the locality and the use to which any premises in the vicinity are put.

When considering whether a licence should be refused on this basis, the Council will have regard to the following;

- The proximity of residential premises, including any sheltered housing and accommodation of vulnerable people;
- The proximity of educational establishments;
- The proximity of places of worship;
- Access routes to and from schools, play areas, children's nurseries, children's centres or similar premises in proximity to the premises;
- The proximity of shopping centres;
- The proximity of community facilities/halls and public buildings such as swimming pools, leisure centres, public parks, youth centres/clubs (this list is not exhaustive);
- Any relevant planning considerations;
- Whether there is planned regeneration of the area
- The proximity of other Sex Establishments;
- The nature and concerns of any representations received from residents and/or establishments objecting to the licence application;
- Any evidence of complaints about noise and/or disturbance caused by the premises;
- Any current licensing permission related to the premises in respect of activities, uses and hours

The above does not, however, undermine the rights of any applicant to have their application considered on its individual merits. That is, the policy provides only guidance.

When determining applications, the council will take account of any comments made by the Chief Officer of Police as well as any objections made.

There are several mandatory grounds upon which an application *must* be refused;

- A person under the age of 18
- A person who is for the time being disqualified from holding a licence
- A person who is not resident in the United Kingdom or was not so resident throughout the period of 6 months immediately preceding the date upon which the application was made
- A body corporate which is not incorporated in the United Kingdom
- A person who has, within the period of 12 months immediately preceding the date upon which 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

There are also several discretionary grounds that allow the council to refuse a licence if appropriate;

- That the applicant is unsuitable the licence by reason of having been convicted of an offence or for any other reason
- That 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
- That 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 council considers is appropriate for that locality (*there is currently no cap in this regard*)
- That the grant or renewal of the licence 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, vehicle, vessel or stall in respect of which the application is made.

Areas of Influence

As mentioned above, no argument for or against the awarding of a licence can be made on moral or ethical grounds.

Members can seek to halt or grant a licence based only upon the reasons detailed above.

Should any of these succeed, they can only affect the SEV licence and the provision of sexual entertainment at the establishment.

Complaints/Reviews

Unlike premises licences, an SEV licence must be renewed every 12 months (though there is scope within the policy to award them for a shorter period of time).

This gives a lot more scope for the review of licence conditions without first having complaints lodged against the venue.

Information from various departments throughout the council suggests that the SEV's we have in the area attract no complaints from the public or Police at this time.

Relationship with Other Council Departments

Community Protection take an interest in matters of the movement of people around a given area, and the footfall in these locales.

Community Safety only get involved in the process should a complaint be received, or if it is deemed there is adequate risk associated with particular activities at a given establishment.

Environmental Health will become involved with SEVs only in the manner they would with any venue serving drinks.

In this way, SEVs are again no different from bars, nightclubs, etc.

APPENDIX VI

OPTIONS PRESENTED BY OTHER COUNCILS

For the most part, the majority of policies conform to the same content. The wording may well differ, but most policies demand the same of applicants.

However, in some examples, there are distinct areas in which certain Councils' policy documents differ from our own.

These are as follows;

- Caps introduced on the number of SEVs allowed in areas of the district. This cap is allowed to be 'nil' if the Council deems it appropriate with regards to the character and amenity of the locale in question
Coventry have recently completed their own SEV consultation (results are still being compiled) which may result in a nil cap being applied. Prior to this, they had introduced an interim cap of two venues in the city centre, and a cap of nil venues outside of the city centre whilst the consultation was underway.
An extremely important thing to note here; when Coventry applied their nil cap, concern was raised from the licensing department that it would lead to increased use of the 'occasional use' rule and, as a consequence, result in a loss of control over these venues.
'Occasional use' allows a venue to provide relevant entertainment no more than 11 times within 12 months, not longer than 24 hours on each occasion and more than one month between each event and means that a venue need not apply for a licence at all, and the City Council would be entirely unable to regulate them.
- Stronger wording of the policy to heavily encourage planning permissions and premises licensing to be in place prior to the SEV application. Whilst a policy is unlikely to be able to *insist* that these are in place, it can be worded in such a way to encourage it.
- Alteration of 'residential areas' to 'occupied residential dwellings'
- Definitions of what constitutes 'proximity'. This alternative to policy seems to be primarily used in urban areas (Tower Hamlets) as a way to provide clearer definition on where licences should be issued. There is another side to these definitions in that, should an application be made for a location just outside of the definitions, then it becomes easier for them to obtain said licence.
- More explicitly defined conditions in the policy document. Whilst this is not necessary (as conditions are dictated by the licences themselves), some Councils take the option of reiterating such conditions in the policy as a series of guidelines to applicants.

Amongst others, tighter conditions include such things as;

- Defining the type of CCTV equipment required
- Minimum requirements for recording and data storage equipment (linked to CCTV requirements)
- Defining where locks and doors can appear within a venue
- Defining restrictions on entrances to the venue
- Defining rules on where performers and customers can be in relation to each other
- Insisting on submission of 'house rules' as part of the application process
- A requirement for objectors to state their location in relation to the venue, and encouraging objectors to submit maps or sketches to better define this
- Higher fees for applicants
- Swansea Council has taken the option of defining their locales in terms of their dominant use. For example, commercial, industrial, etc

- Some councils have taken the opportunity to build in guidance on what constitutes a 'suitable applicant'
- Other authorities require inspections of the premises by the fire department prior to a licence being awarded, whilst others perform 'police checks' on applicants to better determine their suitability to hold an SEV licence

As a brief summary of the ways in which policies differ; they all hold the same *content*, though it is often presented in differing ways.

The Warwick District Council policy is also much more flexible than many of the other, more prescriptive policies of other councils. This appears to be a two edged sword; whilst things such as definitions of proximity are less clearly defined (and so may require more consideration for each applicant), they also allow the regulatory committee to have more say in the regulation of applicants.

These options were drawn through comparison of our own policy with those of; Birmingham City Council, Coventry, Swansea, Nuneaton & Bedworth, and Tower Hamlets.