

MEETING

LICENSING COMMITTEE

DATE AND TIME

MONDAY 20TH NOVEMBER, 2017

AT 7.00 PM

VENUE

HENDON TOWN HALL, THE BURROUGHS, LONDON NW4 4BG

TO: MEMBERS OF LICENSING COMMITTEE (Quorum 3)

Chairman: Councillor John Hart BA (Hons) MA
Vice Chairman: Maureen Braun

Alison Cornelius
Claire Farrier
Jim Tierney

Val Duschinsky
Barry Rawlings
Zakia Zubairi

Wendy Prentice
Agnes Slocombe
Jack Cohen

In line with the Constitution's Public Participation and Engagement Rules, requests to submit public questions or comments must be submitted by 10AM on the third working day before the date of the committee meeting. Therefore, the deadline for this meeting is 15th November at 10AM. Requests must be submitted to Jan Natynczyk jan.natynczyk@barnet.gov.uk 020 8359 5129

You are requested to attend the above meeting for which an agenda is attached.

Andrew Charlwood – Head of Governance

Governance Service contact: Naomi Kwasa. Naomi.Kwasa@barnet.gov.uk

Media Relations contact: Sue Cocker 020 8359 7039

ASSURANCE GROUP

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ORDER OF BUSINESS

Item No	Title of Report	Pages
1.	Minutes	5 - 6
2.	Absence of Members	
3.	Disclosable Pecuniary interests and Non Pecuniary interests	
4.	Report of the Monitoring Officer (if any)	
5.	Public Question and Comment (if any)	
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10.	Street Trading Fees and Charges	To Follow
11.	Any item(s) that the Chairman decides is urgent	

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Decisions of the Licensing Committee

6 July 2017

Members Present:-

AGENDA ITEM 1

Councillor John Hart (Chairman)

Councillor Maureen Braun
Councillor Alison Cornelius
Councillor Val Duschinsky
Councillor Wendy Prentice
Councillor Claire Farrier

Councillor Kitty Lyons (arrived at 7.05pm)
Councillor Agnes Slocombe
Councillor Jim Tierney
Councillor Zakia Zubairi
Councillor Jack Cohen

1. MINUTES

RESOLVED that the minutes of the meeting held on 28 February 2017 be agreed as a correct record.

2. ABSENCE OF MEMBERS

None.

3. DISCLOSABLE PECUNIARY INTERESTS AND NON PECUNIARY INTERESTS

None.

4. REPORT OF THE MONITORING OFFICER (IF ANY)

None.

5. PUBLIC QUESTION AND COMMENT (IF ANY)

None.

6. MEMBERS ITEM (IF ANY)

None.

7. LICENSING AUTHORITY - ANNUAL REPORT ON LICENSING APPLICATIONS

The Committee received the report.

Members were pleased to note the 8.6% increase in applications this year and requested that the Group Manager Community Protection (Regulation), liaise with the Council's Communications Team to publicise this.

RESOLVED that the Annual Report of applications into the Licensing Department, in relation to applications for 2016-2017 be noted.

8. DELEGATION OF FUNCTIONS

The Committee received the report.

RESOLVED that authority be delegated to all Officers to act on the Council's behalf, as a responsible authority under the Licensing Act 2003 (as amended).

9. ANY ITEM(S) THAT THE CHAIRMAN DECIDES IS URGENT

None.

The meeting finished at 7.17pm

AGENDA ITEM 7	
	<h2>Licensing Committee</h2> <h3>20th November 2017</h3>
Title	Sex Establishment and Sex Entertainment Venues Policy
Report of	Commissioning Director for Environment
Wards	All
Status	Public
Urgent	No
Key	No
Enclosures	Appendix 1 – Draft Policy – To Follow
Officer Contact Details	Emma Phasey Group Manager Community Protection (Regulation) Emma.phasey@barnet.gov.uk

Summary

This report seeks approval from Members to adopt the 2017-2022 draft policy in relation to sex establishments and sex entertainment venues policy following review of the current one.

Recommendations

That the Committee authorise the Licensing Department to consult on the draft Policy at Appendix 1.

1. WHY THIS REPORT IS NEEDED

- 1.1 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.
- 1.2 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 adopted these powers in January 2013.
- 1.3 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.
- 1.4 The current policy for sex establishments and sex entertainment venues was adopted in 2013. All policies within the Licensing team are informally reviewed annually with a formal review needed every five years.
- 1.5 Changes that are proposed to the policy, are identified in the tracked changed version of the policy in Appendix
- 1.6 The Licensing team propose to consult on the draft policy. This consultation will be sent to the Metropolitan Police, Children and Families, Environmental Health, the Fire Brigade and all ward Councillors.
- 1.7 The Consultation will also be published on the London Borough of Barnet website for anyone to comment on it. The consultation will take place over 6 weeks. The consultation will run from January 2018.

1.8 The outcome of this consultation will be brought to the Licensing Committee in July 2017.

1.9 The London Borough of Barnet is able to set a quantity limit regarding the number of sex establishments in an area. In 2013 when the current policy was approved by the Licensing Committee, it chose not to set a limit on this.

The March 2010 Home Office Guidance on Sex Entertainment Venue licensing states that regardless of any quantity limit, 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.”

1.10 Some authorities have set limits, for example by ward. However this 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. This could result in more challenges to decisions.

1.11 In 2013, the London Borough of Barnet made the decision to look at the area specifically around where the premises would be located.. The 2013 policy then sets out when the grant of a licence would not be appropriate. For example, when there is a school positioned in the area – which the London Borough of Barnet has called the “relevant locality”. There are no proposed changes to this.

1.12 In 2013 London Borough of Barnet consulted for views on what the size of this “relevant Locality” area should be. Following this consultation the decision was made that this would be set at 75m.

1.13 A review has been taken on both the decision not to set limits on the number of establishments and the 75m definition of “relevant locality” Although the Licensing team see no reason to change these, this will form part of the consultation that anyone can comment on.

2. REASONS FOR RECOMMENDATIONS

- 2.1 It is best practice to regularly review and improve the policy which the Council applies when implementing regulatory regimes. This ensures clarity for traders and other interested parties in the application and enforcement processes.

3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

- 3.1 The Council could choose not to review and update the policy, however this would mean that the 2013 policy would remain in effect but as noted above, it is out of date in some respects.

4. POST DECISION IMPLEMENTATION

- 4.1 There will be a consultation in relation to the adoption of the policy, as noted above, and the feedback from this consultation will be brought back to this committee for consideration.

5. IMPLICATIONS OF DECISION

5.1 Corporate Priorities and Performance

- 5.1.1 Ensuring that any sex shops and establishments in the borough are well run and compliant supports the objectives contained within the Corporate Plan. In particular, in relation to “Responsible Growth, Regeneration and Investment”.

5.2 Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)

- 5.2.1 Administration and enforcement of the legislation will be carried out by the Licensing team within Re.
- 5.2.2 The recommendations within this report have no financial implications as this will be delivered within existing resources.

5.3 Social Value

- 5.3.1 Not relevant to this report

5.4 Legal and Constitutional References

- 5.4.1 The Local Government (Miscellaneous Provisions) Act 1982 provides powers in relation to licensing sex establishments and sex

entertainment venues. The proposed policy sets out how the London Borough of Barnet will discharge this function.

- 5.4.2 The Council's constitution, Article 7 Committees, Forums, Working Groups and Partnerships details the functions of the licensing committee to include:

“for all policy matters relating to licensing with licencing hearings concerning all licencing matters delegated to sub-committees”

5.5 Risk Management

- 5.5.1 It is important that the London Borough of Barnet adopts a robust and accountable regulatory regime in relation to licensing in order to ensure fair trading, and to protect consumers.

5.6 Equalities and Diversity

- 5.6.1 The Council has a legal obligation under section 149 of the Equality Act 2010 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.

- 5.6.2 A consistent approach will be adopted when considering applications. All applications will be considered in line with the relevant legislation and policy

- 5.6.3 An initial equalities impact screening has been completed and there is no identified impact on any of the protected groups. This will be reviewed again in light of any feedback from the consultation.

5.7 Consultation and Engagement

- 5.7.1 As noted earlier, there will be a consultation in relation to the proposed policy and the results of this will be brought back before this committee for consideration.

5.8 Insight

- 5.8.1 Not relevant to this report

6 BACKGROUND PAPERS

None

Appendix 1– Draft Policy

	<p>Licensing Committee 20th November 2017</p>
<p>Title</p>	<p>Film Classification Policy</p>
<p>Report of</p>	<p>Commissioning Director for Environment</p>
<p>Wards</p>	<p>All</p>
<p>Status</p>	<p>Public</p>
<p>Urgent</p>	<p>No</p>
<p>Key</p>	<p>No</p>
<p>Enclosures</p>	<p>Appendix 1 – Draft Policy</p>
<p>Officer Contact Details</p>	<p>Emma Phasey Group Manager Community Protection (Regulation) Emma.phasey@barnet.gov.uk</p>

<p>Summary</p>
<p>This report seeks approval from Members to adopt the 2017-2022 draft policy in relation to film classification</p>

<p>Recommendations</p>
<p>That the Committee approve the Draft Policy at Appendix 1.</p>

1. WHY THIS REPORT IS NEEDED

- 1.1 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.
- 1.2 It is usual for most films to be released across the country and therefore be classified by the BBFC.
- 1.3 The Licensing Authority may be required to classify a film that has not been classified by the BBFC. A typical example of this would be a locally made film to be shown at a film festival within the Borough. Therefore, the Licensing Authority must have a formal procedure in place to determine this classification.
- 1.4 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.
- 1.5 The current policy for film designation was adopted in 2013. All policies within the Licensing team are informally reviewed annually with a formal review needed every five years.
- 1.6 Only minor changes have been made to the policy, these are listed below:

Section of policy	Amendment made
4.2	Address updated to reflect the current address of the team
4.4	The acceptable formats in which the films are provided has been updated to include electronic copies as well as DVDs
5.2	Clearer clarification on who is undertaking the classifications is given. Previously it stated 2 members of the Licensing team and this is not the process that is currently followed. Therefore this is updated to reflect the current process
11.2	7 days is changed to 5 working days in line with information already given on timescales in the document

- 1.7 As the changes to the policy are so minor it is not felt that it is necessary to undertake a public consultation on the documents, therefore this report is seeking to approve the draft policy to take immediate effect.

2. REASONS FOR RECOMMENDATIONS

- 2.1 It is best practice to regularly review and improve the policy which the Council applies when implementing regulatory regimes. This ensures clarity for traders and other interested parties in the application and enforcement processes.

3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

- 3.1 The Committee could consider consulting on the proposed policy; however as the changes are so minor it is not felt that this is necessary.
- 3.2 The Council could choose not to introduce a new policy, however this would mean that the 2013 policy would remain in effect and this is clearly out of date in relation to the matters identified above.

4. POST DECISION IMPLEMENTATION

- 4.1 The policy will take immediate effect and will be published on the London Borough of Barnet webpage.

5. IMPLICATIONS OF DECISION

5.1 Corporate Priorities and Performance

- 5.1.1 Films shown at local small film festivals support the objectives contained within the Corporate Plan. In particular, in relation to "Promoting Community Engagement"

5.2 Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)

- 5.2.1 Administration and enforcement of the legislation will be carried out by the Licensing team within Re, together with support from HB Public Law and from Governance Services.
- 5.2.2 The recommendations within this report have no financial implications as this will be delivered within existing resources.

5.3 Social Value

- 5.3.1 Not relevant to this report

5.4 Legal and Constitutional References

5.4.1 The Local Authority has been provided powers under the Licensing Act 2003 in order to be able to classify films for exhibition within the London Borough of Barnet. This policy sets out how the London borough of Barnet will discharge this function.

5.4.2 A good policy ensures that fair and equitable decisions are taken by the London Borough of Barnet.

5.4.3 The Council's constitution, Article 7 Committees, Forums, Working Groups and Partnerships October 2017 details the functions of the licensing committee to include:

“for all policy matters relating to licensing with licencing hearings concerning all licencing matters delegated to sub-committees”

5.5 Risk Management

5.5.1 It is important that the London Borough of Barnet adopts a robust and accountable regulatory regime in relation to film classification in order to ensure fair trading, and to protect consumers.

5.6 Equalities and Diversity

5.6.1 The Council has a legal obligation under section 149 of the Equality Act 2010 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.

5.6.2 A consistent approach will be adopted when considering applications. All applications will be considered in line with the relevant legislation and policy.

5.6.3 An initial equalities impact screening has been completed and there is no identified impact on any of the groups with protected characteristics. Therefore a full impact assessment is not required.

5.7 Consultation and Engagement

5.7.1 There is no consultation needed in relation to this policy.

5.8 Insight

5.8.1 Not relevant to this report

6 BACKGROUND PAPERS

None

London Borough of Barnet

Film Classification Policy

2017-2022

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Definitions

2003 Act	The Licensing Act 2003
<i>Children</i>	Any person under the age of 18 years.
<i>Exhibition of a film</i>	The exhibition of moving pictures

Introduction

- 2.1 The public exhibition of all films on licensed premises must either be classified by the British Board of Film Classification (BBFC) or authorised by the Licensing Authority under the powers of the Licensing Act 2003.
- 2.2 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
- 2.3 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.
- 2.4 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.

Circumstances the Licensing authority may classify a film

- 3.1 The Licensing Authority may be required to classify a film that has not been classified by the BBFC. A typical example of this would be a locally made film to be shown at a film festival within the Borough. Therefore, the Licensing Authority must have a formal procedure in place to determine this classification.
- 3.2 A distributor of a film or other party may appeal to the Licensing Authority against a decision of the BBFC requesting that the Licensing Authority reclassifies the film for local screening.
- 3.3 In addition to classifying films the Licensing Authority can issue a classification waiver which permits the exhibition of the film or films within the local area without a classification but subject to certain conditions and restrictions.

The Application

- 4.1 Applications for authorisation of films shall be referred to and determined by the Licensing department on behalf of the Licensing Authority.
- 4.2 All applications must be made to the London Borough of Barnet either by email or addressed to:

London Borough of Barnet
Community Protection Team
London
N20 0EJ
Barnet House
1255 High Road
Whetstone
London
N20 0EJ

licensingadmin@barnet.gov.uk

- 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 or **electronic format** to avoid delays, the cost to be borne by the applicant. If DVD/**electronic format** are 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.

Determining the application

- 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 film will be reviewed by 2 individuals, 1 officer from the licensing department and the other a member of the Licensing Committee. Each will view the entire film and assess it against the BBFC guidelines and National Guidance.
- 5.3 If their decision is unanimous in relation to the classification that classification will be applied. Should the officers be unable to reach consensus then the classification for that film will be referred to the Licensing Sub Committee
- 5.4 The Chairman of the subcommittee will have the final decision on the classification to be applied to the film.
- 5.4 The Licensing Department/Sub Committee (as appropriate) 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

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.

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.*

Classification Waiver

8.1 Any authorisations for the exhibition of film without classification issued by the Licensing Authority shall only apply when the film is exhibited within the London Borough of Barnet and does not affect the authorisation or recommendations in any other borough.

8.2 Once the classification has been waived by the Licensing Authority a film will be authorised for a particular showing or festival only. This will be subject to the recommendations imposed by the Licensing Authority (unless further application for re-classification is made). Details of the waiver including any recommendations shall be available from the Council's Licensing Services.

8.3 The issue of any waiver 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 another 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

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

Fees

10.1 The current fees applicable are laid out in the London Borough of Barnet's Fees and Charges Schedule.

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 **5 working days** of the decision.

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

	AGENDA ITEM 9 Licensing Committee 20th November 2017
Title	Fireworks Licences Policy
Report of	Commissioning Director for Environment
Wards	All
Status	Public
Urgent	No
Key	No
Enclosures	Appendix 1 – Draft Policy
Officer Contact Details	Emma Phasey Group Manager Community Protection (Regulation) Emma.phasey@barnet.gov.uk

Summary
 This report seeks approval from Members to consult on the draft policy in relation to firework licences.

Recommendations
 That the Committee authorise the Licensing team to commence a consultation on the draft policy for fireworks licences.

1. WHY THIS REPORT IS NEEDED

- 1.1 The London Borough of Barnet is the licensing authority under Schedule 1, Section 1(a)(ii) of the Explosives Regulations 2014 in relation to an application for a licence for the storage within one site of no more than 2000 kilograms of explosives to which paragraph (a)(i) or (b) of the definition of explosives applies.
- 1.2 Under the Explosive Regulations 2014, the permitted sale periods for selling fireworks are –
 - during the period beginning on the 15th October and ending on the 10th November;
 - during the period beginning on the 26th December and ending on the 31st December;
 - on the first day of the Chinese New year and the three days immediately preceding;
 - on the day of Diwali and the three days immediately preceding.
- 1.3 The London Borough of Barnet is the Licensing Authority under Section 7 of the Fireworks Regulations 2004, in relation to applications to allow premises to not be restricted by the above and to sell fireworks all year. In order to sell fireworks **outside** the normal permitted periods as listed above, an application for a licence is required to comply with the Fireworks Regulations 2004.
- 1.4 The London Borough of Barnet does not currently have a policy in relation to dealing with these applications. It is best practice to have a policy in relation to licence application processes and decisions.
- 1.5 The proposed policy in Annex 1 outlines the application process and gives details on the grounds that the Licensing Team will consider in considering applications for the grant or refusal of a licence or the revocation of a licence. The policy also outlines the appeals process available to an applicant or licence holder in the event that their application is refused or licence is revoked..
- 1.6 The Licensing team propose to consult on the draft policy. This consultation will be sent to the Fire Brigade, Metropolitan Police, all current licence holders and all ward Councillors.
- 1.7 The Consultation will also be published on the London Borough of Barnet website. The consultation will take place over 6 weeks. The consultation will run from January 2018.
- 1.8 The outcome of this consultation will be brought to the Licensing Committee in July 2018.

2. REASONS FOR RECOMMENDATIONS

- 2.1 It is best practice to regularly review and improve the policy which the Council applies when implementing regulatory regimes. This ensures clarity for traders and other interested parties in the application and enforcement processes.

3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

- 3.1 The Council could choose not to introduce a new policy on Fireworks Licences, however this would mean that decisions would be more open to challenge as there is no framework for decisions.

4. POST DECISION IMPLEMENTATION

- 4.1 The Licensing team will commence a consultation on the policy and report back to the Licensing Committee at their July 2018 meeting.

5. IMPLICATIONS OF DECISION

5.1 Corporate Priorities and Performance

- 5.1.1 Fireworks licensing supports the corporate objectives of “Responsible Growth, Regeneration and Investment”.

5.2 Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)

- 5.2.1 Administration and enforcement of the legislation will be carried out by the Licensing team within Re, together with support from HB Public Law and from Governance Services.

- 5.2.2 The recommendations within this report have no financial implications as this will be delivered within existing resources.

5.3 Social Value

- 5.3.1 Not relevant to this report

5.4 Legal and Constitutional References

- 5.4.1 The Local Authority has been provided powers under the Fireworks Regulations 2004 and Explosive Regulations 2014 in order to be able to

licence premises to store and sell fireworks all year round within the London Borough of Barnet. This policy sets out how the London Borough of Barnet will discharge this function.

5.4.2 A good policy ensures that fair and equitable decisions are taken by the London Borough of Barnet.

5.4.3

The Council's constitution, Article 7 Committees, Forums, Working Groups and Partnerships details the functions of the Licensing Committee to include:

“for all policy matters relating to licensing with licencing hearings concerning all licencing matters delegated to sub-committees”

5.5 Risk Management

5.5.1 It is important that the London Borough of Barnet adopts a robust and accountable regulatory regime in relation to licensing in order to ensure fair trading, and to protect consumers.

5.6 Equalities and Diversity

5.6.1 The Council has a legal obligation under section 149 of the Equality Act 2010 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.

5.6.2 A consistent approach will be adopted when considering applications. All applications will be considered in line with the relevant legislation and policy.

5.6.3 An initial equalities impact screening has been completed and currently there is no identified impact on any of the protected groups. A further screening will be undertaken once the consultation responses have been received.

5.7 Consultation and Engagement

5.7.1 There will be a consultation in relation to the adoption of the policy. This will be sent to all traders identified as having a licence for fireworks in the London Borough of Barnet, the Metropolitan Police, the Fire Brigade and other interested parties identified above.

5.8 Insight

5.8.1 Not relevant to this report

6 BACKGROUND PAPERS

None

London Borough of Barnet

Explosives Licence Policy

2018 - 2023

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DEFINITIONS

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

2014 Regulations	The Explosives Regulations 2014
2003 Act	Fireworks Act 2003
	Fireworks Regulations 2004
Storage Licence	Refers to a licence under the Explosive Regulations 2014
Licence to sell all year	Refers to a licence under the Fireworks Regulations 2004
Licensing Authority	The London Borough of Barnet exercising its powers as a licensing authority.

INTRODUCTION

- 2.1 The London Borough of Barnet is the licensing authority under Schedule 1, Section 1(a)(ii) of the Explosives Regulations 2014 in relation to an application for a licence for the storage within one site of no more than 2000 kilograms of explosives to which paragraph (a)(i) or (b) of the definition of explosives applies.
- 2.2 The permitted sale periods for selling fireworks are –
- during the period beginning on the 15th October and ending on the 10th November;
 - during the period beginning on the 26th December and ending on the 31st December;
 - on the first day of the Chinese New year and the three days immediately preceding;
 - on the day of Diwali and the three days immediately preceding.
 -
- 2.3 The London Borough also is the Licensing Authority under Section 7 of the Fireworks Regulations 2004. In relation to applications to allow

premises to not be restricted by the above and to sell fireworks all year round.

2.4 There are currently 40 premises licensed to store explosives in the London Borough of Barnet, the majority of these are supermarkets and convenience stores. There are currently 40 premises licensed to sell fireworks all year round.

2.5 A consultation took place on this policy between *****. This policy was approved at a meeting of the Full Council on ****

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
Community Protection Team
Barnet House
1255 High Road
Whetstone
London
N20 0EJ

3.2 Applicants can be an individual, company or partnership.

NEW APPLICATIONS

4.1 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

4.2 An incomplete or incorrectly completed application will be rejected.

RENEWAL APPLICATION

5.1 A correctly completed application for the renewal of a licence should be submitted no later than one month before the existing licence will expire.

5.2 An incomplete or incorrectly completed application will be rejected

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

VARIATION OR TRANSFER APPLICATION

6.1 The Licensing Authority may vary a storage licence:

- a) where there has been a change in circumstances such that the separation distances can no longer be maintained and the consequent

reduction in the maximum amount of explosive that may be stored is required;

b) in relation to any of the matters it relates to, by agreement with the licensee.

6.2 A storage licence may be varied without the agreement of the licensee. The licensee must be given written reasons for the proposed variation. The licensee will be given the opportunity of making representations to the licensing authority, within a period of 28 days from the date of the notification. Representation can be made in writing, or both in writing and orally.

6.3 If the storage licence is varied without the agreement of the licensee, the variation takes effect from a date to be determined by the licensing authority which must be a date after the 28 day period for representations.

6.4 The licensing authority must grant the application for the transfer of a storage licence or a licence to sell all year unless it is of the opinion that the applicant is not a fit person to store explosives as per Section 20(2)(b) of the 2014 Regulations.

CONSULTATION

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

DETERMINING THE APPLICATION

8.1 Storage licences can be granted or renewed for a period of up to five years. Licences to sell all year can be granted or renewed for a period of up to 12 months.

8.2 The Council will take a proportionate, risk-based approach when dealing with licence applications and the duration of the licence requested.

8.3 Storage licences will only be issued to new retailers with no inspection or enforcement history for a maximum period of one year.

8.4 Storage licences will only be issued to existing licensed sites with a mixed or poor history of compliance for a maximum period of one year.

8.6 Storage licences will only be issued to existing licensed sites:

- that have a history of regularly requiring advice;
- where minor breaches have been identified at inspections;
- that has for example high (relevant) staff turnover

for a maximum period of one year.

8.7 In all cases, The London Borough of Barnet will consider each application on its own merits.

CONDITIONS

The 2014 Regulations allow for conditions to be placed on storage licences.

- 9.2 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.
- 9.3 Any conditions can be imposed on a licence. Each licence must include conditions that specify:
- the site and, within it, the places where the explosives may be stored

 - the hazard type, if any, the description and maximum amount of explosives which may be stored or be present, at any one time at any place so specified.
- 9.4 For licences which relate to the storage of pyrotechnic articles at any site where those articles are to be offered for sale, conditions may be attached considered appropriate which relate to:
- the storage and display of those article in areas where they can be purchased;

 - the prevention of risk of fire arising in respect of those articles;

 - the safe use of fire escapes in that area.
- 9.5 The London Borough of Barnet expects licence holders to comply with the legal requirements of the 2014 Regs and any relevant guidance issued by the HSE.

REFUSAL OF AN APPLICATION

- 10.1 The London Borough of Barnet may refuse an application to sell fireworks all year if the applicant has committed an offence specified in Section 9(5) of the 2004 Regulations.
- 10.2 If the London Borough of Barnet refuse an application to sell fireworks all year notice will be given in writing to the applicant within 5 working days of the decision.
- 10.3 The London Borough of Barnet will refuse an application for a storage licence where they are of the opinion that the applicant is not a fit person to store explosives as defined by Section 20(2)(b) of the 2014 Regulations.
- 10.2 Where the London Borough of Barnet is minded to refuse an application for storage it will, before taking such action, notify the applicant of its proposed course of action and afford the applicant the opportunity of making representations, within a period of 28 days from the date of the notification.
- 10.3 If the London Borough of Barnet refuses an application for a storage licence, representations may be made to the licensing authority in writing, or both in writing or orally.
- 10.4 The final decision to refuse an storage licence application will be made by a senior member of the Licensing team. Consideration will be made of the circumstances surrounding the application and any representations received from the applicant.
- 10.5 Where the London Borough of Barnet decides to refuse an application the applicant will be provided with written reasons for its decision. This will be provided within 5 working days from the decision.

;

EXPIRY OF A LICENCE

- 11.1 A licence will expire on the date specified on the licence unless it is renewed in time.
- 11.2 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.

REVOCAION OF A LICENCE

- 12.1 The London Borough of Barnet may revoke a licence to sell all year if the licence holder is convicted of an offence specified in Section 9(5) of the 2004 Regulations.
- 12.2 If the London Borough of Barnet revoke an application to sell fireworks all year notice will be given in writing to the applicant within 5 working days of the decision.
- 12.2 The London Borough of Barnet may revoke a storage licence on any of the grounds contained within the Act which include:
- where there has been a change in circumstances such as that the site is no longer suitable for the manufacture or storage;
 - where it appears to the licensing authority on information obtained by it after the grant of the licence that the licensee is not a fit and proper person as per Section 20(2)(B) of the 2014 Regulations to store explosives,
 - by agreement with the licensee.
- 12.2 Where the licensing authority proposes to revoke the storage licence, it must, before taking such action, notify the licensee of its proposed

course of action and afford that person the opportunity of making representations to the licensing authority about it, within a period of 28 days from the date of the notification.

12.3 Representation when the London Borough of Barnet is minded to revoke a storage licence must be given in writing, or both in writing and orally.

12.4 Where the licensing authority decides to revoke a licence, it must provide in writing to the licensee the reason for its decision.

12.5 Where the licensing authority revokes the storage licence, that revocation takes effect from a date to be determined by the licensing authority which must be a date after the 28 day representation period.

12.6 A person whose storage licence is revoked must ensure that:

- all explosives are removed from site as soon as practicable after revocation of a licence in respect of that site
- those explosives are deposited at a licensed site, or suitable arrangements are made for those explosives to be disposed of
- the licence is returned to the licensing authority within 28 days of the date that the revocation takes effect.

FEES

13.1 Fees for a storage licence are set by the Health and Safety (Fees) Regulations and are variable dependant on the amount of explosives to be stored and safety distances

13.2 Fees for a licence to sell all year are set by the Fireworks Regulations 2004.

13.3 The current fees applicable are laid out in the London Borough of Barnet's Fees and Charges Schedule.

DECISIONS

14.1 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 5 working days of the decision.

14.2 Decisions will be taken having regard to this Policy and the relevant legislation

APPEALS

15.1 Any applicant who is refused a licence to sell fireworks all year rounds may may within 28 days of receiving the decision notice, appeal to the local magistrate.

ENFORCEMENT AND INSPECTION

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

16.2 Site inspection will be undertaken:

- (a) prior to the grant of a licence;
- (b) if required, following the grant of a licence;

(c) prior to or following the renewal of a licence: and if information is received that the licence holder is operating outside the requirements

of the licence.

16.3 Enforcement visits will be undertaken to unlicensed premises.

PUBLIC REGISTER

17.1 The London Borough of Barnet will maintain a register containing information relating to the application and licence. This information will be held electronically on the Council website.