

MEETING**COUNCIL****DATE AND TIME****TUESDAY 16TH JULY, 2013****AT 7.00 PM****VENUE****HENDON TOWN HALL, THE BURROUGHS, NW4 4BG**

Dear Councillors,

Please find enclosed additional papers relating to the following items for the above mentioned meeting which were not available at the time of collation of the agenda.

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Maria Lugangira 020 8359 2761

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Report from the Licensing Committee

10 July 2013

Members Present:-

AGENDA ITEM 4.5

Councillor Andreas Tambourides (Chairman)

Councillor Lisa Rutter (Vice-Chairman)

Councillor Maureen Braun

Councillor Alison Cornelius

Councillor John Hart

Councillor Julie Johnson

Councillor Andreas Ioannidis

Councillor Agnes Slocombe

Apologies for Absence

Councillor Claire Farrier

Councillor Wendy Prentice

1. **FILM CLASSIFICATION POLICY**

The Committee considered the attached report set out at Appendix A. For the reasons set out in the report the Committee;

RESOLVED TO RECOMMEND - That the Draft Film Classification Policy approved by the Licensing Committee be recommended for adoption as policy by full Council on 16 July 2013.

2. **SEX ESTABLISHMENT AND SEX ENTERTAINMENT VENUES LICENSING POLICY**

The Committee considered the attached report set out at Appendix B. For the reasons set out in the report the Committee;

RESOLVED TO RECOMMEND -

1. That the draft Sex Establishment and Sex Entertainment Venues Policy approved by the Licensing Committee be recommended for adoption as policy by full Council on 16 July 2013.

3. **STREET TRADING POLICY**

The Committee considered the attached report set out at Appendix C. For the reasons set out in the report the Committee;

RESOLVED TO RECOMMEND - That the draft Street Trading Policy approved by the Licensing Committee be recommended for adoption as policy by full Council on 16 July 2013.

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APPENDIX A

Meeting	Licensing Committee
Date	10 July 2013
Subject	Film Classification Policy
Report of	Director of Development and Regulatory Services
Summary	This is a report proposes that the draft Film Classification Policy be approved by the Licensing Committee and that the Committee recommend it for adoption as policy by full Council

Officer Contributors	Emma Phasey, Trading Standards and Licensing Manager
Status (public or exempt)	Public
Wards Affected	All
Key Decision	No
Reason for urgency / exemption from call-in	Not Applicable
Function of	Council
Enclosures	Appendix 1 – Draft film classification policy Appendix 2 – Consultation responses
Contact for Further Information:	Emma Phasey - Trading Standards and Licensing Manager. Email: Emma.phasey@barnet.gov.uk

1. RECOMMENDATIONS

- 1.1 That the draft film classification policy be approved by the Licensing Committee and recommended for adoption as policy by full Council on 16 July 2013**

2. RELEVANT PREVIOUS DECISIONS

- 2.1 Decision by Council on 17th April 2012 to move responsibility for this area to the licensing committee
- 2.2 Decision by Licensing Committee on 26 November 2013² to approve consultation for the draft Film Classification Policy.

3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS

- 3.1 The classification of films will support objectives contained within the corporate plan. In particular in relation to a “successful London suburb” as being able to classify films for performance at local small film festivals can contribute to the economic, cultural, environmental and social well being of the borough.

4. RISK MANAGEMENT ISSUES

- 4.1 Currently the council has no formal detailed policy in relation to film classification.
- 4.2 The lack of a sound policy or the adoption of an unsound policy may result in poor decisions being taken and could cause difficulty to businesses and residents. This would leave the authority open to challenge by way of Judicial Review in relation to the policy and/or appeal of a Licensing Committee decision to the Magistrates’ Court. This would adversely affect the Councils reputation.

5. EQUALITIES AND DIVERSITY ISSUES

- 5.1 The Council has a legal obligation to have due regard to the need to eliminate unlawful discrimination and to promote equality of opportunity and good relations between persons of different groups.
- 5.2 When considering applications, only issues provided for in the legislation and guidance and in addition to the authority’s policy will be taken into account. This will ensure a consistent approach is adopted. Under the terms of the policy, every application will be considered on its own merits, regardless of the race, colour, nationality, ethnic origin, sex, marital status, disability or age of the individuals involved.

5.3 The community in Barnet has a richness of diversity with a broad range of cultural activities and entertainments. Applications will be dealt with in accordance with the Act.

6. USE OF RESOURCES IMPLICATIONS (Finance, Procurement, Performance & Value for Money, Staffing, IT, Property, Sustainability)

6.1 Administration will be carried out by the Licensing team, together with support from Legal Services and from Governance Services, when arranging and co-ordinating arrangements for hearings

6.2 Any expenditure will be contained within Development and Regulatory Services budgets.

7. LEGAL ISSUES

7.1 The Licensing Act 2003 gave Local Authorities power to classify films in addition to the British Board Film Classification. To ensure consistency in decision making an agreed sound policy is needed. This should also lessen the risk of appeals against decisions.

8. CONSTITUTIONAL POWERS (Relevant section from the Constitution, Key/Non-Key Decision)

8.1 Council's Constitution - Responsibly for Functions set out the functions of the Licensing Committee, which include '.....Application for film classification for films shown within the Borough.'

9. BACKGROUND INFORMATION

9.1 The public exhibition of all films on licensed premises must either be classified by the British Board Film Classification (BBFC) or authorised by the Licensing Authority under the powers of the Licensing Act 2003.

9.2 It is usual for most films to be released across the country and therefore be classified by the BBFC.

9.3 However where a local film festival is taking place showing films that are not on general release in the United Kingdom, they can apply to the local authority for that area to authorise/classify the film. This is usually a cheaper and quicker option than the BBFC and therefore allows small scale film festivals to take place which otherwise it would be cost prohibitive to do so.

9.4 Furthermore if a film distributor believes a film has been classified incorrectly they can apply to the local authority for the area they wish to show the film in for a reclassification

- 9.5 The London Borough of Barnet is a culturally diverse borough and therefore being able to classify films and encourage small scale film festivals is beneficial to the whole borough.
- 9.6 The responsibility for film classification moved to the Licensing Committee earlier in the year. However there is currently no policy in place in relation to this.
- 9.7 At its meeting on 26 November 2012 the Licensing Committee instructed the Interim Director of Environment, Planning and Regeneration to consult with relevant persons and bodies on the Film Classification Policy.
- 9.6 The consultation document was sent to the Police, film festival organisers, and residents groups. It was also sent to councillors, faith groups, and voluntary organisations,.
- 9.7 The draft policy was subject to public consultation for 13 weeks ending on 26 June 2013. The consultation was available on the Council's web site. Responses were sought as to whether consultees agreed with the draft policy and comments were invited on any aspect of the policy.
- 9.8 2 responses were received in response to the consultation. 1 neither agreed or disagreed with the policy and 1 strongly disagreed. There were no comments made by the respondees as to the reasons for these responses Full information on responses can be find in Annex 2
- 9.9 The draft policy is attached at Appendix 2. There are no changes to the proposed policy that was submitted at the November meeting.
- 9.10 If the policy is approved, the Committee will recommend it for adoption by full Council on 16 July 2013
- 9.11 The policy may be changed at any time after adoption (after further consultation) and the policy will be regularly reviewed.

10. LIST OF BACKGROUND PAPERS

None

Cleared by Finance (Officer's initials)	JH
Cleared by Legal (Officer's initials)	BH

POLICY FOR DETERMINING FILM CLASSIFICATIONS

1. Introduction

- 1.1 The public exhibition of all films on licensed premises must either be classified by the British Broad Film Classification (BBFC) or authorised by the Licensing Authority under the powers of the Licensing Act 2003.
- 1.2 Section 20 of the Licensing Act 2003 (the Act) provides that where a Premises Licence or Club Premises Certificate authorises the exhibition of a film(s), the licence must include a condition requiring the admission of children to films to be restricted in accordance with recommendations given either by the British Board of Film Classification (the BBFC) or by the Licensing Authority itself
- 1.3 The purpose of this Policy is to set out the formal procedure for the Licensing Authority to determine the classification of previously unclassified films, appeals by distributors against the British Board of Film Classification's decisions or requests to reclassify films.
- 1.4 Where a premises seeks or intends to exhibit film(s), that venue must be covered by a Premises Licence, Club Premises Certificate or Temporary Event Notice under the Licensing Act 2003.

2. Definitions

- 2.1 *Children* - any person under the age of 18 years.
- 2.2 *Exhibition of a film* - the exhibition of moving pictures.

3. Circumstances the Licensing authority may classify a film

- 3.1 The Licensing Authority may be requested to authorise the showing of an unclassified film(s) within the London Borough of Barnet. Usually this will be for:
 - A film festival covering a specific period of time
 - A one off screening of a film
 - A trailer for a film
- 3.2 The Licensing Authority may also be requested to authorise a film that has already been classified by the British Board of Film Classification (BBFC) when:
 - (a) a distributor of a film wishes to appeal against the decision of the BBFC and request that the Licensing Authority re-classifies/authorises the film for local screening (with recommendations on age restrictions);
 - or
 - (b) An independent party may request that the Licensing Authority reclassifies/ authorises the film for local screening (with recommendations on age restrictions)

4. Submission of film

- 4.1 Applications for authorisation of films shall be referred to and determined by the Licensing Sub Committee on behalf of the Licensing Authority.
- 4.2 Applications should be submitted to the Licensing Authority with a minimum of **28 days** before the proposed screening.
- 4.3 An application for authorisation should include the following information:
1. the name of the film maker;
 2. A brief synopsis of the film
 3. any recommendation as may have been made by the film maker upon age limit for the intended audience for exhibition of the film;
 4. any existing classification issued by an existing classification body, whether within or outside the UK;
 5. information identifying the material within the film considered by the exhibitor to be likely to have a bearing on the age limit for the audience for exhibition of the film.
 6. the language spoken in the film and whether there are subtitles in English.
 7. details of how any age restrictions will be enforced.
- 4.4 All requests shall be accompanied by the film(s) where possible in DVD format to avoid delays, the cost to be borne by the applicant. If DVD format is not possible then arrangements will be made for a suitable venue to view the film.
- 4.5 If the film contains dialogue in a language other than English an interpreter will be required for the classification. The London Borough of Barnet will arrange for a suitable interpreter and the applicant will be responsible for the cost of this.
- 4.6 All requests must be accompanied by detailed reasons for the request.
- 4.7 Applicants must ensure that all material that is the subject of the application complies with the current interpretation of the Obscene Publications Act 1959, the Copyright Design and Patents Act 1988 or any other relevant legislation and has not been created through the commission of a criminal offence.

5. Process

- 5.1 Requests will be dealt with as expeditiously as possible as it is appreciated that films are generally only shown in cinemas for a relatively short period.
- 5.2 The Sub Committee will view the entire film and assess it against the BBFC guidelines and National Guidance.
- 5.3 The Chairman of the sub committee will have the final decision on the classification to be applied to the film.
- 5.4 The Sub Committee shall issue a Notice of Determination of the authorisation within 5 working days from the date of viewing.

- 5.5 The Licensing Authority will formally advise the applicant and the licence holder of any recommendation(s) restricting the admission of children to the film(s).
- 5.6 Where the Licensing Authority has determined to refuse authorisation of a film clear and concise reasons shall be given

6. Classification

- 6.1 The BBFC classifies films in accordance with published Guidelines, which are based on extensive research into public opinion and professional advice.
- 6.2 The National Guidance under Section 182 of the LA03 recommends that:
Licensing Authorities should not duplicate the BBFC's work by choosing to classify films themselves. The classifications recommended by the BBFC should be those normally applied unless there are very good local reasons for a Licensing Authority to adopt this role. Licensing Authorities should note that the provisions of the 2003 Act enable them to specify the Board in the licence or certificate and, in relation to individual films, to notify the holder or club that it will make a recommendation for that particular film
- 6.3 The Licensing Authority considers the classification system used by the BBFC to be nationally understood and accepted. It will therefore use this system and any amendments thereto, as a reference point for determining its recommendation(s) on the restriction of access of children to the film(s). It should be noted however that the Licensing Authority is not obliged to follow these guidelines.
- 6.4 Where a licensed premises seeks to exhibit a film that has not been classified by the BBFC then it will be the responsibility of the Licensing Authority to authorise that film.
- 6.5 The Licensing Authority recognises the principle within the Human Rights Act 1998 that adults should be free to choose their own entertainment. However material should not be in breach of the criminal law, including material judged to be obscene under the current interpretation of the Obscene Publications Act 1959 or has been created through the commission of a criminal offence.
- 6.6 In accordance with paragraph 10.31 of the National Guidance, the Licensing Authority shall concern itself primarily with the protection of children from harm. It will not use its powers to censor films save where there is clear cause to believe that this is required to promote the licensing objectives.

7. Protecting children from harm

- 7.1 In terms of film exhibitions and festivals, the most relevant licensing objective is the Protection of Children from Harm.
- 7.2 Paragraph 2.41 of the National Guidance states:
The protection of children from harm includes the protection of children from moral, psychological and physical harm and this would include the protection of children from too early an exposure to strong language

and sexual expletives, for example, in the context of film exhibitions or where adult entertainment is provided.

- 7.3 In line with the National Guidance, where a film is recommended by the Licensing Authority as falling into an age restrictive category, no person under the age specified shall be admitted.
- 7.4 Where a film(s) is recommended by the Licensing Authority as falling into a category requiring any persons under a specified age to be accompanied by an adult, no person under the age specified shall be admitted unless accompanied by an adult.
- 7.5 In these circumstances, the licence holder will be required to display in a conspicuous position a notice clearly stating the relevant age restrictions and requirements. With regard to the wording of such Notices, the Licensing Authority shall have regard to National Guidance, e.g.:
- *Persons Under the Age Of [insert appropriate age] Cannot Be Admitted To Any Part of The Programme*
 - *Persons Under the Age Of [insert appropriate age] Can Only Be Admitted To The Programme If Accompanied By An Adult.*

8. Authorisation

- 8.1 Any authorisations for the exhibition of film issued by the Licensing Authority shall only apply when the film is exhibited within the London Borough of Barnet and does not effect the authorisation or recommendations in any other borough.
- 8.2 Once authorised by the Licensing Authority a film will be authorised for a particular showing or festival only, subject to the recommendations imposed by the Licensing Authority (unless further application for re-classification is made). Details of the authorisation including any recommendations shall be available from the Council's Licensing Services.
- 8.3 The issue of any authorisation by the London Borough of Barnet is strictly limited to the authorisation within the Borough and it is assumed that all relevant third party consents and licences in respect of any and all copyright, confidential information and all other intellectual property rights have been obtained.
- 8.4 Where the Licensing Authority authorises unclassified material to be shown the Licensing Authority will require an undertaking from the applicant that he has satisfied himself after proper enquiry that no material to be exhibited contravenes the current interpretation of the Obscene Publications Act 1959, the Copyright Design and Patents Act 1988 or an other relevant legislation and has not been created through the commission of a criminal offence.
- 8.5 The Licensing Authority shall also not be liable for any material that has been created through the commission of a criminal offence. It is the responsibility of the applicant to ensure that no film or trailer contravenes the law

9. Exemptions

9.1 The provision of the exhibition of a film is exempt from regulation by the Licensing Act 2003 (LA03) if:

It consists of or forms part of an exhibit put on show for any purposes of a museum or art gallery (the LA03 does not define a museum or art gallery so the ordinary meaning of the term is taken)

or:

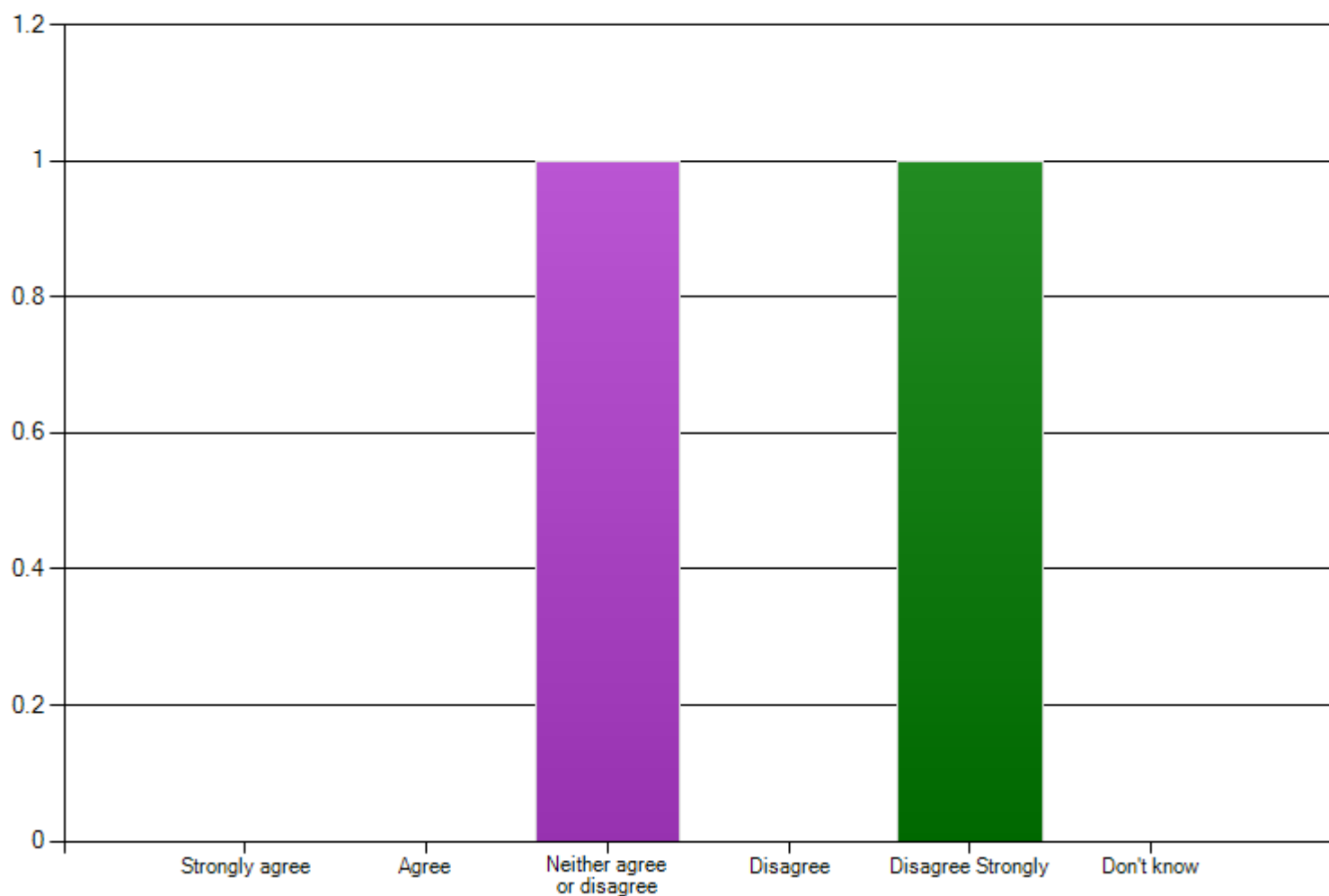
Its sole or main purpose is to:

- demonstrate any product,
- advertise any goods or services (excluding the advertising of films), or
- provide information, education or instruction

Appendix 2

Consultation Responses

How much do you agree or disagree with our policy on film classification? (please tick one option)



APPENDIX B

Meeting	Licensing Committee
Date	10 July 2013
Subject	Sex Establishment and Sex Entertainment Venues Licensing Policy
Report of	Director of Development and Regulatory Services
Summary	This is a report proposes that the draft Sex Establishments and Sex Entertainment Venues Policy be approved by the Licensing Committee and that the Committee recommend it for adoption as policy by full Council.
Officer Contributors	Emma Phasey - Trading Standards and Licensing Manager
Status (public or exempt)	Public
Wards Affected	All
Key Decision	No
Reason for urgency / exemption from call-in	Not Applicable
Function of	Council
Enclosures	Appendix 1 – Draft sex establishment and sex entertainment venue policy Appendix 2 – Consultation responses
Contact for Further Information:	Emma Phasey - Trading Standards and Licensing Manager. Email: Emma.phasey@barnet.gov.uk

1. RECOMMENDATIONS

- 1.1 That the draft sex establishment and sex entertainment venues policy be approved by the Licensing Committee and recommended for adoption as policy by full Council on 16 July 2013**
- 1.2 That 75 Metres is approved as the definition of the area which will be considered as a relevant locality**

2. RELEVANT PREVIOUS DECISIONS

- 2.1 Decision by Council on 17th April 2012 to approve amendments to the council constitution including moving a number of functions (including functions relating to sex establishment functions) to the Licensing Committee
- 2.2 Decision of the Licensing Committee on 11 July 2012 to consult with local people in relation to the adoption of section 27 of the Policing and Crime Act 2009.
- 2.3 Decision by the Licensing Committee on 26 November 2013~~2~~ to consult on the draft policy

3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS

- 3.1 Control over sex cinemas, sex shops and sex entertainment venues will support objectives contained within the corporate plan. In particular in relation to a “successful London suburb”, as well controlled sex establishments can contribute to the economic, cultural, environmental and social well being of the borough.

4. RISK MANAGEMENT ISSUES

- 4.1 Currently the council has no formal detailed policy in relation to sex establishments. The decisions are made in line with best practice. If Section 27 of the Policing and Crime Act 2009 is adopted then the control of Sex Entertainment Venues will fall outside of the remit of the Licensing Act 2003, for which there is an established policy. Therefore there is a need for a formal policy to be adopted.
- 4.2 The lack of a sound policy or the adoption of an unsound policy may result in poor decisions being taken and could cause difficulty to businesses and residents. This would leave the authority open to challenge by way of Judicial Review in relation to the policy and/or appeal of a Licensing Committee decision to the Magistrates’ Court. This would adversely affect the London Borough of Barnet’s reputation.

5. EQUALITIES AND DIVERSITY ISSUES

- 5.1 The London Borough of Barnet has a legal obligation to have due regard to the need to eliminate unlawful discrimination and to promote equality of opportunity and good relations between persons of different groups.
- 5.2 When considering applications, only issues provided for in the legislation and guidance and in addition to the authority's policy will be taken into account. This will ensure a consistent approach is adopted. Under the terms of the policy, every application will be considered on its own merits, regardless of the race, colour, nationality, ethnic origin, sex, marital status, disability or age of the individuals involved.
- 5.3 The community in Barnet has a richness of diversity with a broad range of cultural activities and entertainments. Applications will be dealt with in accordance with the Act.

6. USE OF RESOURCES IMPLICATIONS (Finance, Procurement, Performance & Value for Money, Staffing, IT, Property, Sustainability)

- 6.1 Administration and enforcement of sex establishment and sex entertainment venues will be carried out by the Licensing team, together with support from Legal Services and from Governance Services, when arranging and co-ordinating arrangements for hearings
- 6.2 Any expenditure will be contained within Development and Regulatory Services budgets.

7. LEGAL ISSUES

- 7.1 To ensure consistency in decision, and therefore appeals being rare, making an agreed sound policy is needed.

8. CONSTITUTIONAL POWERS (Relevant section from the Constitution, Key/Non-Key Decision)

- 8.1 Council's Constitution - Responsibly for Functions set out the functions of the Licensing Committee, which includes Sex Shops, Sex Cinemas and Sex Encounter Establishments.

9. BACKGROUND INFORMATION

- 9.1 Sex shops are licensed under the Local Government (Miscellaneous Provisions) Act 1982. This regime gives the Licensing Authority a wide discretion in determining whether to grant or refuse licences, a power to set a limit on the number of premises that may be suitable for a particular locality,

and flexibility on applying licence conditions. It also gives the ability to accept representations from a wide scope of the community.

- 9.2 The Local Government (Miscellaneous Provisions) Act 1982 was amended through the Police and Crime Act 2009 so as to create a new category of “sex establishment venue” (SEV) licence that would include lap, table and pole dancing. This allowed local authorities to have more powers to control the number and location of lap dancing clubs and similar venues in their area. These powers are not mandatory and will only apply where they are adopted by local authorities. The London Borough of Barnet has just finished consulting on whether to adopt these powers.
- 9.3 Currently there are no sex shops or sex cinemas in the London Borough of Barnet and there have not been any applications for premises licences for venues to provide lap dancing or similar entertainment, although there have been a number of recent enquiries in relation to this.
- 9.4 There is no formal agreed policy in relation to sex establishments and sex entertainment venues licensing. Without such a policy in place it is difficult to maintain consistency in decision making and leaves the London Borough of Barnet open to challenge.
- 9.5 At its meeting on 26 November 2012 the Licensing Committee instructed the Interim Director of Environment, Planning and Regeneration to consult with relevant persons and bodies on the Policy.
- 9.6 The consultation document was sent to the Police and residents groups. It was also sent to councillors, faith groups, and voluntary organisations
- 9.7 The draft policy was subject to public consultation for 13 weeks ending on 26 June 2012. The consultation was available on the Council’s web site. Responses were sought as to whether consultees agreed with the draft policy and comments were invited on any aspect of the policy.
- 9.8 2 people responded to the consultation and both agreed or strongly agreed with the policy. Full information on responses can be found in Appendix 2
- 9.9 It should be noted that the legislation allows the local authority to set a quantity limit regarding the number of sex establishments/sex entertainment venues in an area. However it should be noted that the guidance is clear that regardless of this, all applications need to be considered on their own merits

“...it is reasonable and potentially useful to future applicants, for a local authority to decide in advance of receiving any applications that certain areas are, or are not, appropriate locations for a sex establishment or a particular number of sex establishments. Nevertheless, all applications must be considered on their individual merits.”

- 9.10 However setting up limit's, for example by ward, can cause difficulty in decision making. Particularly on the borders of wards where one ward may have a quota for such venues and another may have a zero quota. However in essence the street the venue proposed to set up in may be the same. This could result in more challenges to decisions.
- 9.11 It is beneficial for the London Borough of Barnet to instead look much closer at the specific area around each proposed site. This would ensure that each application is treated individually and on its own merits. To make the decision making process clearer for the applicant and any representees, the London Borough of Barnet will define the area that will specifically be considered. The policy will then set out when it considers the grant of a licence inappropriate. I.e. when there is a school positioned in the relevant locality. The full information in relation to this can be found in the policy at 5.4 – 5.9 and is highlighted in italics
- 9.12 As part of the consultation on the policy the London Borough of Barnet asked for views on the size of the “relevant Locality” area suggesting options of sizes. 1 of the respondents thought a 50 m area was appropriate and the other thought a 75 m area was appropriate. As each decision will still be considered on it merits and this area is only the area that will considered closely in relation to the application it is recommended that the London Borough of Barnet errs on the side of caution and adopts the 75m. This will be reviewed as and when we receive applications in relation to this policy.
- 9.13 The draft policy is attached at Appendix 1. There are no changes to the proposed policy that was submitted at the November meeting.
- 9.14 If the policy is approved, the Committee will recommend it for adoption by full Council on 16 July 2013
- 9.15 The policy may be changed at any time after adoption (after further consultation) and will be reviewed on a regular basis.

10. LIST OF BACKGROUND PAPERS

None

Cleared by Finance (Officer's initials)	
Cleared by Legal (Officer's initials)	BH

London Borough of Barnet

Sex Establishment and Sex Entertainment Venues Policy

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1 DEFINITION OF TERMS

In this policy the following expressions have the meaning set out below

2009 Act	The Policing and Crime Act 2009
1982 Act	The Local Government (Miscellaneous Provisions) Act 1982
2003 Act	The Licensing Act 2003
Section 27	Section 27 of the Policing and Crime Act 2009
Schedule 3	Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982
Sexual Entertainment Venue (SEV)	Any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser of the entertainer
Relevant entertainment:	<p>The meaning of 'relevant entertainment' is 'any live performance or live display of nudity which is of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of an audience (whether by verbal or other means)'</p> <p>The definition of relevant entertainment would apply to the following forms of entertainment as they are commonly understood :</p> <ul style="list-style-type: none"> _ Lap dancing _ Pole dancing _ Table dancing _ Strip shows _ Peep shows _ Live sex shows
Sex establishment	Sex Cinema, Sex Shop or SEV
Sex Shop:	<p>Any premises, vehicle, vessel or stall used for a business which consists to a significant degree of selling, hiring, exchanging, lending, displaying or demonstrating:</p> <p>(a) sex articles; or</p> <p>(b) other things intended for use in connection with, or for the purpose of stimulating or encouraging:</p> <ul style="list-style-type: none"> i) sexual activity ii) acts of force or restraint which are associated with sexual activity.
Sex Cinema:	<p>Any premises, vehicle, vessel or stall used to a significant degree for the exhibition of moving pictures, by whatever means produced, which :</p> <p>(a) are concerned primarily with the portrayal of, or primarily deal with or relate to, or are intended to stimulate or encourage:</p> <ul style="list-style-type: none"> i) sexual activity; or ii) acts of force or restraint which are associated with sexual

	<p>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</p>
Sex article:	<p>(a) anything made for use in connection with, or for the purpose of stimulating or encouraging: i) sexual activity; or ii) acts of force or restraint which are associated with sexual activity. and (b) 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) is concerned primarily with the portrayal of, or primarily deals with or relates to, genital organs, or urinary or excretory functions.</p>

2 INTRODUCTION

- 2.1 This document sets out the London Borough of Barnet's policy in respect of licensing functions for sex establishments and sex entertainment venues
- 2.2 This policy was approved at a meeting of the Licensing Committee on [DATE] and will take effect from [DATE].
- 2.3 This policy will be kept under review and before making any amendments the London Borough of Barnet will consult with licence holders and their representatives and will give consideration to all representations received within the 28-day consultation period.
- 2.4 Section 27 of Policing and Crime Act 2009 introduced a new type of sex establishment called 'sexual entertainment venue'. The London Borough of Barnet consulted on these additional powers and adopted them on (DATE)
- 2.5 This new category allows the London Borough of Barnet to regulate lap dancing clubs and other similar venues under Schedule 3.
- 2.6 Previously a sex establishment licence was not usually required for striptease or lap dancing venues, as the relevant permissions for adult entertainment would have been included on a Premises Licence issued under the Licensing Act 2003.
- 2.7 Paragraph 2A (3) of Schedule 3 sets out those premises that are not sexual entertainment venues and these include sex shops and cinemas and those premises that provide relevant entertainment on an infrequent basis. Those premises that provide infrequent relevant entertainment will continue to be regulated under the 2003 Act either by virtue of a premises licence or club premises certificate or a temporary events notice.
- 2.8 The London Borough of Barnet is mindful of possible local community concerns arising from premises applying for a sex establishment licence in their neighbourhood and the potential conflict that this may trigger between the applicant and community to such an application.
- 2.9 The London Borough of Barnet is a densely populated borough with many small town centres. Therefore commercial and business areas also have many residential properties in close proximity. Community facilities such as schools and places of worship, are situated close to each other and to the residential populations they serve. As a consequence any location considered for a sex

establishment is likely to have a large residential population and a number of community facilities in relatively close proximity

2.10 In regulating sex establishments and sex entertainment venue activities the London Borough of Barnet acknowledges that they need to take account of the potential conflict between the legitimate objectives of applicants and the desires of the population as a whole. A balance must be struck between these positions and all relevant views will be taken into account when making licensing decisions or determining a course of action.

2.11 This policy will apply to all activities to ensure consistency in decision-making. However, each application will be considered on its own merits so that individual circumstances, where appropriate, are taken into consideration.

3 THE APPLICATION

3.1 All applications for a licence must be made to the London Borough of Barnet either electronically using the forms on the London Borough of Barnet website or addressed to:

**London Borough of Barnet
Trading Standards and
Licensing Team
Building 4
North London Business Park
Oakleigh Road South**

London N11 1NP

3.2 In order to avoid any duplication or inefficiency between the licensing and planning processes, the London Borough of Barnet will expect that, prior to the submission of a licensing application the appropriate planning permission will have been granted in respect of the premises concerned.

3.3 New applications

3.3.1 New applications must be:

- Made in writing
- Made on the correct application form as prescribed by the London Borough of Barnet
- Accompanied by the full fee

3.3.2 An incomplete or incorrectly completed application will be rejected.

3.4 Renewal application

3.4.1 A correctly completed application for the renewal of a licence must be submitted no later than two months before the existing licence will expire.

3.4.2 An incomplete or incorrectly completed application will be rejected

3.4.3 A renewal application will be treated the same as a new application in relation to consultation and determination.

3.5 Variation or transfer application

3.5.1 Where an application is made to vary a licence in terms of the activity, hours of operation or certain conditions as previously licensed or transfer a licence to another person (whether on renewal or not), the London Borough of Barnet will take into account:

- Levels of recorded crime and disorder in the area

- Evidence of past demonstrable impacts from the operation of the premises on the safety and amenity of local residents

- Whether appropriate measures have been agreed and put into effect by the applicant to mitigate any adverse impacts

4 CONSULTATION

4.1 A notice of the application must be displayed in a prominent place on the exterior of the premises visible 24 hours a day for a continuous period of 21 days.

4.2 A notice outlining the details of the application must also be published in a local newspaper within 7 days of the submission of the application. A copy of the notice once published should be sent to the Licensing Team.

4.3 Once the application is received, the licensing department will consult with:

- Ward Councillors
- Police
- Fire Brigade
- Planning Service
- Environmental health
- Community Safety
- Licensing Authority
- Safeguarding Children

4.4 The application will also be published on the London Borough of Barnet's website

5 DETERMINING THE APPLICATION

5.1 All applications shall automatically be referred to the Licensing Sub Committee regardless of whether or not any objections have been received.

5.2 The London Borough of Barnet will assess the possible adverse impacts especially on local residents when considering an application for the grant, renewal, variation or transfer of licence, and will take into account the following:

- a. The type of activity to which the application relates;
- b. The duration of the proposed licence
- c. The days and hours of operation of the activity
- d. The layout and condition of the premises
- e. The character of the locality in which the proposed premises are to be situated. (This will include the likely character of an area as a result of redevelopment of that area.)

- f. The use to which other premises in the vicinity are put
- 5.3 The inside of sex establishments should not be visible to passers by on retail thoroughfares or pedestrian routes. Applicants should consider locating premises at basement level.
- 5.4 *The London Borough of Barnet recognises under The Act that it can set a quantity limit regarding the number of sex establishments in an area but has not chosen to do so based on the specific geographical characteristics and nature of the borough.*
- 5.5 *The London Borough of Barnet has not imposed a limit on the number of premises that may be licensed in any area, it will consider each application on its own merits. However, it will not grant licences if it is deemed inappropriate having regard to the character of the relevant locality and in particular in relation to the following:*
- *Purely or primarily residential accommodation*
 - *Schools, play areas, nurseries, youth clubs, children's centres or similar places*
 - *Access routes to and from schools, play areas, nurseries, children's centres or similar premises*
 - *Places of worship*
 - *Community facilities or public buildings including, but not limited to, swimming pools, leisure centres, public parks, youth centres/clubs and sheltered housing.*
- *Historic buildings or tourist attractions*
- 5.6 *"Relevant Locality" is defined as an area of (to be confirmed) metres radius around the proposed location. The London Borough of Barnet will in general, in areas where the relevant locality includes one or more of the above list, consider it inappropriate for a licence to be granted.*
- 5.7 *London Borough of Barnet acknowledges that a concentration of sex establishments in a particular area can result in the potential for fear of crime, anti-social behaviour, disorder, noise pollution and other disturbance to residents. In such cases the amenity of local residents can be placed under severe pressure.*
- 5.8 *The London Borough of Barnet would also consider the following factors when deciding if an application were appropriate:*
- *Cumulative adverse impact of existing sex related licensed activities in the vicinity of the proposed premises*
 - *Proximity to areas with the highest levels of recorded crime*
 - *Whether the premises has met the relevant planning requirements*
 - *Whether the applicant is fit and proper to hold the licence. This may include considering the operation of existing or previous licences held by the applicant, and/or*

any reports received about the applicant from the police or other sources.

5.9 *In all cases, The London Borough of Barnet will consider each application on its own merit.*

5.10 The Licensing Sub Committee will communicate their decision at the end of the hearing and all parties will receive written confirmation within 7 days.

6 CONDITIONS

6.1 The London Borough of Barnet recognises that all applications should be considered on an individual basis and any condition attached to such a licence will be tailored to individual premises.

6.2 Examples of conditions that may be attached to a licence are shown in Appendix A below.

7 REFUSAL OF AN APPLICATION

7.1 The London Borough of Barnet would not be able to consider granting a licence in the following circumstances:

- To a person under the age of 18;
- To a person who is for the time being disqualified due to the person having had a previous licence revoked in the area of London Borough of Barnet within the last 12 months;
- To a person who has, within a period of 12 months

immediately preceding the date when the application was made, been refused the grant or renewal of a licence for the premises, vehicle, vessel or stall in respect of which the application is made, unless the refusal has been reversed on appeal.

7.2 The London Borough of Barnet would consider refusing a licence where

- The applicant is unable to hold the licence by reason of having been convicted of an offence or for any other reason;
- If the licence were to be granted, renewed or transferred the business to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant, renewal or transfer of such a licence if they made the application themselves;

8 EXPIRY OF A LICENCE

8.1 A licence will expire on the date specified on the licence unless it is renewed in time.

8.2 A licence holder may surrender his/her licence by sending it to the London Borough of Barnet at which time it will cease to be valid and will expire.

9 REVOCATION OF A LICENCE

9.1 The London Borough of Barnet may revoke a licence on any of the grounds contained within the Act which include (please note this list is not exhaustive):

- the licence holder being no longer being fit and proper
- Poor operation of the premises

9.2 The London Borough of Barnet will not revoke a licence without first giving the holder of the licence the opportunity of appearing and making representations before the Licensing Sub-Committee.

10 FEES

10.1 The application process involves paying a non-returnable application fee which includes the cost of inspecting premises, processing the application and committee hearing.

10.2 The fees applied are laid out in the London Borough of Barnet's Fees and Charges Schedule.

11 DECISIONS

11.1 The reasons for any decision(s) taken by the London Borough of Barnet in respect of an application for a licence will be provided in writing to all parties to the proceedings within 7 days of the decision.

11.2 Decisions will be taken having regard to this Policy and Part III of the relevant legislation

12 APPEALS

12.1 Any applicant who is refused a licence, or refused the renewal of a licence may within 21 days of receiving the decision notice, appeal to the local magistrate.

12.2 However, the right to appeal does not apply where the licence was refused on the grounds that:

- the number of sex establishments in the area exceeds the number which the authority consider is appropriate;
- the grant of the licence would be inappropriate considering the character of the area, the number of other premises in the area, or the premises themselves.

12.3 A licence holder who wishes to appeal against a condition can appeal to the magistrates' court.

12.4 Licence holders may at any time apply to London Borough of Barnet to vary their licence. If the London Borough of Barnet refuses a variation, or if the licence is revoked, the licence holder may, within 21 days after receiving the decision notice, appeal to the magistrates' court.

12.5 The licence holder also has rights of appeal to the crown court against any magistrates' court decision.

13 ENFORCEMENT

- 13.1 Any enforcement action instigated by the London Borough of Barnet will be in accordance with the Act and the current Enforcement Policy.

14 PUBLIC REGISTER

- 14.1 A public register will be made available and can be accessed on line on the Licensing webpage

Appendix A: Schedule of standard conditions

The following are standard conditions which would be attached, as appropriate, to any licence issued for a Sex Establishment :

Premises Condition applicable to	Condition
All Sex Establishment premises	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.
All Sex Establishment premises	No person under 18 years of age to enter the premises.
All Sex Establishment premises	All customers appearing to be under the age of 21 to be required to provide proof of their age before being allowed access to the premises.
All Sex Establishment premises	No person under 18 years of age is to be employed in the business of the establishment.
All Sex Establishment premises	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
All Sex Establishment premises	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 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

All Sex Establishment premises	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.
All Sex Establishment 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
All Sex Establishment premises	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 not subject to storage for any period of time on any pavement, footpath, forecourt or yard nor in any vessel or vehicle, etc.
All Sex Establishment premises	The Licensee or a responsible person nominated by him in writing for the purpose and approved by the London Borough of Barnet 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 London Borough of Barnet or the Police

All Sex Establishment premises	No part of the premises shall be used by prostitutes (male or female) for the purpose of solicitation or of otherwise exercising their calling or profession.
Sexual entertainment venues	The Licensee 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.
All Sex Establishment premises	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
All Sex Establishment premises	A record shall be kept of all mail order transactions (if any) in such form as agreed by the London Borough of Barnet.
All Sex Establishment premises	The Licensee shall immediately notify the London Borough of Barnet he intends ceasing to carry on the business.
All Sex Establishment premises	The Licensee shall inform the London Borough of Barnet if he 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 London Borough of Barnet will take into consideration any such conviction or orders for possible revocation or non renewal of the licence.
All Sex Establishment premises	The Licensee shall not in the conduct of the business employ any person:- <ul style="list-style-type: none"> • Whose application for a licence to carry on a sex establishment, or renewal thereof, has been refused by the London Borough of Barnet or any other licensing authority; • Whose licence to carry on the business of a sex establishment has been revoked by the London Borough of Barnet or any other licensing authority; <p>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 premises 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</p>
All Sex	The Licensee shall not, in the conduct of the business, employ any person who has a criminal conviction or simple

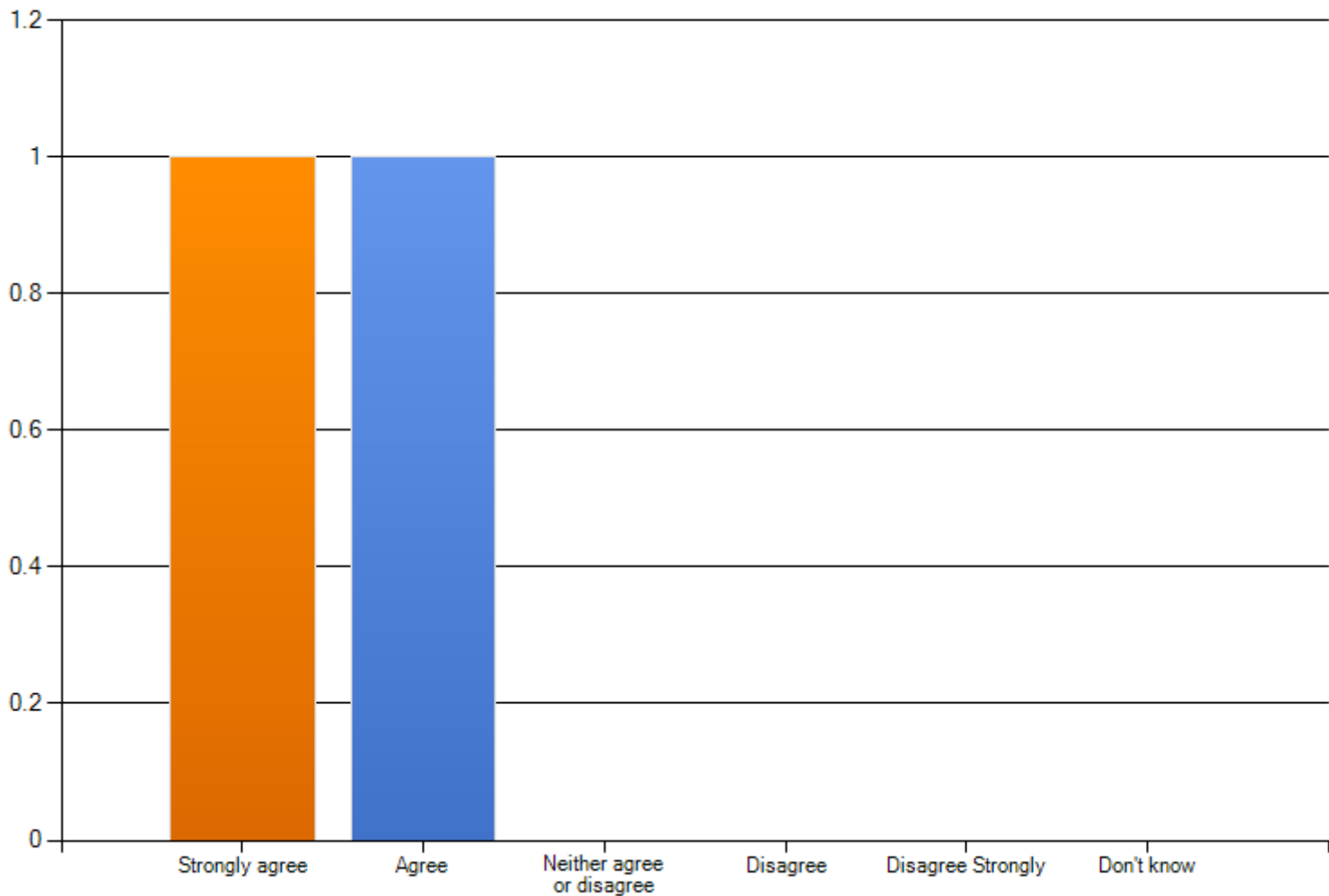
Establishment premises	caution under: <ul style="list-style-type: none"> • The Obscene Publications Act, 1959, • The Protection of Children Act, 1978, or • The Customs and Excise Management Act, 1979
All Sex Establishment premises	No external signage is to be displayed on the premises, except for the company name, the hours of business and details of the age restriction, without the written authorisation of the Licensing Authority
All Sex Establishment premises	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
All Sex Establishment premises	A lobby area is to be installed with double doors so restricting the view into the premises when patrons are entering and leaving
All Sex Establishment premises	The premises shall not, for any purpose of the licence, be opened before 0900 hours and shall not be kept open beyond 2300 hours
All Sex Establishment premises	CCTV is to be installed, operated and maintained to a standard agreed with by the Police and the Licensing Authority. The system is to include 31 day imaging storage and be available for inspection in accordance with the Police's requirement.
Sex Shop	All goods to be discreetly wrapped before leaving the premises.
Sex Shop	No part of the premises is to be used for the showing of recorded videos, DVDs or other moving pictures.
All Sex Establishment premises	Any breach of or failure to comply with the Conditions attached to this Licence may result in the revocation of the Licence.

Sexual entertainment venues	There shall be prominently and legibly displayed a comprehensive tariff of all charges and prices which shall be illuminated and placed in such a position that it can easily and conveniently be read by persons before entering the premises. No employee shall stand in such a position as to obscure the notice.
Sexual entertainment venues	Any striptease entertainment must only be provided on a designated stage area, adjacent to tables where customers are seated and adjacent to the bar
Sexual entertainment	Performances of striptease / lap dancing shall be undertaken only by the performers/entertainers, and the audience shall

venues	not be permitted to participate.
Sexual entertainment venues	No performer shall make physical contact with the breasts and / or genitalia of any other performer during a performance nor shall there be performances or demonstrations of simulated sex or related activities.
Sexual entertainment venues	When striptease entertainment takes place on the designated stage, it must be ensured that the performer has direct and clear access to the dressing room at the end of their performance. The access shall be maintained available without passing through or in close proximity to the audience.
Sexual entertainment venues	Nudity shall only be permitted by performers and not by customers
Sexual entertainment venues	It must be ensured that no performances of striptease, lap dancing or any other form of nudity can be seen from the street.
Sexual entertainment venues	<p>The only physical contact permitted between customers and performers is:</p> <ul style="list-style-type: none"> • the placing of money in a garter worn by a female performer or in the performer's hand at the conclusion of a performance. • a brief handshake at the beginning or end of a performance . • a kiss by the performer on the customer's cheek after the performer has replaced her clothing at the end of a performance. <p>A notice repeating the precise wording of the above conditions shall be displayed at the entrance of the premises, at each table and in each bar area</p>
All Sex Establishment premises	The only external advertising of the agreed activity at or in the immediate vicinity of the premises shall be one showcase measuring no more than 60cm by 45cm. No such advertising shall be sexually explicit or be likely to cause offence to a reasonable person
All Sex Establishment premises	No payment may be made or offered to any person in any public place to encourage or persuade them to enter the premises
All Sex Establishment premises	The licensee shall ensure that no music played in connection with the Licensed activity is audible at or within the site boundary of any residential premises

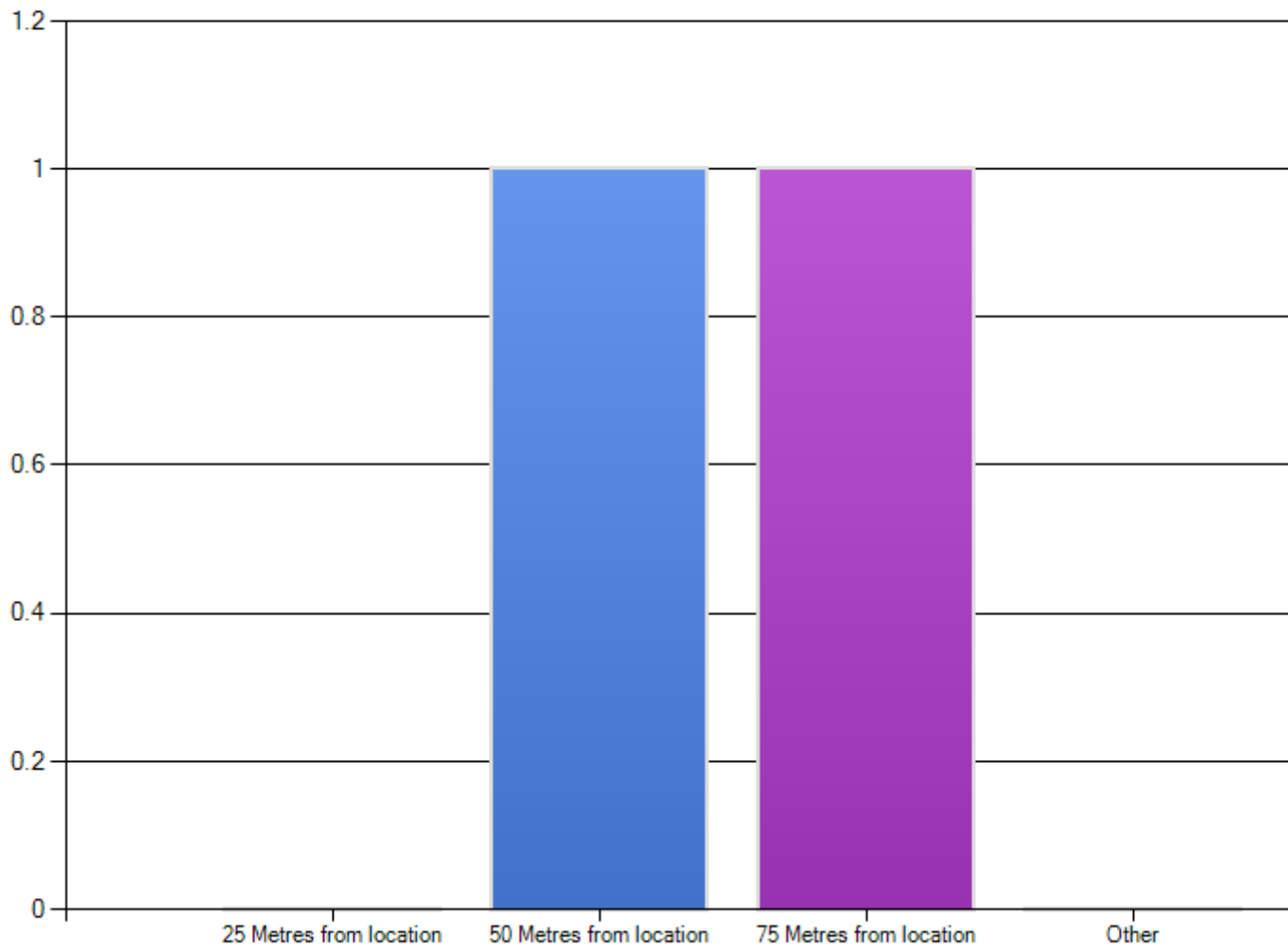
Appendix 2
Responses to consultation

How much do you agree or disagree with our policy on sex establishments and sex entertainment venues? (please tick one option)



Agree/Disagree with policy	Comments
Strongly agree/agree	It makes sense to give clubs like this a separate licensing agreement as they are unlike any other establishment currently on our high streets.

Please specify what size you believe the area to be considered as the relevant locality should be
(please tick one option)



APPENDIX C

Meeting	Licensing Committee
Date	10 July 2013
Subject	Street Trading Policy
Report of	Director of Development and Regulatory Service
Summary	This is a report proposes that the draft Street Trading Policy be approved by the Licensing Committee and that the Committee recommend it for adoption as policy by Full Council

Officer Contributors	Emma Phasey - Trading Standards and Licensing Manager
Status (public or exempt)	Public
Wards Affected	All
Key Decision	No
Reason for urgency / exemption from call-in	Not Applicable
Function of	Council
Enclosures	Appendix 1 – Draft street trading policy Appendix 2 – Consultation responses
Contact for Further Information:	Emma Phasey - Trading Standards and Licensing Manager. Email: Emma.phasey@barnet.gov.uk

1. RECOMMENDATIONS

- 1.1 That the draft Street Trading Policy be approved by the Licensing Committee and recommended for adoption as policy by Full Council on 16 July 2013.

2. RELEVANT PREVIOUS DECISIONS

- 2.1 Decision by Cabinet on 31 January 2008 to adopt the current Street Trading Policy and enforcement regime.
- 2.2 Decision by the Licensing Committee on 26 November 2013² to consult on the draft policy

3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS

- 3.1 Street trading will support objectives contained within the Corporate Plan. In particular, in relation to a “successful London suburb” as Street trading can contribute to the economic, cultural, environmental and social well being of the borough.

4. RISK MANAGEMENT ISSUES

- 4.1 Currently the council has no formal detailed policy in relation to street trading. The decisions are made in line with best practice and in line with the Cabinet Report in January 2008 that established the current regime.
- 4.2 The lack of a sound policy or the adoption of an unsound policy may result in poor decisions being taken and could cause difficulty to businesses and residents. This would leave the authority open to challenge by way of Judicial Review in relation to the policy and/or appeal of a Licensing Committee decision to the Magistrates’ Court. This would adversely affect the Councils reputation.

5. EQUALITIES AND DIVERSITY ISSUES

- 5.1 The Council has a legal obligation to have due regard to the need to eliminate unlawful discrimination and to promote equality of opportunity and good relations between persons of different groups.
- 5.2 When considering gambling applications, only issues provided for in the London Local Authority Act 1990 (as amended), in addition to the authority’s street trading policy will be taken into account. This will ensure a consistent approach is adopted. Under the terms of the policy, every application will be considered on its own merits, regardless of the race, colour, nationality, ethnic origin, sex, marital status, disability or age of the individuals involved.

5.3 The community in Barnet has a richness of diversity with a broad range of cultural activities and entertainments. Applications will be dealt with in accordance with the Act.

6. USE OF RESOURCES IMPLICATIONS (Finance, Procurement, Performance & Value for Money, Staffing, IT, Property, Sustainability)

6.1 Administration and enforcement of street trading will be carried out by the Licensing team, together with support from Legal Services and from Governance Services, when arranging and co-ordinating arrangements for hearings in relation to Permanent Pitches.

6.2 Any expenditure will be contained within Development and Regulatory Services budgets.

7. LEGAL ISSUES

7.1 The London local Authorities Act 1990 provides the framework for the Council's powers over street trading. To ensure consistency in decision making an agreed sound policy is needed. This will also assist should any appeals be made against Council decisions.

8. CONSTITUTIONAL POWERS (Relevant section from the Constitution, Key/Non-Key Decision)

8.1 Constitution Part 3, Section 2, details the functions of the Licensing Committee including street trading

9. BACKGROUND INFORMATION

9.1 In January 2008 the London Borough of Barnet adopted the current regime in relation to street trading. The Introduction of this street trading regime has allowed for the effective control of the street scene. The Council is able to attach relevant conditions to ensure good practice and control issues such as nuisance, crime and disorder. Where there is non compliance, licences can be revoked and appropriate enforcement action taken.

9.2 There are currently approximately 70 temporary street trading licences and 6 permanent pitches in the borough.

9.3 It is good practice for the Council to prepare, consult on and publish a policy which it proposes to apply when exercising relevant functions

9.7 At its meeting on 26 November 2012 the Licensing Committee instructed the Interim Director of Environment, Planning and Regeneration to consult with relevant persons and bodies on the street trading Policy.

- 9.6 The consultation document was sent to the Police, all street trading licence holders, and residents groups. It was also sent to councillors, faith groups, and voluntary organisations
- 9.7 The draft policy was subject to public consultation for 13 weeks ending on 26 June 2012. The consultation was available on the Council's web site. Responses were sought as to whether consultees agreed with the draft policy and comments were invited on any aspect of the policy.
- 9.8 10 responses were received in response to the consultation. 3 agreed with the policy and 3 disagreed. 2 neither agreed nor disagreed and 2 were not sure. There were 6 comments received. Of those who had disagreed or neither disagreed or agreed there is a sense that the majority wanted strong control over street trading. The policy and the current standard conditions address the majority of these concerns. Full information on responses can be found in Appendix 2
- 9.9 The draft policy is attached at Appendix 1. There are no changes to the proposed policy that was submitted at the November meeting.
- 9.10 If the policy is approved, the Committee will recommend it for adoption by full Council on 16 July 2013
- 9.11 The policy may be changed at any time after adoption (after further consultation) and will be reviewed on a regular basis.

10. LIST OF BACKGROUND PAPERS

None

Cleared by Finance (Officer's initials)	JH
Cleared by Legal (Officer's initials)	BH

London Borough of Barnet

Street Trading Policy

London Local Authorities Act 1990 (as amended)

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1 DEFINITION OF TERMS

Within the terms of this policy in respect of street trading the following definitions apply:

- | | | |
|----|---|---|
| 1 | Authorised Officer | An officer employed and authorised by The London Borough of Barnet to act in accordance with the provisions of the London Local Authorities Act 1990 (as amended). |
| 2 | Permanent Street Trading Licence | A licence given by the London Borough of Barnet to trade on a licensed street |
| 3 | Temporary Street Trading Licence | A short term/provisional licence given by the London Borough of Barnet to trade on a street. Usually issued for table and chairs and shop front displays outside of an established premises |
| 4 | Street Market licence | A street trading licence given by the London Borough of Barnet to an individual to allow him/her to trade on a street as a market. |
| 5 | Licence | The term used when this policy applies equally to both a street trading licence and temporary street trading licence. |
| 6 | Licence Holder | The person or company to whom the licence to trade has been granted. |
| 7 | Market | An outdoor space where three or more stalls are situated together for the purpose of allowing people to street trade. |
| 8 | Itinerant ice cream trading | shall have the meaning ascribed in Section 21(1) of the London Local Authorities Act 1990 (as amended). |
| 9 | Street Trader | A trader granted permission by The London Borough of Barnet to trade from a specified position. |
| 10 | Street | Shall have the meaning ascribed in Section 21(1) of the London Local Authorities Act 1990 (as amended). |
| 11 | Street Trading: | Shall have the meaning ascribed in Section 21(1) of the London Local Authorities Act 1990 (as amended) and includes the use of tables and chairs on situated the highway for business purposes. |
| 12 | Street Trading Pitch/Location | The area in any street authorised as a place at which street trading may be engaged in by a street trader, and includes any temporary alternative place approved by the London Borough of Barnet. |
| 13 | Advertisement | Any word, letter, model, sign, placard, board, notice, whether illuminated or not, in the nature, and employed wholly or partly for the purposes of advertisement, announcement or direction and includes any hoarding or similar structure or any balloon used, or adapted for use for the display of advertisements, and references to the display of advertisement shall be constructed accordingly. |
| 14 | Assistant | A person employed by and acting under the directions of a street trader to assist him/her about the business of the stall and whose name and address has been notified to the London Borough of Barnet |

15	Awning	A sheet of canvas or other material, used as a protection against the weather, which projects as an extension of the roof beyond the structure of the stall.
16	Goods	Any goods, wares or merchandise displayed for sale at a stall
17	Pitch Limits	The agreed area within which street trading is permitted.
18	Refuse	Any waste material.
19	Stall	Any structure used by a trader for the display of goods, or in connection with his or her business, and which occupies a licensed street trading pitch; and includes all goods offered or to be offered for sale and any additional structure or equipment used as part of the stall or business. On “isolated pitches” this also includes all rubbish created as a result of the business.
20	Premises	Any shop, house or block of flats or other building.

2 INTRODUCTION

- 2.1 This document sets out the London Borough of Barnet’s policy in respect of the London Borough of Barnet’s licensing functions for street trading under [Part III of the London Local Authorities Act 1990 \(as amended\)](#).
- 2.2 This policy was approved at a meeting of the Licensing Committee on [DATE] and will take effect from [DATE].
- 2.3 This policy will be kept under review and before making any amendments the London Borough of Barnet will consult with licence holders and their representatives and will give consideration to all representations received within the 28-day consultation period.
- 2.4 The policy will be formally reviewed at least every 5 years.
- 2.5 The London Borough of Barnet recognises that street trading can play a part in the cultural identity of the borough and also contributes to the local economy. It may attract visitors and can make for vibrant towns and communities, while at the same time providing employment.
- 2.6 In regulating street trading activities the London Borough of Barnet acknowledges that a balance must be struck between the legitimate objectives of applicants and the desires of the population as a whole, and in particular those members of the public living, working or engaged in normal activity in the area concerned. A balance must be struck between these, often conflicting, positions and all relevant views will be taken into account when making licensing decisions or determining a course of action.

2.7 This policy will apply to all street-trading activities to ensure consistency in decision-making. However, each application will be considered on its own merits so that individual circumstances, where appropriate, are taken into consideration.

2.8 On [DATE], Barnet Council made regulations prescribing standard licence conditions in accordance with Section 27(3) London Local Authorities Act 1990 (Appendix 2)

2.9 The Licensing functions under The Act will be discharged by officers acting under delegated authority.

3 THE APPLICATION

3.1.1 All applications for a licence must be made to the London Borough of Barnet either electronically using the forms on the London Borough of Barnet website or addressed to:

**London Borough of Barnet
Trading Standards and
Licensing Team
Building 4
North London Business Park
Oakleigh Road South
London
N11 1NP**

3.2 New Applications – temporary licences

3.2.1 The application must be:

- Made in writing
- Made on the correct application form as prescribed by the London Borough of Barnet
- Accompanied by the full fee, unless agreed in writing that a partial fee will be acceptable.
- Accompanied by an acceptable passport sized photo
- Accompanied by the following documents:

An original certificate of insurance that covers the street trading activity for third party and public liability risks

Written proof of ownership of the land on which it is intended to trade or adjacent to or written consent of the land owner to trade from that land

3.2.2 A correctly completed application for a licence should (apart from in exceptional circumstances to be determined by the London Borough of Barnet) be received at least 28 days before the proposed start date of the licence..

3.2.3 An incomplete or incorrectly completed application will be rejected.

3.3 New Applications – permanent pitches

- 3.3.1 Please note that to apply for a new street trading permanent pitch the street that you wish to trade must be a designated street under the London Local Authorities Act 1990 (as amended). Currently there are no streets designated.
- 3.3.2 At present there are no plans to designate any street in the near future.

3.4 Renewal Applications

- 3.4.1 Renewal applications will only be accepted for permanent street trading licences.
- 3.4.2 A correctly completed application for the renewal of a permanent street trading licence must be submitted no later than two months before the existing licence will expire but not earlier than three months before that date.
- 3.4.3 An incomplete or incorrectly completed application will be rejected.
- 3.4.4 A copy of the current public liability insurance must be provided
- 3.4.5 An application received more than three months before the expiry date will be rejected

3.4 Fast Track application

- 3.4.1 All applications for temporary street trading licences will be treated as new applications.
- 3.4.2 If a licence holder has held a valid temporary street trading licence within the last 12 months they are eligible for a fast track application
- 3.4.3 A correctly completed application for a licence should (apart from in exceptional circumstances to be determined by the London Borough of Barnet) be received at least 28 days before the proposed start date of the licence.
- 3.4.4 The application form must be accompanied by the fee, an acceptable passport sized picture and the current public liability documents.

3.5 Street Markets

- 3.5.1 All persons intending to trade in a street market must submit an application for a street market.
- 3.5.2 The initial application to hold a market in the area must be submitted at least 4 months before the market will be held. This must be submitted with

An original certificate of insurance that covers the street trading activity for third party and public liability risks

A management plan for the market including a risk assessment

3.5.3 A further application must be submitted at least 2 months before each market confirming the date of the event.

3.5.4 A list of each stall trader complete with full name and address must be submitted at least 2 weeks prior to each event.

4. DETERMINING APPLICATIONS

4.1 New Permanent pitches

4.1.1 Before deciding whether to grant or refuse a licence the London Borough of Barnet will carry out a consultation process with various persons and groups. In particular the following organisations or persons shall be consulted.

- London Borough of Barnet (Highways Authority)
- London Borough of Barnet Environmental Health Department
- The Metropolitan Police Service
- London Fire & Rescue Service
- The elected ward councillor for the proposed street trading location
- Any other person at the London Borough of Barnet believes may provide relevant information in respect of the application.

4.1.2 The consultation period will last for 21 days starting the day following receipt of a valid application for a permanent street trading licence.

4.1.3 Consultees will be given 21 days in which to make comments.

4.2 Renewal Applications

4.2.1 Before a permanent street trading licence is renewed the London Borough of Barnet will carry out a consultation process with various persons and groups. In particular the following organisations or persons shall be consulted.

- London Borough of Barnet (Highways Authority)
- London Borough of Barnet Environmental Health Department
- The Metropolitan Police Service

4.2.2 The consultation period will last for 7 days starting the day following receipt of a valid application for a permanent street trading licence.

4.2.3 The purpose of the consultation is to determine whether there has been any significant change in circumstances since the grant of the previous permanent street trading licence.

4.2.4 The applicant is not required to advertise the application for the renewal of an existing licence

4.3 Temporary licence (non fast track applications)

4.3.1 The applicant must advertise the application by placing a prescribed notice at or on the premises for 21 consecutive days starting the day following receipt of a valid application.

4.3.1 The site may be visited during this consultation period by an officer and assessed for its suitability to have a street trading licence

4.4 Temporary licence (fast track applications)

4.4.1 Fast track application will not have a consultation period or a site visit

4.4.2 A list of the name and address of the premises who wish to apply will be sent on a weekly basis to the following people:

- London Borough of Barnet (Highways Authority)
- London Borough of Barnet Environmental Health Department
- The Metropolitan Police Service

4.5 Street Markets

4.5.1 Before deciding whether to grant or refuse an application to allow an area to be used for a temporary street market a consultation will be undertaken with various persons and groups. In particular the following organisations or persons shall be consulted.

- London Borough of Barnet (Highways Authority)
- London Borough of Barnet Environmental Health Department
- The Metropolitan Police Service
- London Fire & Rescue Service
- The elected ward councillor for the proposed street trading location
- Transport for London)if the market is on a TFL route.
- Any other person at the London Borough of Barnet believes may provide relevant information in respect of the application.

4.5.2 Notices will be displayed in the vicinity of the proposed street market outlining the application and inviting representations.

4.5.3 Letters will be sent to business immediately adjacent to the proposed street market outlining the application and inviting consultations

4.5.4 The consultation period will last for 6 weeks starting the day following receipt of a valid application for a temporary street market.

4.5.5 Consultees will be given 21 days in which to make comments.

4.5.6 If approval is given for a temporary street market to be held by a particular person in a particular area then a further applications must be submitted at least 2 months prior to each market specifying the date of the market. This information will be circulated to the following persons to consult on the suitability of the chosen date.

- London Borough of Barnet (Highways Authority)
- London Borough of Barnet Environmental Health Department
- The Metropolitan Police Service
- London Fire & Rescue Service
- The elected ward councillor for the proposed street trading location
- Transport for London)if the market is on a TFL route.

4.5.7 The parties will have 7 days to make any representations. This application must be accompanied by the relevant fee

4.5.8 Once a street market has been accepted, the applicant must ensure that a list of each individual stall holder with their full name address and photograph is sent to the London borough of Barnet at least 2 weeks prior to the event.

5 REPRESENTATIONS TO AN APPLICATION

5.1 In addition to the persons mentioned in paragraphs 4.1 and 5.1 above, 'interested parties' may also make representations to the London Borough of Barnet in writing on any application for the grant or renewal of a permanent street trading licence or temporary street trading licence. An 'interested party' is defined as:

- A person living in the vicinity of the premises in question
- A body representing persons living in the vicinity of the premises in question

- A person involved in a business in the vicinity of the premises
- A body representing persons involved in such a business in the vicinity of the premises

5.2A representation will not be relevant if it is considered by the London Borough of Barnet to be frivolous, vexatious or repetitive or unrelated to the application.

5.3 If a relevant representation is received the London Borough of Barnet will make efforts to consult with the applicant and the person or body making the representation in an attempt to resolve any issues.

6 DETERMINATION OF THE APPLICATION

6.1 The decision to grant a new permanent street trading licence shall be determined by the Licensing Sub-Committee

6.2 The decision to renew a licence can be made by an officer using delegated powers, however if the officer is unable to make a decision due to exceptional or other circumstances the application may be determined by the Licensing Sub-Committee

6.3 The London Borough of Barnet will have regard to any relevant representations received during the course of the consultation and will

assess the impact of the application on the following when deciding whether to grant or refuse an application:

- Public Safety
- Crime and Disorder
- Nuisance
- Visual Amenity of the area

6.4 The London Borough of Barnet will have regard to any relevant factors that may affect the use of a licence if granted including but not exclusively

- the suitability of the premises at which it is intended to trade and
- the adequate provision of storage facilities for receptacles or perishable goods when street trading is not taking place.

6.5 The London Borough of Barnet will also consider whether the applicant:

- is suitable to hold a licence on the grounds of misconduct or other sufficient reason and may consider the award of penalty points on any existing licence
- has previously failed to obtain a street trading licence

- has previously held a licence that was revoked
- has previously failed to pay fees or other charges in respect of a licence

7 GRANTING THE APPLICATION

7.1 On approving an application the London Borough of Barnet may issue a permanent street trading licence or temporary street trading licence (a licence) as appropriate.

7.2 A licence will be issued subject to the London Borough of Barnet's standard conditions and shall be subject to any additional terms, plans and details contained in the application.

7.3 A licence may also be issued subject to specific conditions that the licensing authority deems reasonable and necessary.

7.4 A permanent street trading licence shall be granted for a period not exceeding 12 months.

7.5 A temporary street trading licence may be granted on a daily, weekly or monthly basis up to a maximum period of six months.

Street Markets

7.6 A street market licence shall be granted for a period not exceeding five days.

7.7 The licence will be issued subject to the London Borough of Barnet's standard conditions and shall be subject to additional conditions in respect of giving a notice of the intended use of the licence street for the purposes of holding a market and advertising the market in accordance with paragraphs 4.8 to 4.10 above.

7.8 The licence may also be issued subject to specific conditions that the licensing authority deems reasonable and necessary.

8 REFUSING THE APPLICATION

8.1 A licence shall not be granted unless:

- The fee has been paid in full or
- An agreement in writing has been obtained from the London Borough of Barnet which contains details of the payment of the fee by instalments.

8.2 A licence shall be refused if any of the circumstances in section 25(4) of the Act apply.

8.3 A licence may be refused if any of the circumstances in section 25(6) of the Act apply. However, before a final decision is taken the London Borough of Barnet will give the licence holder or applicant a written notice of its intention to refuse the licence. The licence holder or applicant will be given an opportunity to appear before a senior officer and to make representations in respect of the matter.

8.4 A licence will not be granted if the proposed street trading pitch will not allow sufficient and safe passage for pedestrians using the footpath. In general at least 2.5 metres of clear unobstructed passage must be maintained from the roadside kerb to the outermost point of pitch. In areas of high pedestrian use or high levels of traffic a larger clearance may be required.

8.5 A licence will not be granted for proposed street trading pitches to extend more than 1 metre from the building and onto the highway on all routes maintained by Transport for London.

8.6 A licence will not be granted if it is clear that the granting of the licence will cause significant nuisance.

Street Markets

8.7 Permission to use a market licence may be refused if the licence holder fails to give the London Borough of Barnet a notice of the intended use of the licence street for the purposes of holding a market and/or failure to advertise the market in accordance with paragraphs 4.8 to 4.10 above.

9 EXPIRY OF THE LICENCE

9.1 A licence will expire on the date specified on the licence unless it is renewed in accordance with section 3 above.

9.2 A licence holder may surrender his/her licence by sending it to the London Borough of Barnet at which time it will cease to be valid and will expire.

Lapse

9.3 If a licence lapses in circumstances as defined in Section 29A of the Act the licence holder should return the licence to the London Borough of Barnet.

Succession

9.4 This section only applies to an individual licence holder of a permanent street trading licence.

9.5 If the licence holder dies or retires or is unable to continue due to ill health as described in Section 26 of the Act the London Borough of Barnet shall not grant a licence in respect of the street trading pitch until 28 days have elapsed from the date of the event.

9.6 During the 28-day period, the person named by the licence holder in his/her application may apply to the London Borough of Barnet for the licence to be transferred.

9.7 The licence will be granted by the London Borough of Barnet in all circumstances.

10 REVOCATION OR VARIATION

Permanent street trading licence

10.1 The London Borough of Barnet may revoke a permanent street trading licence at any time if any of the circumstances in Section 28 of the Act apply.

10.2 However, having considered all the available evidence the London Borough of Barnet may decide that it is appropriate to vary the conditions of the permanent street trading licence to ensure that compliance with the legislation and licence conditions is achieved.

10.3 Before a decision is taken the London Borough of Barnet will give the licence holder a written

notice of its intention to revoke or vary the licence.

- 10.4 The licence holder will then be given an opportunity to appear before a senior officer within 21 days and to make representations in respect of the matter.
- 10.5 The senior officer will consider the representations before a decision is taken.
- 10.6 The senior officer will also have regard to this policy in particular section 7 before making a decision.

Temporary Street Trading Licence

- 10.7 The London Borough of Barnet may revoke or suspend the use of a temporary licence on land within 7 metres of any road or footway as described in section 21 (1)(b) on the grounds of safety.
- 10.8 The London Borough of Barnet may revoke a temporary licence
- 10.9 If the London Borough of Barnet revokes or suspends the temporary licence it will refund a proportion of the fee on a pro-rata basis less the administrative costs of granting the licence.
- 10.10 As an alternative to revocation or variation of a licence, the London Borough of Barnet may decide that other enforcement action is appropriate. This may include using the 'Penalty Points System' or pursuing a criminal prosecution in accordance with the Enforcement Policy.
- 10.11 Use of the penalty points system may result in the revocation of a licence in certain circumstances.

The Penalty Points System is contained in appendix 4.

11 FEES AND CHARGES

- 11.1 The London Borough of Barnet will set the fees for all street trading licences to recover its reasonable administrative and enforcement costs. The cost of street cleaning and other appropriate costs will also be considered when setting the fee.
- 11.2 The fees will be reviewed annually and before any changes are made the London Borough of Barnet will consult with all licence holders and publish a notice of the proposed charges in a local newspaper.
- 11.3 The consultation will last for a period of 28 days from the publication of the notice in the newspaper.
- 11.4 Before a final decision is made the London Borough of Barnet will consider any representations received during the consultation period.
- 11.5 After a final decision is made, the London Borough of Barnet will inform all licence holders and publish a notice of the fees and charges in a local newspaper.
- 11.6 The fees and charges will take effect no less than 28 days after the publication of the notice.

Application Fees

- 11.7 If an application fee is paid by cheque, the fee shall not be deemed to have been paid until the funds have cleared.

12 DECISIONS

- 12.1 The reasons for any decision(s) taken by the London Borough of Barnet in respect of an application for a licence will be provided in writing to all parties to the proceedings within 7 days of the decision.

- 12.2 Decisions will be taken having regard to this Street Trading Policy and Part III of the London Local Authorities Act 1990 (as amended).

13 APPEALS

- 13.1 Any appeal against the decision of the London Borough of Barnet in respect of the grant, variation, revocation or refusal to grant a licence may be made to the magistrate's court under the provisions of section 30 of the London Local Authorities Act 1990.
- 13.2 There is no right of appeal in respect of temporary street trading licences.

14 ENFORCEMENT

- 14.1 Any enforcement action instigated by the London Borough of Barnet will be in accordance with the Act and the current Enforcement Policy.

15 UNLICENSED STREET TRADING

- 15.1 Unlicensed street trading can have a negative impact on legitimate street traders and the community as a whole and will not be tolerated by the London Borough of Barnet.

- 15.2 If an authorised officer suspects that a person has committed an offence of unlawful street trading he may seize any article or thing the officer will take appropriate action in line with the current enforcement policy

- 15.3 Before taking any formal action the authorised officer will identify him/herself by showing their authority before taking any action.

16 MOTOR VEHICLES

- 16.1 The sale or exposure for sale of a motor vehicle or motorcycle in a street is prohibited.

- 16.2 If you are in the motor trade business and you offer a vehicle for sale on the internet at the same time as keeping the same vehicle on the public highway this is also classified as street trading.

16.3 If an authorised officer identifies a vehicle that is exposed or advertised for sale vehicle in a street he may affix a notice to the windscreen or other part of the vehicle requiring the registered owner to remove the vehicle within 24 hours.

17 DATA PROTECTION, FREEDOM OF INFORMATION AND DATA MATCHING

- 17.1 The London Borough of Barnet London Borough of Barnet (“the Council”) is the Data Controller of all personal information held by the licensing authority. The London Borough of Barnet will process and hold that information in accordance with principles of the Data Protection Act 1998.
- 17.2 The information supplied and held as part of the street trading application and enforcement processes may be disclosable in accordance with the Freedom of Information Act 2000 or Environmental Information Regulations 2004.
- 17.3 The information supplied in all applications will be given to the Audit Commission to participate in the National Fraud Initiative (NFI) data matching exercise and will be used for cross-system and cross authority comparison with other relevant organisations’ data for the prevention and detection of fraud.

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