

6 REPORT TO CONSIDER HEREFORDSHIRE COUNCIL'S POLICY ON SEX ESTABLISHMENTS**LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982 SCHEDULE 2 AND SCHEDULE 3 CONTROL OF SEX ESTABLISHMENTS****Report By: Head of Environmental Health and Trading Standards****Wards Affected:**

County-wide

Purpose

1. To consider the Council's policy on issuing licences to Sex Establishments in Herefordshire.

Legislation

2. The Local Government Act (Miscellaneous Provisions) Act 1982 Schedule 2 and Schedule set out the controls for Sex Establishments

The Act defines the meaning of Sex Establishments and allows the Authority to make regulations stipulating conditions of Licence for premises opening as a Sex Establishment.

The Legislation would only require a shop to have a sex establishment licence if the business consists of a "significant degree" of the sale, exchange, lending, displaying or demonstrating sex articles or other articles intended for use in connection with or for stimulating or encouraging sexual activity.

The local authority may grant or renew or transfer a licence or refuse an application for a licence.

The Act allows for the Authority to decide nil is an appropriate number. (Section 12(4)).

If the Authority did allow Sex Establishments they would, when determining whether to grant or renew a licence under the Act, have regard to:

- Fitness of a person to hold a licence on each application
- The character of the relevant locality or
- To the use to which any premises in the vicinity are put or

- To the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.

Appeals

3. The applicant may appeal to a Magistrates Court when an application is refused on the grounds:

- The person or body corporate is not suitable.
- Application for variation of the term condition ;or restriction is refused.
- If the licence has been revoked.

However the applicant does not have any right of appeal where the licence has been refused on the grounds that:

- The number of Sex Establishments exceeds the number which the Authority considers appropriate or
- The location, premises in the vicinity or layout etc. are inappropriate.

4. The Local Authority may refuse a licence to a person or body corporate because they do not fit the criteria laid down in the Act.

However they may refuse to licence on the grounds:

That the number of Sex Establishments in the relevant locality at the time the application is made is equal to or exceeds the number which the Authority considers appropriate for the locality. (Section 12(3)(c)).

Background

5. On 11th December, 2001 the Regulatory Committee decided a nil policy for Sex Establishments in Herefordshire therefore the County of Herefordshire District Council to date has not licensed any sex establishments within the County.
6. One application has been received from Mr. M.J. Bushell a Director of an Adult Business. The main part of their business would be selling restricted 18 videos and would require a sex establishment licence.
7. Another firm has also made enquiries but no formal application has been made.
8. Since 11th December, 2001, when the nil policy was decided a number of shops have opened in Hereford selling goods of an adult sexual nature. These shops do not require licences because they do not supply restricted 18 videos and it is considered the goods sold that are intended to stimulating or encouraging sexual activity do not amount to a "significant degree" of the sale of goods from those premises. However this position is under constant review and if they are considered to be of a significant degree those premises will be advised accordingly.

9. Comparison table of other authority's sex establishment fees and policy, however through our enquiries it was clear there is some confusion from other local authorities whether these sections of the act have been adopted or not.

Authority	Policy
Swindon	Not adopted
Worcester	One licence issued
Gloucester	3 on outskirts
Cheltenham	No applications received
Monmouthshire	Not adopted

10. Public notice was placed in the Hereford times on the 17th and 24th February, 2005 from which the licensing section received 13 responses. Copies of the letters and a summary are attached in schedule 1.

Options

11. It is for the Regulatory committee sitting to decide:-
- Whether nil is an appropriate number of sex establishments in the County of Herefordshire District Council; or
 - Whether they allow the Head of Environmental Health and Trading Standards to decide the number and appropriateness of sex establishments within the County of Herefordshire District Council thus allowing the Regulatory Committee to hear appeals of any refused licences or renewals; or
 - Whether to grant the application to allow sex shop to operate in Herefordshire; or
 - Whether they want to set a limit as to how many; or
 - Come to some other conclusion