

Monday, 5 October 2015
at Town Hall, Eastbourne
(To commence at the conclusion of the
Licensing Act Committee to be held at
6.00pm)

General Licensing Committee

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MEMBERS: Councillor Dow (Chairman); Councillor Rodohan (Deputy-Chairman); Councillors Belsey, Blakebrough, Coles, Choudhury, Hearn, Holt, Murdoch, Murray, Salisbury, Smart and Swansborough

Agenda

- 1 Minutes of the meeting held on 14 July 2014.** (Pages 1 - 8)
- 2 Apologies for absence.**
- 3 Declarations of Disclosable Pecuniary Interests (DPIs) by members as required under Section 31 of the Localism Act and of other interests as required by the Code of Conduct.**
- 4 Questions by members of the public.**

On matters not already included on the agenda and for which prior written notice has been given (total time allowed 15 minutes).

5 Urgent items of business.

The Chairman to notify the Committee of any items of urgent business to be added to the agenda.

6 Right to address the meeting/order of business.

The Chairman to report any requests received to address the Committee from a member of the public or from a Councillor in respect of an item listed below and to invite the Committee to consider taking such items at the commencement of the meeting.

7 Deregulation Act 2015: Approval of Temporary Licence Fee for Private Hire Operators. (Pages 9 - 12)

Report of Customer First Manager.

8 Sex Establishment and Encounter Policy. (Pages 13 - 38)

Report of Customer First Manager.

9 Street Trading Policy. (Pages 39 - 56)

Report of Customer First Manager.

Inspection of Background Papers – Please see contact details listed in each report.

Councillor Right of Address - Councillors wishing to address the meeting who are not members of the Committee must notify the Chairman in advance.

Public Right of Address – Requests by members of the public to speak on a matter which is listed in this agenda must be **received** in writing by no later than 12 Noon, 2 working days before the meeting e.g. if the meeting is on a Tuesday, received by 12 Noon on the preceding Friday). The request should be made to Local Democracy at the address listed below. The request may be made by letter, fax or e-mail. For further details on the rules about speaking at meetings please contact Local Democracy.

Disclosure of interests - Members should declare their interest in a matter at the beginning of the meeting, and again, at the point at which that agenda item is introduced.

Members must declare the existence and nature of any interest.

In the case of a DPI, if the interest is not registered (nor the subject of a pending notification) details of the nature of the interest must be reported to the meeting by the member and subsequently notified in writing to the Monitoring Officer within 28 days.

If a member has a DPI or other prejudicial interest he/she must leave the room when the matter is being considered (unless he/she has obtained a dispensation). If a member has a DPI he/she may not make representations first.

Further Information

Councillor contact details, committee membership lists and other related information is also available from Local Democracy.

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Monday, 14 July 2014
at 6.00 pm



General Licensing Committee

Members: Councillor Shuttleworth (Chairman) Councillor Ungar (Deputy-Chairman) Councillors Ansell, Cooke, Hearn, Liddiard, Murdoch, Murray, Thompson and Warner

1 Minutes of the meeting held on 17 March 2014.

The minutes of the meeting held on 17 March 2014 was submitted and approved and the Chairman was authorised to sign them as a correct record.

2 Apologies for absence.

Apologies for absence were reported from Councillors Coles, Jenkins and Stanley.

3 Declarations of Disclosable Pecuniary Interests (DPIs) by members as required under Section 31 of the Localism Act and of other interests as required by the Code of Conduct (please see note at end of agenda).

None were declared.

4 Historic Private Hire and Hackney Carriage Fee-Setting.

The Committee considered the report of the Senior Specialist Advisor regarding the historic private hire and hackney carriage fee-setting that was referred back to the Committee by Scrutiny Committee.

The Council's hackney carriage and private hire licensing function were self-financing. The fees were levied and reviewed in consultation with Financial Management to ensure that the account had neither a surplus nor deficit on an ongoing basis.

At its meeting on 13th January 2014, the General Licensing Committee decided to consult on proposals to amend the hackney carriage and private hire licensing fees charged from April 2014. This was designed to introduce consistency between the two arms of the trade by setting new fee levels for the first time since 2001. It was also suggested that the historic difference between the hackney carriage proprietor fee and private hire licence fees be referred to Scrutiny Committee for consideration. Minutes of the meeting were included at Appendix 1.

At its meeting on 17th March 2014, the General Licensing Committee agreed the fee amendment proposed at the meeting on 13th January 2014. Minutes of the meeting were included at Appendix 2.

At its meeting on 2nd June 2014, the Scrutiny Committee considered the historic difference between the hackney carriage proprietor fee and private hire licence fees and referred their comments back to General Licensing Committee for consideration and final resolution to the matter. Minutes of the meeting were included at Appendix 3.

Between the financial years of 2001-2014, each hackney carriage proprietor paid £187 per year compared to £95 per year paid for each private hire vehicle licence. The £92 difference was held in reserve each year to reflect the requirement to fund patent unmet demand surveys, in accordance with section 16 of the Transport Act 1985 and subsequent case law. This supported a policy to impose a numerical limit on the number of hackney carriage proprietors within the Borough.

At its meeting on 21st April 2009, the General Licensing Committee lifted the limit on the number of taxis within the Borough. Minutes of the meeting were included at Appendix 4. The decision rendered differential fees unnecessary from that point onwards although it could be argued they ceased to be necessary when the cost of carrying out the last patent unmet demand survey in 2006 was met.

The situation was rectified following the decision of the General Licensing Committee to align the hackney carriage proprietor fee and private hire vehicle licence fees, which came into effect on 1st April 2014. The new fee arrangements ensured that the requirement to set the fees at a level to ensure the budget does not fall into deficit and remain self-financing was met going forward, in addition to removing the differential between the two arms of the trade by setting a flat £150 fee.

A breakdown of the hackney carriage and private hire licensing budget since 2005 was set out in appendix 5.

While insufficient financial data existed to reach a definitive assessment, it appeared that up to 2011 support charges had been set too low and as a result, the hackney carriage and private hire budget may have effectively been subsidised by the central Council budget. As the account had remained in surplus over a period of years, no fee increase to either fees were required to meet the overall cost of this function.

The arrangement now in place from April 2014 onward ensured that the fees were now at a level which reflected a considered prediction of the actual cost of financing this function going forward.

The evidence outlined in the report showed that a differential in charges levied on hackney carriage and private hire licence fees had been allowed to continue over a period of years, despite the justification for the fee arrangement arguably ceasing to exist. There had however been no increase in fees to either arm of the trade since 2001.

The report made the Committee aware that the fees levied against hackney carriage proprietors in previous years were in any event lower than the fees levied by other neighbouring authorities. Furthermore the new flat rate of £150 across both arms was comfortably the lowest in the County. The Council's fees up to April 2014 were £187 for hackney carriage drivers and £95 for private hire drivers. Given that the lowest charge elsewhere in the County was currently £180, it may be considered that even the differential rate levied on the hackney carriage trade was low compared with neighbouring authorities.

Whilst acknowledging that differential charges should not have been levied on the two arms of the trade, once the rationale for doing so had ceased to exist, the evidence of other authority charge levels showed that the differential could be viewed more as a case of a historic under-charge to the private hire trade rather than an over-charge to the hackney carriage trade. The new £150 charge had resulted in a significant reduction in charge to hackney carriage proprietors and a significant increase in charge to private hire vehicle proprietors. Importantly, the new fees set had achieved fairness and high value in the charging regime for both arms of the trade and compared favourably with the fees set by neighbouring authorities.

Mr Paul Culshaw, Hackney Carriage Proprietor, addressed the Committee and made reference to 6.2 of the report regarding human rights in respect of the setting of fees. The setting of fees for a legitimate purpose had ended for the unmet demand survey charge by 2008. He also advised that the hackney carriage proprietor fee was not necessary and proportionate and had been discriminatory since 2008.

He made reference to the comparison with neighbouring authorities which he felt was incorrect as the Committee were not comparing like for like. The Council were charged to recover costs without generating a profit and Mr Culshaw argued that Eastbourne may be providing a poorer service to the trade than neighbouring authorities as if it were not the fees would be more comparable.

Mr Culshaw then made reference to appendix 5 and the breakdown of the hackney carriage and private hire licensing budget since 2005. He advised the Committee that the figures displayed between 2008-2011, without any fee review or increase, showed that the licensing budget surplus had been inflated by irregular unmet demand survey charges.

Mr Culshaw concluded that Eastbourne must be considered in its own entirety and judged solely on fairness to be self-financing and reclaim expenses for the function in an even and proportionate manner.

Mr Peter Smith, UNITE Hackney Carriage trade addressed the Committee and referenced the Officers report which showed that since the requirement to fund unmet demand surveys ceased to be necessary, hackney carriage proprietors had paid additional monies of £92 to meet this survey and thus had been charged erroneously. He believed it was morally wrong to draw a line under the issue and recommended that the Committee decide to refund those hackney carriage proprietors fees that had been overcharged.

Councillor Shuttleworth thanked Mr Culshaw and Mr Smith for their representations. He referenced key information contained in the report for the Committee to consider during the debate. This included the fact that there had been no increase in fees since 2001 and although insufficient financial data existed to make a definitive statement, up to 2011 support charges may have been set too low and led to the hackney carriage and private hire budget being subsidised by the central Council budget to fund service delivery. Councillor Shuttleworth also referenced section 4.4 of the report which demonstrated that the fees levied, even in past years, were lower compared to neighbouring authorities.

Councillor Shuttleworth concluded by referencing section 4.5 of the report which noted that the situation could be viewed as one of historic undercharge to the private hire trade rather than an overcharge for the hackney carriage trade. He supported the fact that the issue had been reviewed and discussed at Scrutiny Committee. He suggested that for the Council to move forward, it should draw a line under the issue, now that the fees had been set which had achieved fairness and high value in the charging regime for both arms of the trade, moreover at a level which was not excessive compared with the fees set by other authorities.

Following a question from Councillor Ungar, the Monitoring Officer addressed the legal aspect of refunding the differential of the fees charged to hackney carriage proprietors between 2009 and 2014. As the costs of the hackney carriage and private hire licensing functions were met from a ring-fenced account, the cost of any refund would have to come from this account. Given the sums involved, this would result in an increase in fees for the whole trade in order to raise the funds. This created the possibility of a claim being submitted by those licence holders who would not benefit from a refund but would be funding it. She advised the Committee that in her view the comparative risk of a successful challenge to the historic fees levied was unlikely.

Councillor Ungar advised that the General Licensing Committee was a quasi-judicial body which had a responsibility to act within the law. He supported Councillor Shuttleworth's recommendation of drawing a line under the issue as he did not want to give hackney carriage proprietors false expectations by refunding them money only for them to be required to pay it back, due to an increase in fee. He concluded by advising that the good service provided by the authority could be put in jeopardy by refunding the money.

Councillor Cooke enquired further about the possibility of a legal challenge. The Monitoring Officer noted that while an accurate prediction of the likelihood of potential future challenges was difficult to make, an increase in fees now in the terms proposed in order to fund a refund could result in legal challenge by means of judicial review. She continued that it was comparatively less likely civil claims with regard to historic fees levied over time would be successful. Councillor Cooke made reference to the predicted surplus of £20,787 at the end of this financial year and asked whether it was possible to make a refund in this sum without raising the fees. Councillor Shuttleworth clarified comments made by the Monitoring Officer

that any steps taken by the Council to make a refund in respect of historic fees could be open to legal challenge.

Councillor Warner addressed the Committee and made reference to when the issue was originally agreed to be discussed at Scrutiny Committee. He stated that it was taken to Scrutiny Committee in the hope that the right thing could be done and he expected that as the Council had incorrectly levied charges at hackney carriage proprietors, an apology should be made and funds should be returned to those that had been overcharged.

Councillor Murray addressed the Committee and made reference to the suggestion made by Mr Culshaw that the Council were providing a poorer service which was why the fees were not comparable with neighbouring authorities. The Senior Specialist Advisor responded that he had hoped that the trade would be of the opinion that the licensing authority provide a good service in terms of the quality of drivers and value of service with the budget that is provided.

Councillor Murray then enquired about taxi drivers who sold their plates and whether any debts owed would be carried over to the owner. He asked whether this would negate problems in the future with people making claims. The Senior Specialist Advisor responded that a proprietor had to inform the Licensing Authority within 14 days of a transfer of a plate. Nothing in the statute made reference to the transfer of money for a plate and any debt therefore was out of the Council's remit. He advised the Committee to not consider this when making their decision. The Monitoring Officer clarified that any claims could potentially still come from taxi drivers who had sold on their plates but considered that they had paid too much to the authority prior to that, but reiterated her view as to the likelihood of success of such claims.

Councillor Ansell addressed the Committee and made reference to the discussions around what the safest option was for the Council and the potential for legal challenge. She made reference to the debate held at Scrutiny Committee on the 2nd June 2014 which centred on whether there was a middle option as opposed to either refunding in full and adding £30,000 in surplus to the account or drawing a line under the issue. She expressed disappointment that the debate tonight did not seem to consider a middle option and reiterated that the historic overcharge to hackney carriage proprietors had not been fair or right. She advised that there were funds available to potentially refund drivers and hoped that the Committee consider this when moving forward.

Councillor Murdoch addressed the Committee and made reference to the breakdown of the hackney carriage and private hire licensing budget since 2005, outlined in Appendix 5. He enquired whether the 2013/14 provisional budget both for total expenditure and income were at the current rate for what the authority charged. The Financial Services Manager responded that it would have reflected the rates relevant at the time. She added by referencing the 2014/15 budget and total income level, which was set in November 2013 and advised that the figure of £84,550 was a prudent figure and was likely to increase once the financial year ended. In a response to a question from Councillor Murdoch regarding achieving a surplus, the Financial Services Manager advised that the account was

looked at over a 3 year period to ensure it broke even and there would be no immediate knee jerk reaction in terms of increasing the fees should a deficit appear in year one, although the overall aim would be to balance the books.

Councillor Cooke reiterated that there had been unfairness practiced on the hackney carriage trade and suggested that the Committee look at some way of showing understanding of the situation. He suggested that the Committee could perhaps look at the option of identifying those hackney carriage proprietors that had been overcharged historically and potentially have their fee waived over a period of time.

Councillor Ungar reiterated that it was unfair to give false expectations to the trade and made reference to the fact that the report had stated that the private hire trade had underpaid historically. If the Committee chose to refund those hackney carriage proprietors, it would be unfair to claim the money back from the private hire trade. It was important for the Council to do the right thing for all parties involved and he reiterated that the Council, whilst acknowledging the historic issue, should draw a line under the issue having set a new fee structure and continue to provide a good service.

Councillor Thompson addressed the Committee and echoed Councillor Ungar's comments that it would be impractical to chase those private hire drivers who had underpaid. He made reference to the fee comparison with neighbouring authorities and reiterated that Eastbourne Borough Council's new fee structure was comfortably the lowest in the County and supported the recommendations to draw a line under the issue.

Councillor Hearn addressed the Committee and reiterated that a refund to those hackney carriage proprietors would only result in an increase in licence fees in the future.

Councillor Liddiard advised the Committee that they should look at making a decision that was right and not necessarily what was the easiest option.

Councillor Ansell urged the Committee to look at the issue intelligently and expressed her disappointment that a compromise was not being sought.

Councillor Cooke reiterated that the Committee as a whole admit that the differential charges were wrong which represented a key issue in the debate and advised that the Committee should make a decision that was right rather than expedient.

Councillor Shuttleworth acknowledged and accepted both sides of the debate. He referenced the point noted earlier that the fees had been left at the same level from 2001-2014 and considered that it was legitimate to suggest that an undercharge occurred during this period rather than an overcharge. He suggested that it would be reasonable for the Committee to move on from this issue in a way that was economically sustainable for the future, as raised by Councillor Murdoch earlier.

Councillor Shuttleworth proposed and was seconded by Councillor Ungar that the best course of action moving forward was to draw a line under the

issue relating to the historic setting of fees. The evidence laid out in the report showed that the differential could be viewed as a historic under charge to the private hire, rather than an over-charge for the hackney carriage trade. The new fee structure of a blanket £150 charge that had been implemented achieved fairness and high value for both arms of the trade.

Councillor Warner requested that a named vote be recorded for the proposal suggested, which was agreed by the Chairman.

For: Councillors Shuttleworth, Hearn, Murray, Murdoch, Thompson and Ungar.

Against: Councillors Ansell, Cooke, Liddiard and Warner.

RESOLVED: (by 6 votes to 4) That the Committee agree to draw a line under the issue relating to historic fee setting now that the new fee structure had been implemented which achieved fairness and high value for both arms of the trade and compared favourably with those fee levels set at other Sussex authorities.

5 Street Trading Consent Income Associated with the Street Market.

The Committee considered the report of the Senior Specialist Advisor regarding the setting of fees for the Street Market.

At its meeting on 23rd April 2012, the General Licensing Committee agreed that the fee levied for consent at the street market would be £5 per pitch and this would be "used for managing the enforcement of the market". This fee had been collected by Eastbourne Street Market Company and subsequently the Chamber of Commerce and duly paid to Eastbourne Borough Council.

The Street Market Company (ESMC) who collected the consent fees ceased trading at the end of 2013. The Eastbourne Chamber of Commerce opted to continue running the street market via *ad hoc* applications to the Licensing Authority at Eastbourne Borough Council.

The street market had been running smoothly for two years now and a review of the current fee had been undertaken. It was determined that the current £5 per pitch fee had been set too high and had created a surplus which exceeded the cost to the Council of the administration and enforcement of the street market.

Eastbourne and District Enterprise Agency Limited (EDEAL) had been given a five year contract that would allow them to act on behalf of Eastbourne Borough Council, carrying out Town Centre Management services. This included allocating and distributing the relevant consents to and collecting the relevant consent fees from market stall holders for onward transmission to Eastbourne Borough Council.

Once Eastbourne Borough Council's funding ceased as intended, EDEAL would support the role through its economic efficiencies by 31st March

2015. The services agreement would end on 31st March 2018 at which point a separate arrangement regarding consents would have to be put in place.

It was considered appropriate that the determination of the fee associated with street market pitches be delegated to a designated Council Officer, who would exercise the delegation in consultation with the chair of General Licensing Committee. This would ensure that the fee could be set at a level which if necessary could be adjusted to ensure that a surplus was not created.

Initially it was proposed that a nominal fee of £1 be levied per pitch to cover associated administrative costs. Experience had indicated that this was a sufficient amount to cover costs and stimulate further interest by potential stall holders.

RESOLVED: (with 1 abstention) That the Committee delegate the setting of consent fees, in relation to the Street Market, to the Senior Head of Development in consultation with the Chairman of General Licensing Committee.

6 Member Training.

The Committee was advised that Member Training had been scheduled to take place on the 8 October 2014.

NOTED.

The meeting closed at 6.52 pm

**Councillor Shuttleworth
(Chairman)**

BODY:	General Licensing Committee
DATE:	5th October 2015
SUBJECT:	Deregulation Act 2015: Approval of Temporary Licence Fee for Private Hire Operators
REPORT OF:	Jay Virgo, Customer First Manager
Ward(s):	All
Purpose:	To make members aware of the changes implemented by the Deregulation Act 2015 relating to the licensing of hackney carriage and private hire drivers and the operation of private hire operators.
Contact:	Jay.virgo@eastbourne.gov.uk
Recommendations:	Approve the structure of fees for a five year private hire operator's licence until such time as a full review of the licensing fees can be made

1.0 Reason for Recommendation

1.1 The Deregulation Act 2015 enshrines in law the requirement for a 5 year private hire operator licence to be implemented by 1st October 2015.

2.0 Background

2.1 Eastbourne Borough Council is responsible for issuing licences for; hackney carriages and private hire vehicles, the drivers of the vehicles and the operators of private hire businesses.

2.2 The Deregulation Act 2015 amends the Local Government (Miscellaneous Provisions) Act 1976 to alter the length of time a licence is issued for, together with the method of operation of the holders of a private hire operator's licence.

2.3 The Deregulation Act 2015 contains two sections relating to the hackney carriage and private hire industry. Sections 10 & 11 are the relevant sections and take effect on 1st October 2015. The Act is available via:

<http://www.legislation.gov.uk/ukpga/2015/20/contents/enacted>

2.4 Section 10 states that driver licences for hackney carriage and private hire vehicles must be issued for a period of three years, unless there is reason for issuing a licence for a shorter period. EBC currently issues three year dual driver licences and is therefore in accordance with the Act.

2.5 Section 10 also states that private hire operator's licences should be issued/ renewed with a standard duration of 5 years, or a lesser period depending on the circumstances of an individual case. EBC currently issues private hire

operator licences with a standard duration of one year.

- 2.6 Section 11 of the Act makes provision for the holder of a private hire operator's licence who has accepted a booking in one district, to pass that booking to another operator to fulfil whether in the same district or not, provided that the booking is accepted in accordance with legislative requirements in the district the second operator is authorised to trade in.
- 2.7 The local authority is still awaiting further guidance from Central Government concerning section 11.

3.0 Adoption of Provisions

- 3.1 The Deregulation Act 2015 requires Local Authorities to issue a five year private hire operator's licence. EBC does not currently offer this.

4.0 Proposed Implementation

- 4.1 The current agreed private hire operator's licence fees are tabulated below and are available via:

<http://www.eastbourne.gov.uk/EasysiteWeb/getresource.axd?AssetID=215981&type=full&servicetype=Inline>

Licence for 1 – 2 vehicles	£ 70
Licence for 3 – 4 vehicles	£ 85
Licence for 5 – 10 vehicles	£ 150
Licence for 11 – 15 vehicles	£ 200
Licence for 16 – 20 vehicles	£ 250
Licence for 21 – 30 vehicles	£ 350
Licence for 31 – 40 vehicles	£ 450
Licence for 41 – 60 vehicles	£ 700
Licence for 61 – 80 vehicles	£ 880
Licence for 81 – 100 vehicles	£1100
Licence for 101 – and above	£1400

- 4.2 From 1st October 2015 private hire operators will be permitted to apply/renew for a 5 year private hire operator's licence and a fee in place to facilitate this.
- 4.3 It is not envisaged at this juncture for there to be an amendment to the level of fee charged. As an interim measure and until the hackney carriage and private hire licence fees are reviewed, it is proposed that the level of fee charged be consistent with the current licence fee.
- 4.4 Therefore the 5 year private hire operator's fee will be charged at 5 times the current yearly fee for consistency and will enable EBC to recover its reasonable costs in processing, determining and ensuring compliance of the licence. The proposed 5 year fee structure is tabulated below.

Licence for 1 – 2 vehicles	£ 350
Licence for 3 – 4 vehicles	£ 425
Licence for 5 – 10 vehicles	£ 750
Licence for 11 – 15 vehicles	£ 1000
Licence for 16 – 20 vehicles	£ 1250
Licence for 21 – 30 vehicles	£ 1750
Licence for 31 – 40 vehicles	£ 2250
Licence for 41 – 60 vehicles	£ 3500
Licence for 61 – 80 vehicles	£ 4400
Licence for 81 – 100 vehicles	£ 5500
Licence for 101 – and above	£ 7000

4.5 Payment options will be made available to the private hire operators to facilitate payment of the licence fee.

5.0 Recommendations

5.1 Members are asked to agree the recommendations at the beginning of this report

Background Papers:

The Background Papers used in compiling this report were as follows:

- Local Government (Miscellaneous Provisions) Act 1976
- Deregulation Act 2015

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BODY:	General Licensing Committee
DATE:	5th October 2015
SUBJECT:	Review the Council's Sex Establishment & Encounter Policy, regarding the control of Sex Establishments.
REPORT OF:	Jay Virgo, Customer First Manager
Ward(s):	All
Purpose:	For members to review the Council's Sex Establishment & Encounter Policy following public consultation.
Contact:	Jay.virgo@eastbourne.gov.uk
Recommendations:	<ul style="list-style-type: none">a) Members are invited to note the feedback received in relation to the public consultation concerning the review of the council's sex encounter policy.b) Members are asked to delegate any further revisions of the Policy in line with the views of the General Licensing Committee to the Senior Specialist Advisor in consultation with the Chair of the Licensing Committee and the relevant Cabinet Portfolio Holder prior to consideration and adoption by Cabinet.c) Members are asked to note the timetable for consultation, review and implementation.

1.0 Introduction

1.1 The increase nationally in the number of lap dancing clubs and adult entertainment venues since the implementation of the Licensing Act 2003 had become a concern for many local communities.

1.2 Central Government responded to calls for further controls to be introduced, specifically governing lap dancing clubs and similar premises. This resulted in the introduction of legislation in the form of the Policing and Crime Act 2009. This re-classifies current "Sexual Establishments" as 'Sexual Entertainment Venues' under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982. (LGMPA 1982).

2.0 Legislative Proposals

2.1 As detailed above, Section 26 of the Policing and Crime Act 2009 introduces a new category of 'Sex Establishment' under Schedule 3, called a 'Sexual Entertainment Venue.' This is defined as 'any premises at which relevant entertainment is provided before a live audience for the financial gain on

the part of the organiser or the entertainer.'

- 2.2 'Relevant Entertainment' is defined as 'any live performance or any live display of nudity which is of such a nature that, ignoring financial gain, it must be reasonably assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience.' This includes pole dancing, lap dancing and strip tease etc.
- 2.3 Such venues will require a Sex Establishment Licence. However, there is an exemption for premises which provide this type of entertainment 'infrequently.' The Act still permits sexual entertainment to be provided in premises, providing it occurs on no more than eleven occasions a year, with at least a month of "other" entertainment in between, without the need for it to be registered as a sexual entertainment venue (i.e. a pub).

3.0 Adoption of Provisions

- 3.1 At a meeting on 19th July 2010, Members agreed to adopt the relevant provisions of the Policing and Crime Act 2009, and Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982.
- 3.2 Members agreed the current Sex Establishment and Encounter Policy on the 23rd February 2011. This is available via:

<http://www.eastbourne.gov.uk/about-the-council/council-policies-plans-and-strategies/licensing-policy/sex-establishment-and-encounter-policy/>

4.0 Consultation

- 4.1 Consultation in relation to the review of the Sex Establishment Policy commenced on the 1st July 2015 and concluded on 24th September 2015.
- 4.2 A range of organisations and individuals have been *directly* consulted about the review of the existing policy, including:

- Sussex Police
- ESCC Child Protection
- Fire Authority
- Planning Authority
- Community Safety Partnership
- Chamber of Commerce
- Town Centre Neighbourhood Panel
- Current operator of a sex establishment
- Ward Councillors

- 4.3 The consultation to review the policy was included on the Council's website at:

<http://www.eastbourne.gov.uk/about-the-council/consultations/>

5.0 Overview of feedback

- 5.1 A copy of the draft review of the policy is included in **Appendix 1**.

5.2 The Authority has received 0 responses concerning the review of the policy.

6.0 Timetable For Review

6.1 The timetable for the review of the policy is tabulated below:

Procedure	Date/s
Public consultation	1 st July – 24 th September 2015
Full Licensing Committee: <ul style="list-style-type: none">- To consider the results of the consultation- Delegate any further revisions to the Senior Specialist Advisor in consultation with the Chair of the Licensing Committee and the relevant Cabinet Portfolio Holder prior to consideration and adoption of the policy by the Cabinet.	5 th October 2015
Seek Cabinet Approval	9 th December 2015

7.0 Community Safety and Links To Strategic Vision

7.1 The introduction of the regime under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 gives the Council powers to tackle issues of concern to local communities around crime, disorder and anti-social behaviour, associated with sex establishments.

7.2 The local authority will continue to work in partnership with enforcement agencies such as Sussex Police and Trading Standards to deliver effective enforcement in respect of crime, disorder and anti-social behaviour.

7.3 The Corporate Plan sets out the Council's priority themes and is available via:

<http://www.eastbourne.gov.uk/EasysiteWeb/getresource.axd?AssetID=210648&type=full&servicetype=Inline>

8.0 Policy Review

8.1 The Sex Establishment Policy will be kept under review and amended as required.

9.0 Recommendations

9.1 Members are asked to agree the recommendations at the beginning of this report

Background Papers:

The Background Papers used in compiling this report were as follows:

- Local Government (Miscellaneous Provisions) Act 1982
- Policing and Crime Act 2009
- Sexual Entertainment Venues, Guidance For England and Wales, Home Office 2010
- Licensing Act 2003

SEX ESTABLISHMENT & ENCOUNTER POLICY

ADOPTED

**Eastbourne Borough Council
1 Grove Road
Eastbourne
BN21 4TW**

Tel: 01323 410000

Email: customerfirst@eastbourne.gov.uk

Eastbourne Borough Council

Sex Establishment Policy

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1.0 Introduction

1.1 This document relates to applications for sex establishment licences. Sex establishments fall into one of the following three categories:

- sex cinemas
- sex shops
- sexual entertainment venues

1.2 The scheme for the control of sex establishments by way of a licensing regime is contained in the Local Government (Miscellaneous Provisions) Act 1982, as amended by the Policing and Crime Act 2009. The Council has had regard to the Home Office Sexual Entertainment Venues Guidance for England and Wales (March 2010).

<http://www.lacors.gov.uk/lacors/ContentDetails.aspx?id=23464>

1.3 This Policy sets out the Council's approach for the benefit of applicants, and operators. It also aims to guide and re-assure the public and other public authorities, ensuring transparency and consistency in decision making. When the decision making powers of the Council are engaged, each application will be considered on its merits.

1.4 The procedure outlines:

- the process for making an application, and
- the process the Council will follow in considering and determining an application for a sex establishment.

2.0 Consultation

2.1 Consultation on this Policy took place with:

- One or more persons who appear to the authority to represent the interests of persons carrying, or proposing to carry on, the business of a sex establishment in the authority. One or more persons who appear to the Authority to represent the interests of persons who are likely to be affected by, or otherwise have an interest in the Policy. This includes; Sussex Police, the Fire Authority, Community Safety, Planning Authority, Town Centre Neighbourhood Panel and Child Protection

2.2 The Licensing Authority will give due weight to the views of those consulted, and amend the Policy where appropriate. In determining what weight to give particular representations, the factors to be taken into account will include:

- Who is making the representation (what is their expertise or interest)
- How many other people have expressed the same or similar views
- How far the representations relate to matters the Council should include in its Policy.

2.3 The policy is published via::

<http://www.eastbourne.gov.uk/about-the-council/council-policies-plans-and-strategies/licensing-policy/sex-establishment-and-encounter-policy/>

- 2.4 Should you have any comments regarding this Policy, please send them via email or letter to Customer First at Eastbourne Borough Council
- 2.5 The consultation on this Policy took place from 1st July 2015 until 24th September 2015.

3.0 Definitions

3.1 The Act

This refers to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, as amended by the Policing and Crime Act 2009.

3.2 The Policy

This refers to the Eastbourne Sex Establishment and Encounter Policy.

3.3 Sex Cinema

A sex cinema is any premises, vessel, vehicle or stall used to a significant degree for the exhibition of moving pictures however produced, which:

(a) are concerned primarily with the portrayal of, or primarily deal with or relate to or intending to stimulate or encourage sexual activity, acts of force or restraint which are associated with sexual activity

(b) are concerned primarily with the portrayal of, or primarily deal with or relate to genital organs or urinary or excretory functions but does not include a dwelling-house to which the public is not admitted .

3.4 Sex Shop

A sex shop is any premises, vehicle, vessel or stall used for a business which consists to a significant degree of selling, hiring, exchanging, lending, displaying or demonstrating:

(a) sex articles

(b) other things intended for use in connection with or for stimulating or encouraging:-

(i) sexual activity

(ii) acts of force or restraint which are associated with sexual activity.

3.5 Sex Articles

A sex article is anything for use in connection with or for stimulating or encouraging

(a) sexual activity

(b) acts of force or restraint which are associated with sexual activity

(c) anything:-

i) containing or embodying matter to be read or looked at or anything intended to be used, either alone or as one of a set, for the reproduction or manufacture of any such article; and

ii) to any recording of vision or sound, which

a) is concerned primarily with the portrayal of, or primarily deals with or relates to, or is intended to stimulate or encourage, sexual activity or acts of force or restraint which are associated with sexual activity; or

b)

b) is concerned primarily with the portrayal of, or primarily deals with or relates to, genital organs, or urinary or excretory functions.

3.6 Sexual Entertainment Venue

A sexual entertainment venue is any premises where any live performance or any live display of nudity is of such a nature that, regardless of financial gain, it must reasonably be assumed to have been provided solely or mainly for the purpose of sexually stimulating any member of the audience. It includes, but is not limited to, lap dancing, pole dancing, table dancing, strip tease, live sex shows and similar activities.

3.7 The Organiser

This is any person who is responsible for the organisation or management operation of the relevant entertainment or the premises.

3.8 Display of nudity

This means:

- in the case of a woman: exposure of her breasts, nipples, pubic area, genitals or anus; and
- in the case of a man: exposure of his pubic area, genitals or anus.

3.9 Relevant locality

This is the locality where premises are situated or where the vehicle, vessel or stall is going to be used as a sex establishment. The locality and the area that this covers is a matter for the Local Authority to decide at the time it considers an application for the grant, renewal or transfer of a sex establishment licence.

3.10 Permitted hours

These are the hours of activity and operation that have been authorised under a sex establishment licence.

3.11 Appropriate Authority

Eastbourne Borough Council is the 'Appropriate Authority' for the purposes of the sex establishment licensing regime introduced by the Local Government (Miscellaneous Provisions) Act 1982 (as amended) and adopted by Council on 23rd February 2011.

4.0 Policy Considerations

Relevant Locality

- 4.1 This Policy applies to the areas covered by Eastbourne Borough Council. Eastbourne is a thriving seaside town and a spectacular gateway to the South Downs and the national beauty spot, Beachy Head..
- 4.2 With five miles of beaches, the largest manmade marina in the UK, and over 4,000 acres of South Downs countryside, Eastbourne regularly receives awards from Blue Flag to Best UK Resort and Most Group-Friendly UK Destination.
- 4.3 Tourism is crucial to this cosmopolitan area and is Eastbourne's primary industry. It attracts over 4 million visitors and is worth over £343 million to the local economy every year with over £5.5 million in conferencing business alone.
- 4.4 With one of the largest quantities of tourist accommodation in the South East, Eastbourne has approximately 7,500 bed spaces, and as a result the town stages a busy events programme which includes; international ladies tennis, theatre shows direct from the West End and an international four day air show, Airbourne, bringing over 800,000 visitors.
- 4.5 In addition, a Tourism Strategy seeks to secure investment in the town. It develops new marketing initiatives which will add new audiences for Eastbourne in the future, targeting 35+ age groups with high spending capability.
- 4.6 The Council's vision is to achieve balanced, sustainable communities and neighbourhoods to enable a good quality of life for all. In consultation with its partners it has developed and adopted a number of strategies, policies and plans that set out how we mean to achieve this vision.
- 4.7 In devising this Policy, regard has been given to the available data, findings, shared vision and plans informing Eastbourne's Sustainable Community Strategy (the "Strategy"), adopted by the Council and local strategic partnership.

Strategic Vision

- 4.8 The Strategy has the following vision for the Borough:
 - A Borough with greater opportunity and prosperity for everyone, whatever their background, and the narrowing of economic environmental and health inequality.
 - Safe, strong and cohesive communities, and a shared sense of fairness, citizenship and social responsibility.
- 4.9 The Council aims to integrate this Policy with the objectives of the Sustainable Community Strategy and the Core Strategy so that it contributes to achieving the vision of the Borough. This is considered in the context of:
 - the relative size of the borough taken as a whole
 - population density and growth trends
 - ward profiles
 - borough profile
 - poor economic and health specific deprivation indices
 - level of social housing and tenure

- areas subjected to regeneration initiatives
- locations of: premises attracting vulnerable people such as GP surgeries and addiction centres
- areas and premises attracting families such as leisure and sport facilities and play spaces and play path finders, parks and open spaces
- premises attracting young people such as schools, nurseries and other educational establishments
- our diverse cultural communities
- places of worship
- Cumulative densities of certain types of commercial premises in any one location

4.10 Working with its partners in Health, Education, the Police and the business and voluntary sectors, the Council will continue to ensure that it reasonably and proportionately reflects the needs of its local communities through:

- continued meaningful consultation
- the promotion of a consistent and fair approach to regulation
- consultation with the Police and other agencies as appropriate, to establish protocols for effective enforcement

4.11 The Council understands that the co-ordination and integration of policies, strategies and initiatives is important. This policy takes account of, and is supported by, other Council policies and relevant legislation..

4.12 Through partnership working, the Council will seek to secure the proper integration of its Policy with other; licensing policies, local crime prevention, planning, tourism, race equality schemes and cultural strategies, and any other plans introduced for the management of the town centre and the night time economy:

<http://www.eastbourne.gov.uk/about-the-council/council-policies-plans-and-strategies/>

5.0 General Policy

Principles to be applied

5.1 Specific mandatory grounds for refusal of a licence are set out in the Act.

A licence cannot be granted:

- a) to anyone under 18 years of age
- b) to someone who has held a licence that was revoked in the last 12 months (from the date of revocation) and who was disqualified from holding a licence for that period.
- c) to someone who has been refused a new licence or renewal of licence within the last 12 months (from the date of making the application)
- d) to an individual who is not resident in the United Kingdom or who has not been resident for six months prior to the making of an application
- e) to a company not incorporated in the United Kingdom

5.2 Crime and Disorder:

In accordance with Section 17 of the Crime and Disorder Act 1998, the Council is under a duty to exercise its functions with due regard to the likely effects on crime and disorder. It aims to do all it can to prevent crime and disorder in its area. The possible impact of crime and disorder are clearly relevant factors in the consideration of all applications. In giving "due regard" to these possible implications, Members will consider all information available and representations made from all objectors, the applicant and in particular the Sussex Police.

5.3 Every application for the grant, renewal or transfer will be considered on its merits, on a case by case basis.

5.4 The Council may also refuse a licence if the applicant is unsuitable to hold a licence because they have been convicted of an offence or for any other reason. The determination of the suitability of the applicant is a matter for the local authority to decide at the time that the application is made.

5.5 Each application will be considered on its own merits. The Local Authority will take into account representations from the applicant, any person objecting and the Chief Officer of Police. The Council shall normally take into account:

- previous knowledge and experience of the applicant and their managerial competence
- any evidence of the operation of any existing/previous licence held by the applicant, including any licence held in any other borough
- any report about the applicant and management of the premises received from objectors or the Police and any criminal convictions or cautions of the applicant
- that the operator is proposing a management structure which will deliver compliance with operating conditions, and policies; detailing the training of staff, welfare of performers and means to protect the public.
- any other relevant reason

5.6 With regard to a business for which an application relates that would be considered to be managed, or carried on for the benefit of a person other than the applicant, the determination is a matter for the local authority to. Each application will be considered on its own merits. The local authority will take into account representations from the applicant, any person/organisation objecting and shall

normally take into account:

- comments/observations of the Police and Council personnel, including compliance with licensing conditions, relevant history (including noise complaints) together with details of previous convictions/prosecutions pending.
- the suitability and fitness of an applicant/operator to hold a licence.

5.7 The number of sex establishments or sex establishments of a particular kind in the relevant locality at the time the application is determined is equal to or exceeds the number which the local authority consider is appropriate for that locality at that time.

5.8 The grant or renewal of a licence would be inappropriate having regard to:

- i) the character of the relevant locality
- ii) the use to which any premises in the vicinity are put; or
- iii) the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made
- iv) Where it can be shown that the business would be managed for the benefit of a third party who would be refused a licence.

5.9 The relevant locality will be determined in accordance with where the premises are situated or where the vehicle, vessel or stall is going to be used. The area and extent of the relevant locality is a matter of the local authority to decide at the time the application is made. Each application will be considered on its own merits.

5.10 In determining the character of relevant locality and the appropriate number of sex establishments in that relevant locality, the Local Authority will take into account, but not limit its determination to:

- (a) the use to which any premises in the vicinity are put;
- (b) the number of existing sex establishments both in total and also in respect of each type (*i.e.* sex cinemas, sex shops and sexual entertainment venues);
- (c) the number of existing premises engaged in and or offering entertainment]of an adult or sexual nature or entertainment or associated with an adult or sexual nature (for example tattooing, piercing etc;)
- (d) the proximity of residents to the premises, including any sheltered housing and accommodation for vulnerable persons;
- (e) the proximity of educational establishments to the premises;
- (f) the proximity of places of worship to the premises;
- (g) access routes to and from schools, play areas, nurseries, children's centres or similar premises;
- (h) the proximity to shopping centres;

- (i) the proximity to community facilities/halls and public buildings such as swimming pools, leisure centres, public parks, youth centres/clubs. This list is not exhaustive;
- (j) the potential impact of the licensed activity on crime and disorder and public nuisance;
- (k) the potential cumulative impact of licensed premises in the area taking into account the days and hours of operation of the activity and the character of the locality where the premises are situated;
- (l) the nature and concerns of any objections received from residents/establishments objecting to the licence application;
- (m) any evidence of complaints about noise and/or disturbance caused by the premises;
- (n) current planning permission/planning requirements on the premises;
- (o) any current planning policy considerations;
- (p) whether there is planned regeneration of the area;
- (q) any current licensing permissions related to the premises in relation to activities, uses and hours;

6.0 Renewal Applications

- 6.1 Where a licence was in existence before the introduction of this Policy, this Policy will become a consideration when the licence is due for renewal.
- 6.2 It should be noted that the Council in applying its decision-making discretion may consider it appropriate to refuse the renewal of the licence even where there has been no change in the character of the relevant locality or in the use to which any premises in the locality are put.
- 6.3 If a renewal application is not opposed, it shall be approved under Authority delegated to relevant officer(s). All contested applications for renewal, as described in the Act shall be referred to the Licensing Sub-Committee for decision.

7.0 The Application Process

Making an application

- 7.1 Any application should be made in writing to Customer First at Eastbourne Borough Council. Please note that generally, applications may take 8-12 weeks to determine.
- 7.2 Applicants for a licence must complete and return the application form, together with:
 - 2 sets of floor plans, drawn to scale and showing all means of entry and exit, any parts used in common with any other building and indicating how the premises lie in relation to the street;
 - 2 sets of plans showing the existing and front elevation of the premises depicting all signage;

- 2 sets of plans (scale 1:500) showing the sex establishment in relation to other premises within 100 metres;
 - 2 sets of plans (scale 1:50) showing the layout of the sex establishment;
 - the correct fee as set by the Council's Licensing Committee
- 7.3 As part of the application process, applicants are required to post a white A3 notice at the proposed site for 21 days, from the date the application is lodged with the Council, setting out the application details.
- 7.4 The notice must be posted in a prominent position on the premises for the whole of that time so that it can be easily read by passers-by. Applicants are also required to place a public notice in a local newspaper, for example the Eastbourne Gazette or Eastbourne Herald, at their own expense. The newspaper notice should appear in the publication within 7 days of the application being lodged.
- 7.5 Authorised Officers from the relevant Authority may choose to inspect the premises. This includes Council Officers, Sussex Police, and the Fire Authority to ensure that required technical standards are met. If works are required to bring the premises up to standard, the applicant will be notified. Licences will not be issued until all required works are satisfactorily completed.
- 7.6 As part of the established procedure for dealing with applications, the Council's Noise Pollution Specialists will be consulted. If there is the possibility of noise nuisance for example from amplified music, these officers may also carry out an inspection and recommend noise insulation work. Any requirements they identify must be complied with at all times any licence is in force.
- 7.7 Notice of all applications shall be given to Council Officers, Sussex Police, the Fire Authority, ward members and any other relevant person/organisation as deemed appropriate by the licensing authority.
- 7.8 Applicants are advised that any person who, in connection with an application for the grant renewal or transfer of a licence, makes a statement which s/he knows to be false in any material respect, or which s/he does not believe to be true, is guilty of an offence and liable to summary conviction to a fine not exceeding £20,000.
- 7.9 Any licence approved does not constitute any approval under any other Acts (for example, the Town and Country Planning Act 1990) or Bye-Laws. The applicant must ensure that all other necessary consents and approvals are obtained prior to operation.
- 7.10 The Council will not determine an application for grant of a licence unless the applicant allows an authorised officer a reasonable opportunity to enter the proposed sex establishment to make such examination and enquiries as may be necessary to determine the suitability of the applicant and the sex establishment.
- 7.11 On the grant of a licence, the licence document will have the agreed days and hours of operation set out, together with any other specific and/or standard conditions applied. Licence holders must comply with this.
- 7.12 Application forms, sample advertisements and site notices are available via:

<http://www.eastbourne.gov.uk/businesses/licences-and-registrations/sex-establishment-shop-cinema-licence/>

8.0 Renewal of Licences

- 8.1 To continue operating a sex establishment, licence holders must make a renewal application prior to the expiry of the existing licence.
- 8.2 The Council may not determine an application for renewal of a licence unless the applicant allows an authorised officer a reasonable opportunity to enter the proposed sex establishment to make such examination and enquiries as may be necessary to determine the suitability of the applicant and the sex establishment.

9.0 Variation of Licence

- 9.1 The application form, with relevant plans and fee should be sent to the Licensing Authority. Please note that applications for variation of licence are also subject to the site and newspaper notice requirements set out statute.
- 9.2 Variation applications relate only to proposed changes to such matters as the hours and area of the premises covered by the licence. Any changes in Licensee must be the subject of a transfer application.
- 9.3 All variation applications for sex establishment licences must be referred to the Council's Licensing Sub-Committee for decision. Applicants must not operate any revised or varied arrangements until such an application has been approved and any revised or varied licence has been issued.

10.0 Transfer of Licence

- 10.1 The Council may not determine an application for transfer of a licence unless the applicant allows an authorised officer a reasonable opportunity to enter the proposed sex establishment to make such examination and enquiries as may be necessary to determine the suitability of the applicant and the sex establishment.

11.0 Representations on an Application

- 11.1 Any person wishing to object to an application must submit a written representation within the 28 day consultation period specified to the Licensing Authority, setting out the grounds of objection.
- 11.2 Valid representations must be made within 28 days of the application being submitted. Representations made before the application is submitted can be taken into account. The Council also has discretion to consider representations made after the 28 day consultation period, although this will be assessed on a case by case basis.
- 11.3 The legislation dictates that, unless a person making representations consents, their name and address shall not be revealed to the applicant. They may also be reluctant to appear before a hearing of the Sub-Committee.
- 11.4 However, the grounds of any objection made on the application must be provided to the applicant prior to the determination of the application. The report to the Licensing Sub-Committee may have full details of the objections, including any actions / undertakings proposed by the applicant to address matters raised.
- 11.5 Additionally, the applicant and any persons who made representations and who wish to attend the hearing will have the opportunity to address the Licensing Sub-committee before the application is determined.

12.0 Duration of Licence

12.1 Sex Establishment Licences will normally expire on an annual basis, but can be issued for a shorter term, if deemed appropriate.

13.0 Appeals

13.1 There is no right of appeal:

- against refusal of a licence on the grounds set out in the above, unless an applicant can prove the appropriate ground of refusal does not apply to them;
- where refusal of a licence is based on the grounds set out in earlier in this Policy;
- against conditions applied to a licence

13.2 Any appeal to the Magistrates' Court must be made within 21 days from the date on which the person is notified of the decision or became aware of the condition.

13.3 Where an appeal is lodged (other than on grounds previously stated) against refusal to renew or for revocation, the licence remains in force until such time as the appeal is determined. Where an appeal is lodged against conditions applied to a licence, the conditions are deemed not to come into force until the determination or abandonment of the appeal.

14.0 Human Rights

14.1 In determining applications, the principles of the Human Rights Act 1998 must be taken into consideration. The Act acknowledges that local authorities are entitled, amongst other things, to act where this is in the "general interest". Should it be decided to refuse or to grant an application, or to attach conditions, the rights of appeal that exist through the Magistrates' Court will ensure that the principles of the Human Rights Act are adhered to.

14.2 The Human Rights Act 1998 incorporates the European Convention on Human Rights and makes it unlawful for a local authority to act in a way which is incompatible with a Convention right.

15.0 Policy Review

15.1 This Policy will be reviewed to incorporate statute and guidance as appropriate.

Appendix 1

Licensing Committee Hearing Procedure Pursuant to the Local Government (Miscellaneous Provisions) Act 1982 and Policing and Crime Act 2009 - Control of Sex Establishments and Sex Encounter Establishments.

PROCEDURE AT COMMITTEE

- 1.1 The Chair will open the meeting by introducing Members of the Committee and Officers present. The Chair will then invite other parties present to introduce themselves and the capacity in which they are attending (e.g. local residents, business representatives or legal advisor etc). The Chair will then explain the nature of the decision to be taken, and the procedure to be followed.
- 1.2 Thereafter the Chair will direct the parties to the hearing (the Applicant, Objectors, the local police or any other public or private bodies who have made an objection or representation), to address the Committee on their application, objection or representations. The Chair may direct a party to provide further information or other evidence that the Chair feels requires expansion or clarification.
- 1.3 The Authorised Officer will provide an outline of the application, objections and representations received and highlight relevant policy considerations.
- 1.4 Members, Applicants and Interested Parties are then permitted to ask questions of the Licensing Manager.
- 1.5 The Police, Objectors and other parties will then be heard by the Committee and may be questioned in turn.
- 1.6 The Applicant will then have an opportunity to set out their application and any further evidence upon which they propose to rely.
- 1.7 The Chair will direct that parties should limit their oral representations to those matters which relate to the grounds upon which a licence can be refused and/or upon such conditions as might reasonably and proportionately be imposed in the circumstances of the application.
- 1.8 The Chair may also direct that an appropriate time limit be set to allow each individual an equal opportunity to present their case.
- 1.9 The Chair will invite the Members of the Committee and thereafter other parties to ask any relevant questions after each of the representations. The Chair will direct that parties should limit their questions to those matters which engage with the grounds upon which a licence can be refused and/or upon such conditions as might reasonably and proportionately be imposed in the circumstances of the application.
- 1.10 The Chair will invite each of the parties to make a very brief closing speech/summing up if they wish. No new information may be introduced at this stage.
- 1.11 The Chair will invite Members to go into closed session to make their decision. The Committee will be accompanied by the Council's Legal Adviser. Any legal advice given to the Committee will be given in outline to the parties.
- 1.12 Members will then return to the open session. The Chair will announce the decision, giving reasons, and any conditions placed upon the licence (if granted).

Alternatively, the Committee may inform the parties that its decision will be given in writing and not at the conclusion of the hearing. In such a case the decision will be notified to all the parties within five working days of the hearing (not including the date of the hearing).

NOTE

- The Council requires that any evidence supplementary to the original submissions, in support of or against an application must be received a minimum of 5 working days before the date on which the matter is to be heard, to ensure that all parties have sight of the evidence in advance of the hearing.
- The applicant will normally be notified in writing of the decision within 5 working days.
- Applicants and Licence holders have right to appeal against a decision in certain circumstances, details of which can be obtained from the Licensing Manager.
- The Council is committed to taking decisions in an honest, accountable and transparent fashion but on occasion may find it necessary to exclude members of the press and public based upon the legal framework given by the Local Government Act 1972 Schedule 12a and/or local policy. On these occasions decisions based on the above framework will be given. Generally this authority endeavours to allow all parties to speak and ask questions of another party present during a Licensing hearing. However, this decision has to be taken on a case by case basis and in some cases (a reason will be given) verbal representation and cross examination may not be permitted.
- The Authority has the right to exclude any parties disrupting this hearing, at its discretion.
- The Authority reserves the right to amend the hearing procedure without notice.

Appendix 2

LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982 AS AMENDED BY THE POLICE AND CRIME ACT 2009

Sex Establishment Schedule of Standard Conditions

Display Of Licence

- A copy of the Sex Establishment Licence and the standard conditions made by the authority must be kept exhibited in the public area of the premises.

Age Policy

- No person under 18 years of age to enter the premise.
- All customers appearing to be under the age of 21 to be required to provide photographic proof of their age before being allowed access to the shop.
- No person under 18 years of age is to be employed in the business of the establishment.
- At all entrances there shall be prominently displayed so as to be visible at all times to persons approaching the premises a notice prohibiting entry to all persons under 18 years of age.
- The Licensee of the premises shall ensure that all persons employed on the premises are aware of the age restriction on clients and that they exclude or remove from the premises any person attempting to evade the restriction.

Site Specific Conditions - Sex Shop

- A premises licensed as a Sex Shop under the provisions of Schedule III of the Local Government (Miscellaneous Provisions) Act, 1982, shall be used only for the purpose of a Sex Shop as defined in Paragraph 4 of the said Schedule 3 and shall not be used, wholly or in part, for any other purpose during the period the premises are licensed as a Sex Shop.
- The Licensee shall not display outside, near to, or within the premises any advertising material, sign or pictorial display referring to the licensed premises or the goods, articles or services provided at the premises, in such a position or manner that it is visible to any person using adjacent highways, streets, footpaths or forecourts except any notice displaying the name or trading title of the Licensee, any Notice indicating the name of the premises, times of opening of the premises for business, any Notice required by any statute, regulation or bylaw applicable to the premises or business carried thereon or any notice prescribed by these conditions.
- The use of loudspeakers and displays on business vehicles is strictly prohibited.
- The licensed premises shall be so arranged by screening or obscuring windows, doors and other openings so that the interior of the licensed premises and the displays of articles sold at the premises shall not be visible at any time to persons outside the building. The external doors shall be fitted with automatic closing devices which shall be maintained in good working order.
- The Licensee shall not supply or permit to be supplied to any person, other than a person employed to work on the premises, any article of food or drink whether for consumption on or off the premises.
- All refuse produced on the premises and materials, goods or articles discarded for any reason shall be securely stored within the premises and delivered in sealed containers to the refuse collection service.
- The Licensee shall make such provision for the reception of goods and articles for sale, hire, exchange, loan, demonstration or display on the premises so that they are

received directly into the premises and are not subject to storage for any period of time on any pavement, footpath, forecourt or yard nor in any vessel or vehicle, etc. where they may be seen by members of the public.

- The Licensee or a Responsible Person nominated by him in writing for the purpose and approved by the Council shall be in charge of and upon the licensed premises during the whole time they are open to the public. Such written nominations shall be continuously available for inspection by authorised officers of the Council or the Police.
- The Licensee or their nominated representative shall ensure that no employee or other person shall seek to obtain custom for the premises by means of personal solicitation outside or in the vicinity of the premises.
- The external appearance of the premises must be as approved by the Council and neither the interior nor the exterior of the premises shall be altered without the approval of the Council.
- No advertisements, other than advertisements relating to other licensed sex establishments or relating to goods sold from the premises, shall be displayed in the premises.
- A record shall be kept of all mail order transactions (if any) in such form as agreed by the Council.
- The licence is not transferable by the Licensee other than through the formal application process to the Licensing Authority.
- The Licensee shall immediately notify the Council he/she intends ceasing to carry on the business.
- The Licensee shall inform the Council if he/she is convicted under the Obscene Publications Act, 1959, the Protection of Children Act, 1978, or the Customs and Excise Management Act, 1979 or if an order for forfeiture is made under the Obscene Publications Act, 1959 following the service of a summons on the Licensee. The Council will take into consideration any such conviction or orders for possible revocation or non-renewal of the licence.
- The Licensee shall not in the conduct of the business employ any person:-
 - Whose application for a licence to carry on a sex establishment, or renewal thereof, has been refused by the Council or any other licensing authority
 - Whose licence to carry on the business of a sex establishment has been revoked by the Council or any other licensing authority;
 - The name, address, date of birth and details of any criminal convictions of all individuals who will have responsibility for the operation or management of the store in the absence of the licence holder are to be provided to the Licensing Authority prior to such persons commencing their role at the premises.

The Licensee shall not, in the conduct of the business, employ any person who has a criminal conviction or simple caution under:

- The Obscene Publications Act, 1959,
- The Protection of Children Act, 1978, or
- The Customs and Excise Management Act, 1979
- No external signage is to be displayed on the premises, except for the company name, the hours of business and details of the age restriction, without the written authorisation of the Licensing Authority.
- The windows of the premises must be such that there is no view from outside into the interior of the premises and no window display is to be permitted. A lobby area is to be installed with double doors so restricting the view into the premises when patrons are entering and leaving.
- CCTV is to be installed, operated and maintained to a standard agreed with by Sussex Police and the Licensing Authority. The system is to include 28 day Imaging storage and be available for inspection in accordance with the Police's requirement.
- All goods to be discreetly wrapped before leaving the premises.

- No part of the premises is to be used for the showing of recorded videos, DVDs or other moving pictures.
- Any breach of legislation or failure to comply with the Conditions attached to this Licence may result in prosecution or in the revocation of the Licence.

Premises where activities include lap dancing, pole dancing, nudity and/or sexual stimulation - the prevention of crime and disorder

Security Industry Authority Door supervisors:

- 1) The [either: the licensee or a Responsible Person nominated by him in writing or the organiser] NOT --- Designated Premises Supervisor (DPS) or their authorised representative will ensure that all personnel carrying out security functions at the premises shall be licensed by the Security Industry Authority. (SIA)
- 2) There will at all times be a minimum of 2 SIA door supervisors at the main entrance to the premises and thereafter to a ratio of 1 SIA Door Supervisor per 100 patrons or part thereof. There will be a further two SIA door supervisors on each floor whilst that floor is in operation, deployed as directed.
- 3) Additional door supervisors must be provided on the respective floor on a ratio of 1 to 100 on any occasion when the capacity on that floor exceeds 200 customers. The two door supervisors operating at the entrance to the premises will be excluded from this calculation.
- 4) Records shall be maintained at the premises containing the full name, badge number, date and hours of employment of every Door Supervisor.
- 5) If Registered Door Staff are employed through an agency the name and address of the agency must be included in the entry referring to the person employed by the agency.
- 6) Any such record must be in a form approved by the Licensing Authority. [In the event that no form is either issued or approved by the Licensing Authority, the management may draft their own form but this must contain all the information stipulated in this section].
- 7) The [either: the licensee or a Responsible Person nominated by him in writing or the organiser] NOT --- Designated Premises Supervisor or their nominated representative shall ensure door supervisors display a approved SIA badge

Close Circuit Television (CCTV) and Associated Recording Equipment

- 8) CCTV and appropriate recording equipment to be installed, operated and maintained throughout the premises internally and externally to a standard specification following consultation with Sussex Police. Such CCTV footage will be stored for a minimum of 28 days, and the management will give full and immediate cooperation and technical assistance to the Police in the event that CCTV footage is requested for the prevention and detection of suspected or alleged crime.
- 9) The Chief Officer of Police, or his/her representative of the rank of Inspector or above, must be afforded access to video recordings upon request and be provided with a copy, which will be returned to the club within a reasonable time.
- 10) The premises will not open unless and until written confirmation has been supplied to the Council Licensing Authority by the Police that they are satisfied that the

installation, operation and coverage of the CCTV system meets the required standard.

- 11) Security arrangements for the dressing rooms in the form of a combination lock with deadlocking latch and a discreet panic alarm within the dressing rooms, linked to the club reception, shall be maintained at all times whilst the premises are open. No member of the audience shall be admitted to this room under any circumstances and a notice to this effect will be displayed on the door.

Drugs

- 12) The management and premises will have an absolute zero tolerance policy towards drugs and drug misuse. Any illegal drugs seized will be stored in a secure 'drugs box', and periodically the management will request the Police to come and remove all drugs in the 'drugs box' for destruction.
- 13) In the event that a person is found on the premises actively taking or dealing in drugs, that person will be detained and the Police will be called to the premises.
- 14) The management will permit the Police to use an 'ION Track' drugs detector or other similar device inside the premises to detect the illegal use of drugs and will sign the Police consent form.

Public Safety

- 15) Capacity limits. The number of persons on the premises shall not exceed that as stated by the Fire Officer. Such a figure will **include** staff and performers.
- 16) When the [either: the licensee or a Responsible Person nominated by him in writing or the organiser] NOT --- DPS is not on site, an appropriately authorised, trained and nominated individual shall assume management and control of the site.
- 17) Crime prevention and security measures shall be instigated throughout the premises following consultation with Sussex Police Crime Prevention Design Advisor or their nominated representative, as reasonably required.
- 18) The management of the premises will meet with the Police to discuss the safe and proper management of the premises on a minimum three monthly basis, unless the Police confirm in any one quarter that such a meeting is not necessary.
- 19) The premises will continue to be a member of NIGHT WATCH or any similar organisation set up to replace this.
- 20) Shatterproof drinking receptacles will be used throughout the site where practicable.
- 21) No persons under 18 will be admitted to the premises.
- 22) No under 18s events will be hosted anywhere on the premises at any time.
- 23) Whilst striptease entertainment is taking place, no customer under 18 shall be on the premises and clear notices shall be displayed at the entrance to the premises in a prominent position so that it can easily be read by persons entering the premises in the following terms:

**NO PERSONS UNDER 18 TO BE ADMITTED
ENTERTAINMENT WITHIN THESE PREMISES INVOLVES
A FORM OF NUILITY**

Special Conditions

- 24) The only form of entertainment which is approved and may be provided at the premises is striptease entertainment in the form of pole dancing by club dancers only, in the following format:
- 25) Fully nudity is not permitted. The dancer/performers should at all times wear a G-string or similar piece of clothing which is not transparent on the appropriate part of the body in order to cover the groin/genital area.
- 26) The approved striptease/pole dance entertainment shall be given only by the performers/entertainers and no audience participation shall be permitted.
- 27) There shall be no physical contact between the customer and the dancer before, during or after the performance when the performance is complete. All monetary transactions will take place at the reception/entrance area and shall be lieu of a ticket, covering the cost of the performance of pole dancing only. Notices outlining this shall be clearly displayed at every table and be on display at the entrance of the premises and in each bar area.
- 28) Dancers shall only perform within a designated area to seated customers. No booth seating or performances shall be permitted at any time. All areas will have adequate lighting to ensure the safety of the dancer and to ensure that both the member/guest/audience and the performer are adhering to the Club rules at all times.
- 29) There shall be no simulated sex acts or use of props, save for the pole, as part of the performance.
- 30) There shall be no physical contact between dancers whilst performing.
- 31) There will be a minimum distance of one metre between the dancer and the seated customers at all times.
- 32) Dancers may not give out any personal information, including telephone numbers, email addresses or other contact details to audience members. Dancers may not accept any telephone number, address, business card or any other information from any customer.
- 33) All dancers/performers will be aged over 18 years of age and legally entitled to work in the UK before they perform at the Club. Copies of all dancers' files will be made available to Licensing Authority for inspection upon request.
- 34) At no time will members or their guests be permitted into the performers changing room(s).
- 35) Members and their guests may not at any time take photographs, film, video or mobile phone photographs or footage of performers. This will be an express written condition of membership.

- 36) Both floors will be dedicated to table and/or pole dancing on design. The premises will not permit one floor to be used for table and/or pole dancing or other forms of adult entertainment, whilst permitting the other floor to be used for other types of function (whether open to the public or via private booking) without first receiving prior written confirmation and approval for the specific event from the Police and the Council Licensing Department.
- 37) There shall be no mixed gender performance at any time.
- 38) Outside of premises advertising. The Designated Premises Supervisor or their nominated representative will ensure that there is no display outside of the premises of photographs or other images that indicate or suggest that pole dancing striptease or similar entertainment takes place on the premises. No photographs or other images or words of a sexually explicit nature shall be displayed on the outside of the premises.
- 39) Website. Any promotional website for the premises will not display photographs or other images of topless or nude performers, or show photographs or other images that may be reasonably construed as sexually explicit. The website will include clear statements as to the 48 hour prior membership application requirement and the over 18 age requirement for members and guests.
- 40) Promotional literature. Any promotional literature circulated outside of the premises will not display photographs or other images of topless or nude performers, or show photographs or other images or words that may reasonably be construed as offensive. All promotional literature will include clear statements as to the 48 hour prior membership requirement and the over 18 age requirements for members and guests.

Conditions

- G1. Only activities to which the Council has given its consent shall take place.
- G2. The approved activities shall take place only in areas designated by the Council and the approved access to the dressing room(s) shall be maintained whilst striptease entertainment is taking place and immediately thereafter.
Note The Council will not permit striptease to be in a location where the performance can be seen from the street.
- G3. The striptease entertainment shall be given only by the performers/entertainers and the audience shall not be permitted to participate.
- G4. Whilst striptease entertainment is taking place no person under the age of 18 shall be on the premises. A clear notice shall be displayed at each entrance to the premises in a prominent position so that it can be easily read by persons entering the premises with the words:

NO PERSON UNDER 18 WILL BE ADMITTED

- G5. There shall be no physical contact between the customer and performer before, during or after the performance other than the placing of notes by the customer in a garter worn by the performer for that purpose.
- G6. Notices outlining this shall be clearly displayed at every table, be on display at the entrance of the premises and at each bar area.

- G7. The performers shall at all times wear at least a G-string which shall not be removed as part of the performance and which shall at all times cover the genitalia.
- G8. Entertainment under this consent may be provided solely by dancers performing on the stage or to customers seated at a table in the approved part of the premises.
- G9. CCTV shall be installed to cover all the areas where dancing will take place.
- G10. Whilst dancing takes place, registered door supervisors shall be employed in that part of the premises used for dancing. The number of registered door supervisors employed shall be stipulated by the Council as part of the conditions of consent.

Agenda Item 9

Body:	General Licensing Committee
Date:	5th October 2015
Subject:	Review of the Councils policy in relation to Street Trading in the Borough of Eastbourne
Report Of: Ward(s)	Jay Virgo, Customer First Manager All
Purpose	To present the General Licensing Committee with the revised Street Trading Policy covering the Borough of Eastbourne post consultation. To note the position regarding the fees and charges associated with street trading.
Recommendation:	a) Members are invited to note the feedback received in relation to the public consultation concerning the review of the council's street trading policy. b) Members are invited to delegate any revisions of the Policy in line with the views of the General Licensing Committee to the Senior Specialist Advisor in consultation with the Chair of the Licensing Committee and the relevant Cabinet Portfolio Holder, prior to its consideration and adoption by Cabinet. c) Members are invited to note the timetable for consultation, review and implementation.
Contact:	Jay.virgo@eastbourne.gov.uk

1.0 Introduction

1.1 A key Council objective is to increase the vibrancy and vitality of the town, and in particular the town centre. This is embedded in the Community Strategy in the Regeneration & Economy chapter, the Corporate Plan and the Proposed Submission Version of the Eastbourne Town Centre Area Action Plan. The intention is to have a policy that facilitates the provision of extra vitality in the Borough and the appropriate diversification of street trading activity, and to attract a regular street market.

1.2 The Street Trading Policy, adopted in February 2012, sought to allow a range of managed street trading activities across the Borough and is available via:

<http://www.eastbourne.gov.uk/about-the-council/council-policies-plans-and-strategies/licensing-policy/street-trading-policy/>

- 1.3 The Council currently regulates street trading under the provisions of Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982. This permits the Council, among other things, to designate streets as "consent streets" or "prohibited streets" for trading purposes.
- 1.4 The Street Trading Policy will not cover all types of trading on the street, as there are some exemptions. Pedlars Certificates, which are issued by Sussex Police to individuals to sell their goods from a mobile unit, moving from location to location. This activity is transitory in nature, where customers approach the Pedlar as opposed to the Pedlar directly marketing their wares. Their activity is regulated under the Pedlars Act 1871.

2.0 Consultation

2.1 Consultation in relation to the review of the Street Trading Policy commenced on the 1st July 2015 and concluded on the 24th September 2015.

2.2 A range of organisations and individuals have been directly consulted about the review of the existing policy, including:

- Sussex Police
- ESCC Child Protection
- Fire Authority
- Planning Authority
- Highways Department
- Food Safety
- Noise Pollution
- Ward Councillors
- Community Safety Partnership
- Chamber of Commerce
- Town Centre Neighbourhood Panel
- Existing Street Traders

2.3 The consultation to review the policy was included on the Council's website at:

<http://www.eastbourne.gov.uk/about-the-council/consultations/>

2.4 The Policy covers the streets where trading will be permitted – 'consent streets' and those where trading will not be permitted 'prohibited streets.'

2.5 The Policy covers the type of trading that can take place; including hours of operation. It also considers the potential impact on established businesses and residents in the area, health and safety implications as well as trading units.

2.6 It incorporates the application process, an overview of how decisions are made, conditions aligned to consents, and the process for enforcement.

2.7 Importantly the policy under review includes reference to the case of *West Berks DC v Paine* [2009] EWHC 422 (Admin). Any area to which the public have access without payment is considered, for the purposes of this legislation, as a "street". Under the wide re-designation of the status of all the roads and streets within the

Borough passed by the Full Council in February 2012 and confirmed by them in July 2012 after the statutorily required consultation and advertisement, this includes areas such as free car parks at Shopping Centres etc.

3.0 Overview of feedback

- 3.1 A copy of the draft review of the policy is included in **Appendix 1**.
- 3.2 The Authority has received 0 responses concerning the review of the policy.

4.0 Implementation Timetable

4.1 The timetable for the review of the policy is tabulated below:

4.2

Procedure	Date/s
Public consultation	1 st July – 24 th September 2015
Full Licensing Committee: <ul style="list-style-type: none"> - To consider results of consultation - Delegate any further revisions of the policy in line with the views of the General Licensing Committee to the Senior Specialist Advisor in consultation with the Chair of the Licensing Committee and the relevant Cabinet Portfolio Holder prior to consideration and adoption by Cabinet. 	5 th October 2015
Seek Cabinet Approval	9 th December 2015

5.0 Links To Strategic Vision

5.1 The Corporate Plan sets out the Council's priority themes and is available via:

<http://www.eastbourne.gov.uk/EasysiteWeb/getresource.axd?AssetID=210648&type=full&servicetype=Inline>

6.0 Policy Review

6.1 The Street Trading Policy will be kept under review and amended as required.

7.0 Recommendations

7.1 Members are asked to agree the recommendations at the beginning of this report.

8.0 Financial & Resource Implications

8.1 Full Council delegated to the General Licensing Committee the setting of fees for street trading consents. Fees will be set having regard to the cost of implementation and administration of the provisions. Applications will be renewed annually and the consent fees will be reviewed at the appropriate time to ensure that they cover the cost of the service.

Background Papers:

The Background Papers used in compiling this report were as follows:

Local Government (Miscellaneous Provisions) Act 1982
Pedlars Act 1871
West Berks DC v Paine [2009] EWHC 422 (Admin)
Street Trading – Eastbourne Policy

Schedule 4 of the Local Government
(Miscellaneous Provisions) Act 1982

Eastbourne Borough Council Street Trading Policy

DATE

Eastbourne Borough Council
1 Grove Road
Eastbourne
East Sussex BN21 4TW
Customerfirst@eastbourne.gov.uk
Tel no: 01323 410000

STREET TRADING POLICY

1.0 Introduction Scope and Purpose

- 1.1 Local Authorities have a legal discretion to regulate street trading in their area. If they exercise their discretion they can apply controls across the whole of their administrative boundary or just parts of it. In the early 1980's Eastbourne Borough Council, herein referred to as "The Council" adopted the provisions of Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982.
- 1.2 The Council agreed at that time to regulate street trading in certain parts of the town centre, predominantly in the central area or in other areas where street trading activity would be considered inappropriate. As detailed below, the Council more recently decided to extend its regulatory coverage to the whole borough.
- 1.3 The purpose of this Street Trading Policy is to provide a decision making framework for the consideration of applications for street trading consents.
- 1.4 This Policy aims to create a street trading environment which complements premises based trading, is sensitive to the needs of residents and businesses, provides diversity and consumer choice. It seeks to enhance the character, ambience and safety of the local environment.
- 1.5 Street trading can be a valuable tool to aid the regeneration of Eastbourne's retail centres. The Council's ability to regulate street trading is set out in Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 referred to in this Policy as "the Act".

2.0 Definition of Street Trading

- 2.1 Street Trading is defined in paragraph 1 of Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 as:

"the selling or exposing or offering for sale of any article (including a living thing) in a street".
- 2.2 The Act defines the term "street" as including:

"any road, footway, beach or other area to which the public have access without payment"; and a service area as defined in Section 329 of the Highways Act 1980".
- 2.3 Any part of a street is a "street" for the purposes of the Act.

- 2.4 As reaffirmed in the case of West Berks DC v Paine [2009] EWHC 422 (Admin) any area to which the public have access without payment is considered, for the purposes of this legislation, as a "street". Under the wide re-designation of the status of all the roads and streets within the Borough passed by the Full Council in February 2012 and confirmed by them in July 2012 after the statutorily required consultation and advertisement, this includes areas such as free car parks at Shopping Centres etc.
- 2.5 The Act at paragraph 1(2) of Schedule 4 states that the following types of trade are not street trading:
- (a) a pedlar trading under the authority of a pedlar's certificate granted under the Pedlar's' Act 1871;
 - (b) anything done in a market or fair, the right to hold which was acquired by virtue of a grant, enactment or order;
 - (c) trading in a trunk road picnic area provided by the Secretary of State under Section 112 of the Highways Act 1980;
 - (d) trading as a News Vendor;
 - (e) trading carried on at premises used as a petrol filling station;
 - (f) trading carried on at premises used as a shop or in a street adjoining a shop where the trading carried on is part of the business of the shop;
 - (g) selling things, or offering or exposing them for sale, as roundsmen
- 2.6 For the purposes of street trading activity, streets are designated as either '**prohibited,**' or '**consent**' streets. The location of prohibited and consent streets in Eastbourne is included in **Appendix A**.
- 2.7 A map of the town centre area defined in this policy is included in **Appendix B**. A definition of the different classifications is set out below:

3.0 Prohibited Streets

- 3.1 If a street is designated as a "**prohibited street**" then a criminal offence is committed by any person engaging in street trading in that street. There could be a number of reasons for wishing to designate a street as prohibited.
- 3.2 For example, the street may not be wide enough to facilitate a trader or the Council may wish to restrict trading at a particular location.

4.0 Consent Streets

- 4.1 If a street is designated as a "**consent street**," then street trading without consent is a criminal offence. The Council is bound to act reasonably and consistent with its general obligations, for example those under the Human Rights Act 1998.
- 4.2 However, subject to this, the Council enjoys a very wide discretion with regard to the granting or refusal of street trading consents. It does not have to rely upon specific statutory grounds in order to refuse an application for grant or renewal of a consent. This may include:
- That there are sufficient traders in the locality;
 - The proposed operation is likely to cause noise, nuisance or disturbance
 - There is insufficient space for trading to take place
- 4.3 There is no statutory right of appeal against any Council decision made in respect of a street trading, although in theory a demonstrably unreasonable decision could be challenged by way of judicial review. A street trading consent can only be granted for a period not exceeding twelve months, and can be revoked at any time.
- 4.4 When granting or renewing a consent, the Council may attach any reasonable conditions to it. The Council may, at any time, vary the conditions attached to a consent.
- 4.5 Any such variations will be notified in writing to the named person on the application, and to whom the consent has been approved, and will take effect immediately, or on the date contained within the notification letter.

5.0 Policy Considerations

- 5.1 This Policy facilitates the administration of applications for street trading consents. Central to the Council's policy are a number of objectives which are set out below:-
- 5.2 **Public Safety:** The proposed location of the activity should not present a significant risk to the public in terms of highway safety and obstruction. This would include the consideration of factors such as: - interference with sight lines for road users, and pedestrian access including access for the disabled. The views of the Highway Authority may also be sought in this regard.
- 5.3 **Commercial Issues:** Consideration will be given to the number of other traders in the vicinity of the application site and whether the street trading proposed is for a similar type of product or offer. The Policy aims to protect against the over proliferation of street traders, and is mindful of the impact such can have in an existing retail area or other localised issues.

- 5.4 **Prevention of Crime and Disorder:** The proposed activity should not present a risk to crime, disorder or give rise to anti-social behaviour and related nuisance. This is likely to be more of an issue in respect of applicants wishing to trade in the later hours, or where the area is a crime hotspot or has an issue with anti-social behaviour and nuisance.
- 5.5 **Prevention of Public Nuisance:** Consideration will be given to measures taken to reduce the risk of nuisance from noise, refuse, vermin, fumes and smells. The street trader shall be personally responsible for the removal and disposal of any waste created by that activity. He/she shall return the area back to its original condition at the conclusion of each trading occasion.

6.0 Council Resolution

- 6.1 **On 22/2/12 Eastbourne Borough Council passed a resolution, which it confirmed after the statutorily required consultation on 18/7/12, to designate various streets as "consent" and "prohibited streets." The resolution stated:**

"The Council hereby seeks to make a resolution awarding 'consent street' status to all streets in the Borough, except for the seafront promenade and beach up to high tide, which will be designated as a "prohibited street" where street trading is prohibited unless it is in connection with a pre-planned, Council authorised event. Street trading will also prohibited on all classified A Roads, and/or where the speed limit exceeds 30 miles per hour. The consent streets, where the Council considers necessary, will include the allocation of specific 'pitches' where street trading can take place to facilitate monitoring and enforcement."

7.0 Site Assessment

- 7.1 The Council will identify suitable pitches for street trading and will also consider applications from individuals to create new pitches in specific locations if the applicant can demonstrate a clear demand for the goods or service to be provided.
- 7.2 Consents may be issued to mobile artists who sketch or paint, sell their work and move from a location to location which will be specified on the consent.
- 7.3 In determining whether to create a street trading pitch, the Council will have regard to:
- Any effect on road safety, either arising from the siting of the pitch or from customers visiting or leaving;
 - Any loss of amenity caused by noise, traffic or smell;
 - Existing traffic orders;
 - Any potential obstruction of pedestrian or vehicular access, for example where the road by its overall design makes street trading unsuitable, it is narrow or one way;
 - Any obstruction to the safe passage of pedestrians;

- The safe access and egress of customers and staff from the pitch and immediate vicinity.
- The proximity of such to business and/or residential accommodation where is likely to cause noise, nuisance or disturbance.

8.0 Consultation for New Pitches

8.1 Before a new pitch is created, the Council will consult for a minimum of 28 days, and seek representations from:

- Occupiers of premises immediately adjacent and opposite the proposed location;
- Ward Councillors;
- Sussex Police;
- East Sussex County Council.
- Other parties the Council considers appropriate.

8.2 The Council will also consider any responses received in relation to public notices on the highway.

8.3 Any objections from consultees will be assessed against the criterion set out above, but this list is not exhaustive. An application will normally be determined by an authorised officer, but in exceptional circumstances, may be referred to a Licensing Sub Committee for consideration.

9.0 Sustainability and Product Type

9.1 The applicant should set out measures to reduce the environmental impact of the proposed activity. Typically, this could include the use of recyclable products and energy efficient processes. Consideration will also be given to the type of products sold, and the suitability of the products at the location requested, particularly where there are established outlets selling similar products. The sale or supply of live animals shall be strictly prohibited.

9.2 In general, street trading consents will not be granted where the product to be traded is similar to products sold within existing outlets in the direct vicinity. Goods will normally consist of craftwork, fresh flowers and foodstuffs. Other types of trading, including the provision of services will be considered on a pitch by pitch basis.

10.0 Hours of Operation

10.1 Street trading hours will normally mirror those of existing outlets that may be in the immediate vicinity. In the case of food outlets, trading hours will be determined on a pitch by pitch basis.

11.0 Suitability of Trading Unit

- 11.1 The vehicle, trailer or stall to be used will be of a high quality design/build, and will add to the quality of the street scene. . The unit shall comply in all respects with any legal requirement relating to the trading activity proposed. It must also be deemed roadworthy, and comply with any relevant traffic provisions and laws.
- 11.2 This list is not exhaustive, but it includes the following legislation, and any subsequent revisions:-
- (a) Food Premises (Registration) Regulations 1991
 - (b) Food Safety Act 1990
 - (c) Food Premises (Registration) Regulations 1991
 - (d) Food Safety Act 1990
 - (e) Food Safety (General Food Hygiene) Regulations 1995 (as amended)
 - (f) The Food Safety (Temperature Control) Regulations 1995
 - (g) Health and Safety at Work etc. Act 1974 and any regulations made under this Act.
 - (h) Environmental Protection Act 1990
 - (i) Licensing Act 2003
- 11.3 A pitch is defined as an area of space measuring no more than 3 metres by 3 metres per trading unit. Where this is exceeded, the Council may take enforcement actions and/or charge a supplementary fee.

12.0 Submitting an Application

- 12.1 Application forms are available from

Eastbourne Borough Council
1 Grove Road
Eastbourne
BN21 4TW

E mail: customer_first@eastbourne.gov.uk

Website: www.eastbourne.gov.uk/licensing

Telephone: 01323 410000

- 12.2 The following will be required to be submitted with the application:-
- (a) A completed and signed application form.
 - (b) The application fee.
 - (c) Where the proposed activity will take place at a fixed position a map of at least 1:200 scale should be submitted clearly identifying the proposed location by marking the site boundary with a red line.
 - (d) Two colour photographs of the trading unit illustrating different elevations of the unit.
 - (e) A copy of the certificate of insurance covering third party and public liability risks to the level of £5 million.
 - (f) 2 colour passport photographs of the applicant.

13.0 Who Will the Council Consult?

13.1 Before any consent is granted, the Council will normally consult with the following agencies or persons. A period of twenty eight days will be allowed for comments to be received. The application will normally be determined within ten working days after the initial consultation period of 28 days. Applicants are therefore advised to make application to trade in good time of any proposed activity; otherwise the application may be refused.

- (a) Sussex Police
- (b) Planning Department (Eastbourne Borough Council) (EBC)
- (c) Highways Department (East Sussex County Council) (ESCC)
- (d) Health and Environment Noise Team (EBC)
- (e) Food Safety Team (EBC)
- (f) Ward Councillors (EBC)
- (g) Others as the Council sees fit.

14.0 How the Council Makes its Decision

14.1 If, when undertaking consultation on an application, no adverse representations are received, or where representations can be resolved by way of mediation, then the application will normally be decided by an authorised Council Officer.

14.2 Where representations are received and remain unresolved, the application may, in exceptional circumstances, be referred to and heard by a Licensing Sub Committee. The applicant will be advised in writing of the date, time and place when the application will be heard. The Council will follow its standard Licensing Sub Committee procedure.

14.3 In the event of a street trading consent, the law does not currently offer a right of appeal. However, the Council will, where it considers appropriate, offer reasons for refusal. When a consent is refused, the fee will be retained.

14.4 The Council will also reserve the right to suspend these pitches at any time to accommodate works on the highway, and to facilitate other street scene activity.

15.0. Duration of Permissions and Fees

15.1 Street trading consents will normally be issued for one of the following periods:

- (a) Daily
- (b) Weekly
- (c) Annual (a maximum of 12 months)

15.2 All fees must be paid in full in advance, otherwise the application will be deemed invalid. A list of the fees and charges is included at **Appendix C**.

- 15.3 If permission is revoked or surrendered, no refund of the fee will be made. Failure to maintain payments may result in the consent or licence not being renewed, or the consent being withdrawn/ deemed to have lapsed.
- 15.4 Where consent has been approved for a particular individual or operation, this does not set a precedent, nor create an entitlement that that individual will be granted permission for that, or another location within a consent street.

16.0 Conditions and Enforcement

- 16.1 Standard conditions are contained at **Appendix D**. These will usually be attached to all consents issued. These conditions include details regarding the holder's responsibility to maintain public safety, prevent nuisance, and to preserve local amenities.
- 16.2 Further conditions may also be attached, limiting the days and the hours when street trading is permitted, the goods which may be sold, the size of the trading pitch or any other matter the Council deems appropriate.
- 16.3 Failure to comply with conditions may lead to revocation, or non-renewal of consent to trade.
- 16.4 Persons engaging in street trading (as defined in the Act) without consent to trade, or who fail to comply with the conditions will be liable to prosecution under paragraph 10 of Schedule 4 of the Act.
- 16.5 Decisions regarding enforcement action will be made in accordance with the Licensing Enforcement Policy adopted by the Council.

17.0 Street Trading Consent does not:

- Permit trading outside the terms of the Consent
- Indicate that planning permission is not required
- Indicate that the unit is exempt from business rates
- Override parking restrictions or any other traffic regulations
- Imply approval under *any* other system of control or regulation e.g. planning or licensing.

All applicants for street trading are strongly advised to ensure that all necessary consents/permissions required under the Planning or Licensing Acts are obtained **before** the commencement of trade and that food registration is sought, as appropriate.

Appendix A

TOWN CENTRE

Consent & Prohibited Streets in the Borough

Many of the streets in the Borough of Eastbourne are designated as "consent streets," where, subject to the necessary licence consent being in place, street trading is permitted. Several are defined as "prohibited streets" where street trading of any type is prohibited.

The Town Centre is the area bounded by the blue line on **Appendix B**, and mirrors the area defined in the Town Centre Area Action Plan. With the exception of authorised street markets/events taking place in the Town Centre, all other street trading is prohibited unless specifically authorised by the Licensing Authority.

"Prohibited Streets," are identified as those which are designated as a classified "A Road," and/or where the speed limit for that road exceeds 30 miles per hour. It also includes the seafront promenades, and the beach up to high tide mark. In "prohibited streets," street trading is not permitted.

Where a street is awarded consent status, any applications will be considered within the context of the broader Street Trading Policy

APPENDIX B - Town Centre Area



Appendix C

Street Trading Fees

(These may be amended from time to time by the Council's General Licensing Committee)

Eastbourne

	Daily	Weekly	Annual
Fee Level	£30	£175	£405

Street Market Fees

Per Stall, per established market operated on behalf of Eastbourne Borough Council or as part of a Council authorised event: £1

If consent is sought for a shorter period, then the daily and weekly fees agreed by the Committee would apply.

The flower salesman who has "grandfather rights" and operates in the town centre could still be issued yearly consent and the annual fee charged.

APPENDIX D

GENERAL CONDITIONS THAT WILL NORMALLY BE ATTACHED TO STREET TRADING CONSENT

1. The consent may not be transferred to any other person or business.
2. The consent holder shall not permit any person to exercise the consent in his/her absence, unless that person is directly employed by the consent holder, and is at least 17 years of age. That person must be duly authorised in writing by the consent holder, and of whom the Council has been informed.
3. The consent holder shall only trade on the days and between the times stated on the consent.
4. The consent holder shall only trade using the appropriate stall, barrow or basket or other receptacle or vehicle in any street, which is specified in the consent, and which has been duly inspected and authorised.
5. The consent holder shall not sell, expose or offer for sale any articles other than those specified on the consent.
6. The consent holder shall not carry on business on any street so as to cause noise, nuisance, obstruction, noxious smells, or cause danger to people/vehicles using the street complying with all highway safety and access requirements.
7. The consent holder shall not carry on business from any vehicle or erect or place any stall or other structure in any street except in the area specified in the consent.
8. The consent holder shall on all occasions, when carrying on business, be strictly sober, and conduct him/herself in a proper, civil and courteous manner. He/she shall not carry on his/her business in such a way as to cause annoyance to the occupier or person in charge of any shop, business, resident, or any person using the street in the vicinity of the pitch.
9. The consent holder shall at all times conduct his/her business and position any vehicle used by him/her in connection with his/her business in such a manner that no danger is likely to arise to persons trading or intending to trade.
10. The consent holder shall at all times conduct his/her business in a clean and tidy manner.
11. The consent holder shall ensure that a copy of the consent available for inspection on request by an Authorised Officer of the Council or Sussex Police. It must also be displayed on the stall/vehicle at all times trading is taking place.
12. The consent holder shall not permit any person to assist him/her in his/her trading unless the details and 2 passport sized photographs of that person have been supplied to the Licensing Authority. Any such person shall be

issued with an identification badge by the Licensing Authority, Eastbourne Borough Council.

13. The Trader shall at all times whilst trading wear in a prominent position an identity badge provided by Eastbourne Borough Council.
14. The Trader shall be insured against any claim in respect of a third party liability whilst trading under consent. No consent will be issued until a current and valid public liability policy has been produced to the value of £5 million. This insurance must also be made available on request to an Authorised Officer of the Council.
15. If, during the currency of any consent there is any material change in the facts of particulars and information contained in, or given along with, the application for the consent, the holder of the consent shall report such changes to the Licensing Authority within 72 hours of that change.
16. Any motor vehicle used for the purpose of street trading shall at all times be in a roadworthy condition and have the relevant documents i.e. insurance, tax and MOT to make the use of that vehicle on a road legal. These documents will be produced by the consent holder to any Police Officer or Authorised Officer of the Council.
17. Neither the consent holder, nor any assistant shall display merchandise which is likely to cause offence or distress to any other person or which would be deemed an offence under any other legislation.
18. A consent holder selling food shall at all times comply with any food hygiene regulations in force at that time, and when required by the Licensing Authority, shall produce appropriate food handling certificates.
19. The Council reserves the right to alter or amend these conditions at any time without prior notice to Consent Holders.
20. The sub-letting of any consent is prohibited.
21. The consent holder shall be responsible for the temporary storage of refuse, liquid and other material accumulated or created whilst trading and its subsequent removal from the site. The removal and disposal must be to the satisfaction of the Council.
22. The consent holder shall ensure that there are adequate fire safety measures in place.

N.B This consent is issued without prejudice to any other statute, by-law or regulation. This consent does NOT over-ride any regulations regarding parking, food hygiene, obstruction, etc.