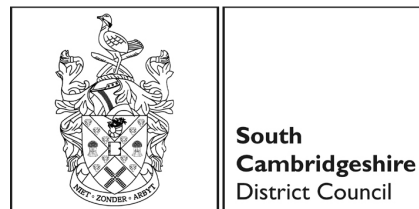


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21 October 2010

To: Chairman – Councillor Cicely Murfitt
Vice-Chairman – Councillor John F Williams
Members of the Licensing Committee – Councillors Richard Barrett, Val Barrett,
Trisha Bear, Nigel Cathcart, Roger Hall, Sally Hatton, Liz Heazell,
Mervyn Loynes, Raymond Matthews, David McCraith, Charles Nightingale,
Alex Riley and Janet Lockwood and
Cllr Sue Ellington, Environmental Services Portfolio Holder

Quorum: 3

Dear Councillor

You are invited to attend the next meeting of **LICENSING COMMITTEE**, which will be held in **COUNCIL CHAMBER, FIRST FLOOR** at South Cambridgeshire Hall on **THURSDAY, 21 OCTOBER 2010 at 10.45 a.m.**

Members are respectfully reminded that when substituting on committees, subcommittees, and outside or joint bodies, Democratic Services must be advised of the substitution *in advance of* the meeting. It is not possible to accept a substitute once the meeting has started. Council Standing Order 4.3 refers.

Yours faithfully
JEAN HUNTER
Chief Executive

The Council is committed to improving, for all members of the community, access to its agendas and minutes. We try to take all circumstances into account but, if you have any specific needs, please let us know, and we will do what we can to help you.

AGENDA		PAGES
1. APOLOGIES FOR ABSENCE	To receive apologies for absence from committee members.	
2. DECLARATIONS OF INTEREST		
3. MINUTES OF PREVIOUS MEETING	To authorise the Chairman to sign the minutes of the meeting held on 6 September 2010 as a correct record.	1 - 6
4. ADOPTION OF S27 POLICING AND CRIME ACT 2009		7 - 10
5. DRAFT SEX ESTABLISHMENT LICENSING POLICY		11 - 36
6. DRAFT STREET TRADING POLICY		37 - 64

OUR VISION

- We will make South Cambridgeshire a safe and healthy place where residents are proud to live and where there will be opportunities for employment, enterprise and world-leading innovation.
- We will be a listening Council, providing a voice for rural life and first-class services accessible to all.

OUR VALUES

We will demonstrate our corporate values in all our actions. These are:

- Trust
- Mutual respect
- A commitment to improving services
- Customer service

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Disturbance by Public

If a member of the public interrupts proceedings, the Chairman will warn the person concerned. If they continue to interrupt, the Chairman will order their removal from the meeting room. If there is a general disturbance in any part of the meeting room open to the public, the Chairman may call for that part to be cleared.

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SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

Minutes of a meeting of the Licensing Committee held on
Monday, 6 September 2010 at 9.30 a.m.

PRESENT: Councillor Cicely Murfitt – Chairman
Councillor John F Williams – Vice-Chairman

Councillors:	Richard Barrett	Val Barrett
	Trisha Bear	Nigel Cathcart
	Roger Hall	Sally Hatton
	Liz Heazell	David McCraith
	Alex Riley	

Officers:	Myles Bebbington	Licensing Officer
	Gary Duthie	Senior Lawyer
	Ian Senior	Democratic Services Officer

Apologies for absence were received from Councillor Janet Lockwood, Raymond Matthews and Charles Nightingale.

5. DECLARATIONS OF INTEREST

There were no declarations of interest.

6. MINUTES OF PREVIOUS MEETING

The Committee authorised the Chairman to sign, as a correct record, the Minutes of the meeting held on 22 June 2010.

7. LICENSING ACT 2003 - HOME OFFICE CONSULTATION DOCUMENT

The Licensing Committee considered a report on the Government's consultation document entitled rebalancing the Licensing Act.

Noting that the consultation document was a national one, the Chairman reminded Members that their role was to examine its proposals in the context of how effectively they might apply within South Cambridgeshire. Sections 1 to 4 reflected Government Policy over which local authorities had no control. The Committee's task was to consider the 29 specific questions posed in the subsequent sections, and inform the Licensing Officer's response, which had to reach the Government by 8 September 2010.

Question 1 – What do you think the impact would be of making relevant licensing authorities responsible authorities?

Members favoured the idea of South Cambridgeshire District Council being designated a responsible Authority as this would enable it to be more proactive when dealing with complaints and applications. It would be important though to impose limits by empowering other government bodies to amend or rescind the actions of a responsible Authority, where appropriate.

Question 2 – What impact do you think reducing the burden of proof on licensing authorities will have?

Members favoured a reduction in the burden of proof but noted that, while such a reduction would lead to an overall improvement, it could result in a heavier workload for licensing officers and licensing committees should there be a consequent increase in

licensing hearings, reviews and appeals.

Question 3 – Do you have any suggestions about how the licence application process could be amended to ensure that applicants consider the impact of their licence application on the local area?

Members agreed that applicants for licences should be required to complete a radically redesigned application form in full. Such form should include a section seeking information that would enable the Licensing Authority to assess an event's likely impact on the local environment and on the amenity of local residents. Parish Councils should be invited to make representations as consultees.

Question 4 - What would be the effect of requiring licensing authorities to accept all representations, notices and recommendations from the police unless there is clear evidence that these are not relevant?

Members considered that the current powers afforded to the Police were sufficient and that the only changes perhaps desirable, possibly through Government Guidance, might be that representations by the Police be considered carefully by the Licensing Authority rather than being arbitrarily accepted by it. The Senior Lawyer informed Members that Case law existed indicating that it was unlawful to seek to defer power to the Police (or any other authority) over other responsible authorities and case law exists stating that this is unlawful.

Question 5 – How can licensing authorities encourage greater community and local resident involvement?

Members considered that it was essential to involve parish and town councils (or equivalent) as a means of engaging local communities. If there was no recognisable elected body, such engagement could be with a parish meeting. Members encouraged central Government to make more effective use of Information Technology as part of the consultation process.

Question 6 – What would be the effect of removing the requirement for interested parties to show vicinity when making a relevant representation?

Members considered that removing the requirement to demonstrate vicinity would allow those persons affected in a more remote way to contribute comments. However, such removal might also result in the receipt of remarks from individuals or groups with "single issue agendas" that were not entirely relevant to the application at issue.

Question 7 - Are there any unintended consequences of designating health bodies as a responsible authority?

Members considered that the involvement of health bodies could incur significant costs at a time of significant financial and structural change within the National Health Service. They said that, if Health Bodies were to be designated as responsible authorities, it should only be at a local level so as to exclude general health matters of a more national interest when commenting on specific applications of purely local concern.

Question 8 - What are the implications in including the prevention of health harm as a licensing objective?

Members considered that the inclusion of the prevention of health harm might be broader than directly related alcohol issues. The definition of 'health harm' could be expanded to include, for example, the amenity of residents that might be affected by late night or early morning noise disturbance from licensed premises.

Question 9 - What would be the effect of making community groups interested parties under the licensing act and which groups should be included?

Members considered that the current practice of inviting community groups to make

representations on behalf of local people was adequate. Ideally, parish councils, or equivalent representative bodies, should become consultees.

Question 10 - What would be the effect of making the default position for the magistrates court to remit the appeal back to the licensing authority?

Members said that the question was not clear as to whether such a change would mean that a Licensing Authority would be required to hear the entire application again (with all the original evidence) or simply review the evidence on which the decision had been based. In general the right of Magistrates to hear an appeal in full (including all the evidence) and make their own determination was considered most appropriate but there may be scope for a council appeals panel to be introduced to scrutinise hearing decisions to ascertain whether the decision was reached fairly and is reasonable and proportionate.

Question 11 - What would be the effect of amending the legislation so that the decision of the licensing authority applies as soon as the premises licence holder receives the determination?

In principal, Members supported such an amendment to the legislation, subject to licensing authorities being protected against costs being awarded against them in cases where decisions were overturned on appeal, particularly where the process had been followed correctly. Members noted that such a decision could have a serious impact on business, particularly in respect of reviews and, in such circumstances, the licence holder should be able to present a business case outlining the potential impact of a licence revocation.

Question 12 - What is the likely impact of extending the flexibility of early morning restriction orders to reflect the needs of the local area?

Subject to transparency and robust decision making processes such a change could be an asset to the Local Authority in promoting the Licensing Objectives

Question 13 - Do you have any concerns about repealing Alcohol Disorder Zone?

Question 14 - What are the consequences of removing the evidential requirement for Cumulative Impact Policies?

Question 15 - Do you agree that the late night levy should be limited to recovery of these additional costs? Do you think that the local authority should be given some discretion on how much they can charge under the levy?

Question 16 - Do you think it would be advantageous to offer such reductions for the late night levy?

Question 17 - Do you agree that the additional costs of these services should be funded by the late night levy?

Members stated that South Cambridgeshire District Council had no experience of the issues referred to in Questions 13 to 17 and therefore made no comment other than to state that authorities in rural areas needed sometimes to be treated differently from those in urban ones

Question 18 - Do you believe that giving more autonomy to local authorities regarding closing times would be advantageous to cutting alcohol – related crime?

Members agreed that giving more autonomy to local authorities regarding closing times would be advantageous to cutting alcohol – related crime. However, they sought clarification about the precise meaning of “alcohol related crime” in this context.

Question 19 - What would be the consequences of amending the legislation relating to Temporary Event Notices so that:

(a) All the responsible authorities can object to a TEN on all of the licensing objectives?

Members noted that, in many cases, Temporary Event Notices were used as a mechanism to usurp the conditions imposed for good reasons on a premises licence, and that an overhaul of the TEN system was needed. The following should be included as Responsible Authorities in order to address the major considerations of noise, nuisance and safety:

- Police
- Fire
- Environmental Services
- Licensing Authority

While not gaining the full support of the Committee, there was some concern that local residents should also be invited to support or object to a Temporary Event Notice.

(b) The police (and other responsible authorities) have five working days to object to a TEN?

Members welcomed the recent change to two working days and would support a further move to five working days.

(c) The notification period for a TEN is increased, and is longer for those venues already holding a premises licence?

Members expressed a number of different views on this aspect. On the one hand, it was argued that if the responsible authorities were given five working days to make representations then, in practical terms, a corresponding increase should be introduced for the Licensing Authority to process any matters that arose. On the other hand, the purpose of TENs was to offer spontaneity, which would be eroded by any increase in timescale.

(d) Licensing authorities have the discretion to apply existing licence conditions to a TEN?

Members agreed with this proposal in principle even though it would be likely to increase workload both for officers and for the Licensing Committee. Many premises use TENs to avoid the potential of reasonably imposed restrictive conditions. This “technical” loop hole can seem illogical to members of the public and lead to a loss of confidence in the licensing process.

Question 20 - What would be the consequences of :-

(a) Reducing the number of Temporary Event Notices that can be applied for by a personal licence holder to 12 per year?

Members could see no benefit in changing the current status afforded Personal Licence Holders.

(b) Restricting the number of Temporary Event Notices that could be applied for in the same vicinity.

Members reacted positively to this proposal. The existing rule was being exploited to negate the need for obtaining a full licence. Members considered that changing the definition of “vicinity” would be beneficial but urged caution in drafting this aspect of the legislation.

Question 21 - Do you think 168 hours (7 days) is a suitable minimum for the period

of voluntary closure that can be flexibly applied by the police for persistent underage selling?

Members reacted positively to this proposal. The Licensing Act should adopt the rules of Tobacco (three sales in two years) as a guideline.

Question 22 - What do you think would be an appropriate upper limit for the period of voluntary closure that can be flexibly applied by police for persistent underage selling?

Members said that the provisions for underage selling of alcohol should be made consistent with those for sales of tobacco (three sales in two years) and result in restriction orders for a period of up to 12 months.

Question 23 - What do you think the impact will be of making licence reviews automatic for those found to be persistently selling alcohol to children?

Members considered that such a move would make licensees aware of the importance of complying with legislation but significantly increase workloads for licensing authorities.

Question 24 - For the purpose of this consultation what are your expert views on defining the cost of alcohol and enforcing a ban on below-cost sales?

Councillor Alex Riley outlined how the cost price of alcohol was calculated. In many respects the costs of a bottle of beer, wine or similar were quantifiable up to the point of storage, this cost included the unit cost, VAT, Excise Duty and so on. While such a method would be the most accurate in determining a minimum price policy, it would be difficult to use it as evidence in enforcement situations in view of its subjectivity. The use of a cost per unit of alcohol was a very general approach but was far more simple and easy to understand and enforce. However, any cost-per-unit figure should be subject to regular review and should have limited exemptions, such as for the sale of end of line items (especially by smaller retailers) or stock approaching its sell-by date.

Question 25 - Would you be in favour of increasing licence fees based on full recovery, and what impact would this have?

Members agreed that the Government should increase licensing fees to reflect the increases in licensing authorities' workload and costs likely to arise as a result of the changes following this consultation process.

Question 26 - Are you in favour of automatically revoking the premises licence if the annual fees have not been paid?

Members said they were in favour, subject to appropriate reminders being issued.

Question 27 – Have the first set of Mandatory Conditions that came into force in April 2010 had a positive impact on preventing alcohol related crime?

Members said it was too early to be certain but, at this stage, there appeared to be little if any impact in the Cambridgeshire area. Members suggested that the April 2010 Mandatory Conditions were ambiguous and unenforceable.

Question 28 - Would you support the repeal of any or all of the Mandatory Conditions?

Members agreed that the only two Conditions worthy of retention were Condition C (ensuring that free tap water was available in all licensed premises in the on-trade) and Condition D (ensuring the existence of an age-verification policy).

Question 29 - Would you support measures to deregulate the Licensing Act, and what sections of the Act in your view could be removed or simplified?

Members agreed that there were elements of the Act that should be fine-tuned in the interests of clarity, but that a wholesale deregulation would have a detrimental effect on

local communities as the Act provided the main mechanism for allowing responsible (currently regulated) activities to take place. While the Act in its current form did not promote a pro-active approach, it did allow for consideration of a number of concerns and problems to be addressed.

The Meeting ended at 12.55 p.m.

SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

REPORT TO: Licensing Committee

21 October 2010

AUTHOR/S: Executive Director/Operational Services / Environment Services Manager

ADOPTION OF S.27 POLICING AND CRIME ACT 2009**Purpose**

1. To seek approval and recommendation to full Council for the adoption of schedule 3 to the Local Government (Miscellaneous provisions) Act 1982 as amended by section 27 of the Policing and Crime Act 2009.
2. This is a key decision as it raises new issues of policy.

Recommendation

3. That the Licensing Committee recommend to the leader of the Council the adoption of Schedule 3 of the Local Government (Miscellaneous provisions) Act 1982 as amended by section 27 of the Policing and Crime Act 2009 as to apply in the district of South Cambridgeshire.

Reason for Recommendation

4. To commence with the adoption prior to the 6 April 2011 deadline as defined in the Policing and Crime Act 2009.

Background

5. On 28 September 2006 the council adopted the provisions of part II Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 relating to the control of sex establishments.
6. On the 6 April 2010 the provisions contained in section 27 of the Policing and Crime Act 2009 relating to sexual entertainment venues came into effect.
7. These provisions amend Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 by introducing a new category of sex establishment called a sexual entertainment venue into the existing legislation. These venues are defined to include live performances or a live display of nudity. The relevant entertainment is defined as:-
 - Any live performance or display of nudity "*which is of such a nature that ignoring financial gain, it must be reasonably assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience (whether by verbal or other means)*". Such activities would include for example striptease and lap dancing before a live audience. A licence will be required under this legislation for these specific activities.
8. Premises only providing this entertainment at monthly intervals within a period of 12 months will be exempt from the requirement to obtain a licence.

9. The licensing of Sex Entertainment Venues are outside of the remit of the Licensing Act 2003, however where such premises provide other licensable activities e.g the sale or supply of alcohol they will nevertheless continue to require the authorisation under the Licensing Act 2003 for such activities.
10. Because the new licensing arrangements are to be dealt with under the Local Government (Miscellaneous provisions) Act 1982 rather than the Licensing Act 2003 they would fall within the remit of this Committee rather than the Licensing Act Committee.
11. In order to use these procedures, a resolution is required to be made at full council. The resolution is made under section 2 of the Local Government (Miscellaneous Provisions) Act 1982. The procedure requires the local authority to make a resolution which specifies that the provision will apply to the area from the date specified in the resolution. This date shall not be within one month from the date that the resolution is passed.
12. The process by which Sex Establishments are licensed remains unchanged, as Section 27 of the 2009 Act only amends the definition of a Sex establishment to include Sexual Entertainment Venues rather than to create a new licensing regime. Accordingly, an applicant for a Sex Establishment licence must submit the application to the Council, including the prescribed fee (Currently £3,400) and advertise the application in the local press and on the premises. If representations are received that are not malicious, frivolous or vexatious the application would be referred to the Licensing Committee, which would resolve either to grant the licence (with additional conditions if necessary) or refuse the application on one or more of the grounds contained in the 1982 Act.

Considerations

13. In order to proceed with the adoption of the provisions, the policy will be forwarded in the following manner:
 - a. This Licensing Committee will, if it decides to do so, make a recommendation to the Leader of the Council to adopt the provisions of S.27 of the Policing and Crime Act 2009.
 - b. The Leader will then make a recommendation to Council at its meeting on 25 November 2010 to approve and adopt the provisions. The date set for the implementation of the provisions will not be less than one month after the date of the meeting.

Options

14. The legislation is not mandatory for local authorities and therefore the adoption of Section 27 is optional. However, if the amendment within the Policing and Crime Act 2009 is not adopted by 6 April 2011, then any future adoption will be subject to a consultation with local people about whether we should do so as soon as is reasonably practical after that date.

Implications

15. Venues that would fall into this category are currently either outside the scope of licensing or more likely covered by the Licensing Act 2003 and as such are limited by the licensing objectives when either considering grounds for refusing an application or

attaching conditions. The adoption of this provision would give far wider parameters to the Licensing Committee when considering the impact such a venue may have in any given area.

16. Financial	Lap dancing venues are currently licensed under the Licensing Act 2003, as such the fees are set by statute. It is proposed that if a Local Authority adopts the provisions of Section 27 of the Policing and Crime Act, 2009 fees will be set by the Local Authority but will have regard to cost of implementation, administration and enforcement of the legal requirements.
Legal	Any decision to refuse an application may be appealed to a magistrates Court
Staffing	None arising from this report
Risk Management	None arising from this report
Equality & Diversity	There are no negative impacts
Equality Impact Assessment completed	Awaiting completion
Climate Change	N/A

Consultations

17. There is no statutory requirement to consult on the adoption of the provisions of the Act provided adoption occurs before 6 April 2011. Consultation will, however, take place in respect of the amended policy for determining applications for these venues.

Effect on Strategic Aims

18.	Commitment to being a listening council, providing first class services accessible to all.
	The commitment to being a listening council, any application for a licence will be subject to a 28-day period in which comments can be received and considered by the Council.
	Commitment to ensuring that South Cambridgeshire continues to be a safe and healthy place for all.
	The adoption of the Act will allow for conditions to be considered, subject to the merits of an individual application.
	Commitment to making South Cambridgeshire a place in which residents can feel proud to live.
	The policy clearly states the objectives of the Council.
	Commitment to assisting provision for local jobs for all.
	The policy clearly states the objectives of the Council.
	Commitment to providing a voice for rural life.
	A sub committee of the Licensing Committee will determine applications where any relevant representations have been made against applications

Conclusions / Summary

19. As detailed in the report, the Council must pass a resolution if it wishes to adopt these new provisions. The resolution must be made under Section 2 of the Local Government (Miscellaneous Provisions) Act 1982 stating that Schedule 3 as amended by Section 27 of the Policing and Crime Act 2009 has been adopted and shall apply to the Council's area. The final resolution must be made by full Council.

20. The adoption of the resolution will lead to a review of the current policy for dealing with applications which, as referred to will be subject to a formal consultation.

Background Papers: the following background papers were used in the preparation of this report:

Schedule 3 of Local Government (Miscellaneous Provisions) Act 1982

Licensing Act 2003

Policing and Crime Act 2009

The Policing and Crime Act 2009 (commencement No 1, Transitional Provisions and Savings) (England) Order 2010

Home Office Guidance – Sexual Entertainment Venues

The Policing and Crime Act 2009 (Consequential Provisions) (England) Order 2010

Contact Officer: Myles Bebbington, Licensing Officer
Telephone: (01954) 713132

SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

REPORT TO:	Licensing Committee	21 October 2010
AUTHOR/S:	Executive Director, Operational Services / Environment Services Manager	

DRAFT SEX ESTABLISHMENT LICENSING POLICY**Purpose**

1. To seek approval of the draft Sex Establishment Licensing Policy, as attached at **APPENDIX A** for consultation purposes, as South Cambridgeshire's formal Statement of Licensing Policy for Sex Establishments licensed under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 incorporating amendments made under Section 27 of the Policing and Crime Act 2009.
2. This is a key decision as it raises new issues of policy.

Recommendation

3. That the Licensing Committee approves the draft Licensing Policy as attached at **Appendix A** in order to commence a consultation process.

Reason for Recommendation

4. To enable the Council to be transparent in its decision making process.

Background

5. South Cambridgeshire District Council adopted the provisions of Schedule 3 on 28 September 2006 and in doing so introduced a number of mandatory conditions but no formal policy detailing how we would deal with applications and enforcement.
6. There is no statutory requirement for a local authority to adopt a policy on the licensing of sex establishments, however, it is the view of the licensing officer that in light of the impending adoption of Schedule 27 of the Policing and Crime Act 2009 it would be best practice to consider such a policy.
7. Attached as **APPENDIX A** is a draft policy in relation to the licensing of sex establishments and sexual entertainment venues. It is the officer's view that such a policy would provide guidance to prospective applicants and members of the public and would assist with consistency of decision-making. The report requests, without prejudice to any decision in relation to adoption, that the authority should consult in relation to a draft policy.
8. The policy will remain a document that continually develops to reflect the changing nature of the sex industry, Government initiatives and the needs of local businesses and residents alike.

Considerations

9. In order to proceed with the final policy it will be forwarded in the following manner:

- a. A Licensing Committee will be held in late February 2011 to consider and recommend to the Leader at his Portfolio Holder meeting on 31 March 2011 any amendments to the draft policy as a result of the consultation process.
- b. The Leader will make a recommendation to Council at its meeting on 14 April 2011 to approve and adopt the policy. The policy will then form the basis of any decision taken in respect of applications or enforcement under Schedule 3 of the Local Government Miscellaneous provisions Act 1982 by officers or any Committee or Sub-committee involved in licensing decisions.
- c. The statement of Licensing Policy will be open to review at any time in the future should it prove necessary to do so.

Options

10. The report requests the authority to consult in relation to a draft policy. The alternative option would be not to progress such a policy or to make amendments to the draft policy prior to consultation.

Implications

11. Financial	None arising from this report
Legal	The adoption of a policy contributes to a transparency and consistency of decision making
Staffing	None arising from this report
Risk Management	The introduction of a policy reduces the risk of future legal challenge against decisions made under the Act
Equality and diversity	The consultation process will comply with the Council's Equal Opportunities Policy
Equality Impact Assessment completed	Awaiting completion
Climate Change	N/A

Consultations

12. As part of the consultation process Officers will consult with a broad range of people including but not exclusively:
 - Police
 - Fire Authority
 - Trading Standards
 - Social Services
 - Environmental Health
 - Planning
 - Health & Safety
 - Parish Councils
 - Faith Groups
 - Women's Aid (Cambridge)
13. The consultation document will also available for general comment via the Council's website and at reception.

Effect on Strategic Aims

14.	Commitment to being a listening council, providing first class services accessible to all.
	Consultation will take place for a twelve-week period allowing relevant parties to raise any issues regarding the revised policy for consideration by the authority
	Commitment to ensuring that South Cambridgeshire continues to be a safe and healthy place for all.
	The policy clearly states the objectives of the Council.
	Commitment to making South Cambridgeshire a place in which residents can feel proud to live.
	The policy clearly states the objectives of the Council.
	Commitment to assisting provision for local jobs for all.
	The policy clearly states the objectives of the Council.
	Commitment to providing a voice for rural life.
	The Licensing Committee (or a sub Committee appointed by the Committee) will determine applications where any relevant representations have been made against applications

Conclusions/Summary

15. The adoption of Licensing policy in respect of Schedule 3 to the 1982 Act will, in particular
- Allow local people to understand the processes involved in making an application for a sex establishment licence and how to make representations either for or against such applications.
 - Give clear and transparent guidelines to prospective applicants, enabling them to understand the stance of the Council in respect of such applications.
 - Give a clear framework to both officers and the Licensing Committee when determining representations or applications referred to a licensing committee (or sub-committee) for decision.

Background Papers: the following background papers were used in the preparation of this report:

- Schedule 3 of Local Government (Miscellaneous Provisions) Act 1982
- Licensing Act 2003
- Home Office Guidance – Sexual Entertainment Venues

Contact Officer: Myles Bebbington – Licensing Officer
Telephone: (01954) 713132

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**SOUTH CAMBRIDGESHIRE
DISTRICT COUNCIL**

DRAFT POLICY

SEX ESTABLISHMENTS

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**Sex Establishments Policy
Preamble**

1. The overarching objectives of the policy are to;
 - promote the Authorities visions and values,
 - protect the rights and health and safety of the general public, workers, residents, small businesses, minority and vulnerable groups,
 - and to ensure consistent and transparent decision making.
- 1.1 This document outlines the policy, which will guide South Cambridgeshire District Council when considering applications for licences. The Authority will determine each application on its' individual merits and this policy should not be regarded or interpreted as an indication that any requirement of the relevant law may be overridden.
- 1.2 The Local Government (Miscellaneous Provisions) Act 1982 (1982 Act) introduced a licensing regime to control Sex Establishments. South Cambridgeshire District Council adopted Schedule 3 of the Act on 28 September 2006 (APPENDIX A). This means that the Authority can control and regulate the operation of certain kinds of Sex Establishment within the area. No Sex Establishment can operate unless it has obtained a licence from the Authority. Any such licence will contain conditions that will restrict how that premises may trade.
- 1.3 Under Section 17 of the Crime and Disorder Act 1998, local authorities must have regard to the likely effect of the exercise of their functions on, and do all that they can to prevent crime and disorder in their area. This policy has regard to the likely impact of such licences on related crime and disorder in the area.
- 1.4 The Policy should be read in conjunction with, and without prejudice to, other existing National and European Union legislation, such as Human Rights Act 1988 and Disability Discrimination Act 1995.

Introduction
Meaning of Sexual Entertainment Venue

- 1.3 New measures came into force on 6 April 2010 in England, under section 27 of Policing and Crime Act 2009 (“2009 Act”), to reclassify lap-dancing clubs as Sexual Entertainment Venues.
- 1.4 The reclassification allows Local Authorities to regulate such venues as Sex Establishments under Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982.
- 1.6 South Cambridgeshire District Council adopted the provisions of The Policing and Crime Act 2009 Act (2009 Act) on 25 November 2010 (APPENDIX B), however at present there are no premises identified as falling within the definitions of sex establishments. The Authority will contact any premises identified as holding activities of a sexual nature with a view to assessment.
- 1.7 Following the adoption of 2009 Act, the Authority has more power to control the number and location of lap dancing clubs and similar venues within South Cambridgeshire. The provisions allow the Authority to take a broader range of considerations into account before making decisions about licences, and give local people a greater say over the regulation of lap dancing clubs and similar venues in their area.
2. A sexual Entertainment venue is defined as *‘any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer.’*
- 2.1 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)”*. *An audience can consist of just one person (e.g. where the entertainment takes place in private booths).*
- 2.2 The Authority judges each case on its’ individual merits, however considers that the definition of relevant entertainment would apply to the following forms of entertainment;
 - Lap dancing
 - Pole dancing
 - Table dancing
 - Strip shows
 - Peep shows
 - Live sex shows
 - Topless Bars

South Cambridgeshire District Council does not consider the list to be exhaustive as the nature of premise may vary. Decisions to licence premises as sexual entertainment venues shall depend on the content of the entertainment provided and not the name it is given.

Prior to the amendment Schedule 3 of the 1982 Act defined “sex establishment” to mean a “sex cinema” or a “sex shop”, and includes

businesses which consist to a significant degree of selling, hiring, exchanging, lending, displaying or demonstrating with “sex articles” within the licensing regime.

2.3 Premises that are not sexual entertainment **venues** are as follows:

- Sex shops and sex cinemas
- Premises which provide relevant entertainment on an infrequent basis. These are defined as premises where-
 - a) no relevant entertainment has been provided on more than 11 occasions within a 12 month period;
 - b) no such occasion has begun within a period of one month beginning with the end of the previous occasions; and
 - c) other premises or types of performances or displays exempted by an order of the Secretary of State.

Premises providing relevant entertainment on an infrequent basis will continue to be regulated under 2003 Act.

Requirement for a licence

3. Any person wishing to operate a sex establishment as defined by Schedule 3 requires a sex establishments licence, unless the requirement for a licence has been waived by the appropriate authority.
 - 3.1 A licence would normally be granted for a period of one year, however the Authority may exercise its discretion to issue a licence for a shorter period if deemed appropriate.
 - 3.2 South Cambridgeshire District Council may, upon application, waive the requirement for a licence in any case where it considers that to require a licence would be unreasonable or inappropriate.
 - 3.3 Waivers may be granted to;
 - Medical book shops
 - Sex clinics
 - Cases where the requirement for a licence is considered by the Authority as borderline i.e. a nude scene in a burlesque show
 - Educational Establishments as part of a recognised educational curriculum
 - 3.4 Each application for a waiver will be considered on its individual merits, however, any establishment that would normally require licensing under the provisions of the 1982 Act is unlikely to be granted a waiver other than in exceptional circumstances.
 - 3.5 In order for a waiver to be considered an applicant must provide the basic information included in the application form, and any other information that the authority may reasonably require in order to make it's decision.

- 3.6 A waiver may be for such period as the Authority thinks fit. Where South Cambridgeshire District Council grants an application for a waiver, notice will be given to the applicant stating that it has granted the application. The Authority may at any time give a person who would require a licence but for a waiver notice that the waiver is to terminate on such date not less than 28 days from the date on which it gives the notice as may be specified in the notice.
- 3.7 Spontaneous entertainment does not require a sex establishment licence. *'Where activities that would otherwise be considered to involve the provision of relevant entertainment take place, but are not provided for the financial gain of the organiser or entertainer, such as spontaneous display of nudity or a lap dance by a customer or guest, the premises will not be considered a sexual entertainment venue by virtue of those circumstances alone. This is because the relevant entertainment must be provided for the financial gain of the organiser or entertainer. However, it should be noted that an organiser may be considered to have provided the entertainment where he has permitted the activity to take place, whether expressly or impliedly.'*

Amendments to the Licensing Act 2003

4. Premises holding a sexual entertainment venue licence will not require a premises licence under the 2003 Act unless the premises is carrying on other licensable activities e.g. the sale of alcohol or the provision of regulated entertainment.
- 4.1 Live music or the playing of recorded music which is integral to the provision of relevant entertainment, such as lap dancing, for which a sexual entertainment licence is required, is specifically excluded from the definition of regulated entertainment in the 2003 Act.

Grant/Renewal/Transfer/Refusal of a Licence

5. South Cambridgeshire is a rural area comprising of over 100 villages, in which our communities live and work. Many of the localities falling within the area can be described as family residential, leisure, parks and farming land.
- 5.1 In determining an application relating to a Sex Establishment licence the Authority will assess the application on its individual merits having regard to the content of this policy, the relevant legislation and any relevant guidance that may be issued by central Government.
- 5.2 Where it is necessary for the Authority to depart substantially from this policy, clear and compelling reasons for doing so will be given. Only a Licensing Officer and Appeals Sub-Committee may authorise a departure from the policy if it is felt appropriate for a specific application.
- 5.3 No specific areas within the district have been identified as exclusion zones for the purposes of applying for a sex establishment licence. In general the authority would discourage applications for areas it considers to be inappropriate, such as premises in close proximity to schools, places of

worship, retirement establishments, community premises or areas where a premises of this nature would be inappropriate having regard to the character of the relevant locality.

- 5.4 In addition the Authority will consider public safety issues when determining whether an area is appropriate; for example areas that attract a high percentage of female, elderly or young users may be deemed as inappropriate. Where the Authority receives an application, which it considers to be within close proximity to those identified in para 5.3, it will not be automatically refused. Applications presenting genuinely exceptional circumstances will be considered on their individual merits.
- 5.5 Further consideration to grant a licence will be given where a premises, as defined by the 1982 Act, wishes to display a high profile exterior frontage and/or wishes to depict external nude images. Any decision to depart from the authorities standard conditions will be referred to licensing committee for final approval.
- 5.6 An applicant must be a fit and proper person to hold a licence in determining suitability for a new licence, or a transfer of an existing one, the Authority will take the following into account:
- Previous relevant knowledge and experience of the applicant;
 - The operation of any existing or previous licence(s) held by the applicant, including any licence held in any other area.
 - Any report about the applicant and management of the premises received from statutory objectors.
- 5.7 Whilst every application will be considered on its individual merits the Authority will be unlikely to grant an application from any person, or for the benefit of any person, with unspent criminal convictions.
- 5.8 The authority shall not grant a licence;
- a) To a person under the age of 18
 - b) to a person who is disqualified from making an application by reason of having been convicted of an offence or for any of the matters included in paragraph 17(3)
 - c) to a person, other than a body corporate, who is not resident in the United Kingdom or was not so resident through the period of six months immediately preceding the date when the application was made; or
 - d) to a body corporate which is not incorporated in the United Kingdom; or
 - e) to a person who has, within a period of 12 months immediately preceding the date when the application is made, been refused the grant or renewal of a licence , unless the refusal has been reversed on appeal.
- 5.9 Applications may be refused on grounds relating to an assessment of the “relevant locality”. A licence may be refused if either, at the time the application is determined the number of sex establishments, or sex establishments of a particular kind, in the relevant locality is equal to or exceeds the number that the authority considers appropriate for that locally; or that a sex establishment would be inappropriate having regard to the character of the relevant locality, the use to which any premises in the vicinity

are put or the layout, character or condition of the premise. Nil may be the appropriate number.

- 5.10 This Authority considers the 'relevant locality' to mean the area which surrounds the premises specified in the application; and in accordance with legislation does not seek to further define any precise boundaries or markings.
- 5.11 A decision to determine the number of sex establishment venues appropriate for this particular area has not been made, however this may be subject to review.
- 5.12 Applications for a premise licence may be refused where the Authority is not satisfied that the application has been advertised in accordance with requirements of the Act. (APPENDIX C).
- 5.13 The Authority may refuse to accept an application where it considers that relevant information has been omitted or an application is incomplete.
- 5.14 In considering any application for the grant, renewal or transfer of a licence the authority will have regard to any observations submitted by the Chief Officer of Police and those persons meeting the requirements of para 6 below.
- 5.15 Where the Authority refuses to grant, renew or transfer a licence, notice of the reasons why will be sent in writing to the applicant within seven days.

Objections

- 6. The Authority will have regard to objections submitted within the prescribed timescales as set out in Sch 3 Para 10(15) of the 1982 Act Legislation imposes no pre-qualifications on who may be objectors, or whether objectors are likely to be affected by the operation of an establishment. As such the authority will consider the views of any person or corporate persons that are submitted in writing. The Act imposes no constraint on the subject matter of objections, however South Cambridgeshire District Council may give consideration to the weight that should be given to objections considered as vexatious, malicious or frivolous. If doubt arises over the relevance/validity of an objection, the final decision on whether to accept the objection will be made by the Licensing Officer.
- 6.1 The Authority will notify applicants of any objections made within the prescribed advising period. The authority will not without the consent of the person making the objection reveal his/her name or address to the applicant at this stage.
- 6.2 Where a hearing is required to determine an application, it is the Policy of this Authority to disclose the names and address of objectors unless there are clear reasons to depart from the Policy. The Licensing Officer will make the final decision on whether details of objectors are to be disclosed.
- 6.2 Licensing Sub-Committee will consider all applications where there are relevant representations.

Notification

7. The Authority will endeavour to notify the following partner authorities of accepted applications made within two working days of receipt;
 - Cambridgeshire Constabulary
 - Planning
 - Environmental Health
 - Parish Council
 - Local Cllr
 - Women's Aid (Cambridge)
 - Cambridgeshire Fire Authority

Hearing/Appeal

8. The Authority will give applicants the opportunity of appearing before the Licensing Committee or Sub-Committee before a decision is made to refuse the grant/renewal/transfer of a licence.
 - 8.1 Where the Authority is required to determine an application by reference to a Licensing and Appeals Sub-Committee, the applicant and objectors will be advised of the date, time and venue of hearing.
 - 8.2 In preparation for the hearing, all parties will receive a copy of the Licensing Officer's report prior to the hearing. The report will contain a summary of the application, objections and any other relevant information.
 - 8.3 At the hearing, all parties will have the opportunity to address the Sub-Committee and ask questions of all parties that they feel relevant to the determination process.
 - 8.4 The Sub-Committee will communicate their decision at the end of the hearing and all parties will receive written confirmation of the decision within seven days.
 - 8.5 Whilst the Act does not stipulate a timescale for hearing applications where objections have been submitted and accepted, South Cambridgeshire District Council aims to determine an application within 28 days, from the last day of advertising.
 - 8.6 Applicants have a further right of appeal to a Magistrates Court within 21 days from the date of the decision.
 - 8.7 The 1982 Act strictly limits who can appeal to Magistrates Court, and the matters about which they can appeal. The Act affords rights of appeal to the industry only. The decisions against which a right of appeal lies are refusals of grants, renewals, transfers or variations, the imposition of conditions and also revocations.

Enforcement

9. Prior to pursuing enforcement action the Licensing Department will have regard to the Environmental Health Enforcement Policy in place and consult with any partners as deemed appropriate.
- 9.1 In pursuing the objectives in para 1, the Authority will operate a proportionate and reasonable enforcement regime.
- 9.2 The responsibility for the overall supervision of Sex Establishment Licensing lies with the Head of Licensing and Cambridgeshire Constabulary.

Consultation

10. In developing this policy South Cambridgeshire District Council will consult with the following individuals and partner agencies;
 - Cambridgeshire Police
 - South Cambridgeshire District Council Planning Department
 - South Cambridgeshire District Council Environmental Health Department
 - Parish Council
 - Members
 - Woman's Aid (Cambridgeshire)
 - Public
 - Cambridge Fire & Safety

The consultation period will commence on 1st November 2010 and run for a period of 12 weeks (ending 21st January 2011), where upon receiving all responses, any necessary amendments will be made to the policy prior to it's final adoption.

Amendments to Policy

11. Any significant future amendment to this policy will only be implemented after further consultation with the individuals and partner agencies listed in para10.

All such amendments to this Policy will be undertaken in accordance with the Authorities Constitution.

For the purpose of this section, any significant amendment is defined as one that:

- a) is likely to have a significant financial effect on the licence holders, or
 - b) is likely to have a significant procedural effect on the licence holders, or
 - c) is likely to have a significant effect on the community.
- 11.1 Any minor amendments to this Policy may be authorised by the Licensing Officer and undertaken in accordance with the Authorities Constitution.

- 11.2 The Authority maintains the right to review the policy as deemed necessary by the Licensing Officer, Licensing Committee, or as required due to legislative changes and Government guidance.

Conditions

12. This policy provides for a set of “standard conditions” to be attached to each licence granted, renewed or transferred by the authority unless they have been expressly excluded or varied. (Appendix D). Further conditions may be attached to individual licences where the authority deems it necessary. The standard conditions are also applicable to “Sex Establishments”, “Sex Cinemas”, “Sex shops” and premises involved with the sale/supply of “Sex Articles”.
- 12.1 The Authority will seek to avoid duplicating licence conditions where a premise holds licences under both the 2003 Act and Schedule 3. Furthermore the Authority will endeavour to avoid imposing conditions on either licence that are contradictory to one another.

Integration with Council Strategies

13. When considering and reviewing this policy the Authority will consider local and regional strategies and policies including Crime Prevention, Equality and disabled discrimination law. However it recognises the need to avoid, so far as possible, duplication of existing legislation and other regulatory regimes that place obligations on employers and operators such as The Health and Safety at Work Act 1974, The Environmental Protection Act 1990, Children Act 2004, Discrimination legislation and the Regulatory Reform (Fire Safety) Order 2005.
- 13.1 The Authority is aware of its obligations under the Race Relations Act 1976 as amended with the Authorities Race Equality Scheme and will have due regard to the need to eliminate unlawful discrimination; and to promote equality of opportunity and good relations between persons of different racial groups.

Definitions

14. Term	Definition
The <i>Authority</i>	South Cambridgeshire District Council
The “2009 Act”	Policing and Crime Act 2009
“Section 27”	Section 27 of the Policing and Crime Act
“Schedule 3”	Schedule 3 to Local Government (Miscellaneous Provisions) Act 1982
The “1982 Act”	Local Government (Miscellaneous Provisions) Act 1982
The “2003 Act”	Licensing Act 2003
“Premises”	includes any vessel, vehicle, stall or premises (which will include any building, any part thereof, forecourt, yard or storage place in connection with any building) but does not include a private dwelling to which the public are not admitted. (Note that this is not an exclusive definition and includes a touring strip show performing within a circus tent or marquee).
“Licence Holder”	A person who holds a Sex Establishment Licence under the Act
“The Policy”	South Cambridgeshire District Council’s Sex Establishment Policy
“Display of Nudity”	in the case of a woman, means exposure of her nipples, pubic area, genitals or anus.
“Organiser or entertainment”	<p>The ‘organiser’ means any person who is responsible for the organisation or management of the relevant entertainment or the premises at which the relevant entertainment is provided. In most circumstances, this will refer to the manager of the premises, but could also refer to someone who is responsible for organising the relevant entertainment on behalf of the person responsible for the management of the premises.</p> <p>The ‘organiser’ must be someone who is in a position to responsibility over the provision of the relevant entertainment and should not be interpreted to mean a member of staff who is merely employed to work during the provision of relevant entertainment. It is only necessary for one person to hold a sexual entertainment venue licence for premises, even if there is more than one person who is responsible for the organisation or management of the relevant entertainment or the premises.</p>

“Sex Establishment” means a sex cinema or a sex shop.

“Sex Cinema” means any premises, vehicle, vessel or stall used to a significant degree for the exhibition of moving pictures, by whatever means produced, which—

(a) are concerned primarily with the portrayal of, or primarily deal with or relate to, or are intended to stimulate or encourage—

(i) sexual activity; or

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

(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.

(2) No premises shall be treated as a sex cinema by reason only—

(a) if they are licensed under Article 3 of the Cinemas (Northern Ireland) Order 1991, of their use for a purpose for which a licence under that Article is required; or

(b) of their use for an exhibition to which Article 8 of that Order (certain non-commercial exhibitions) applies given by an exempted organisation within the meaning of Article 8(6) of that Order.

Meaning of “sex shop”
and “sex article”

“sex shop” means any premises, vehicle, vessel or stall used for a business which consists to a significant degree of selling, hiring, exchanging, lending, displaying or demonstrating—

(a) sex articles; or

(b) other things intended 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.

(2) No premises shall be treated as a sex shop by reason only of their use for the exhibition of moving pictures by whatever means produced.

(3) In this Schedule “sex article” means—

(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 to which sub-paragraph (4) applies.

(4) This sub-paragraph applies—

(a) to any article 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

(b) to any recording of vision or sound, which,

(i) 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

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

Appendix A

PDF file – paper copy attached.

Appendix B

Resolution to be made in November to be attached.

Appendix C

(7) An applicant for the grant, renewal or transfer of a licence under this Schedule shall give public notice of the application by publishing an advertisement in such newspapers circulating in the district of the council as the council may require.

(8) The applicant shall supply a copy of every advertisement published under sub-paragraph (7) to the council.

(9) The publication shall not be later than 7 days after the date of the application.

(10) Where the application is in respect of premises, notice of it shall in addition be displayed for 21 days beginning with the date of the application on or near the premises and in a place where the notice can conveniently be read by the public.

(11) Every notice under this paragraph which relates to premises shall identify the premises.

(12) Every such notice which relates to a vehicle, vessel or stall shall specify where it is to be used as a sex establishment.

Appendix D

South Cambridgeshire District Authority

Regulations made pursuant to paragraph 13 of schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 prescribing standard conditions applicable to licences for sex establishments

In this licence the following words and/or expressions shall have the meaning hereby respectively assigned to them. In these conditions the following expressions shall have the following meanings:

- “The Authority” – South Cambridgeshire District Council.
Licensing section, Cambourne Business Park, Cambourne, CB3 6EA
- “Sex Establishment”, “sex cinema”, “sex shop”, and “sex article” shall have the meanings given to them in Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982.

- “Premises” - any vehicle, vessel, stall or premises (which shall include any building, any part thereof, forecourt, yard or storage place in connection with any building), which is the subject of a licence, granted under Schedule 3 aforesaid.

Standard Conditions for Sex Establishment Licence

South Cambridgeshire District Council reserve the power to alter, modify or dispense with these conditions as it sees fit at any time.

Management of the Premises

1. The Licensee or some responsible person nominated by him and approved in writing by the Authority for the purpose of managing the sex establishment (“the manager”) shall have personal responsibility for and be present on the Premises at all times when the Premises are open to the public.
2. Where the Licensee is a body corporate or an incorporated body, any change of director, company secretary or other person responsible for the management of the body shall be notified in writing to the Authority within 14 days of such change and such written details as the licensing authority may require in respect of the change of personnel shall be furnished within 14 days of a request in writing from the Authority.
3. A copy of the licence and any special conditions attached shall at all times be displayed in a conspicuous position on the Premises, so as to be available for inspection by the police, the fire authority, and authorised officers of the Authority or the local trading standards authority.
4. The name of the person responsible for the management of the Premises, whether the Licensee or the manager, shall be displayed in a conspicuous position within the Premises throughout the period during which he is responsible for the conduct of the Premises.
5. The Licensee shall retain control over all parts of the Premises and shall not let, licence or part with possession of any part. The Authority must be notified within 24 hours in the event that any part of the Premises is affected by the

termination of a lease or other event affecting the Licensee's control of the Premises.

6. The Licensee shall ensure that the public is not admitted to any part of the Premises that has not been licensed.
7. No person under the age of 18 shall be admitted to the Premises and a notice to this effect, in accordance with condition 19, shall be displayed on the outside of the Premises.
8. Neither the Licensee nor any employee or agent shall personally solicit custom for the sex establishment outside or in the vicinity of the Premises.
9. The Licensee shall ensure that during the hours that the Premises are open for business every employee wears a badge of a type approved by the Authority indicating his name and that he is an employee.
10. The Licensee shall maintain a daily register in which shall be recorded the name and address of any person who is to be responsible for managing the Sex Establishment in the Licensee's absence and the names and addresses of those employed in the Sex Establishment. The Register is to be completed each day within thirty minutes of the Sex Establishment being opened for business and is to be available for inspection by the police and by authorised officers of the Authority.

Opening of the Premises

11. The Premises shall not, without the written consent of the Authority, be opened and used for the purposes for which the licence is granted except during the following hours:

Monday – Saturday 9 am – 6 pm

12. The Premises shall not, without the written consent of the Authority, be opened and used for the purposes for which the licence is granted on Sundays, Good Friday, or Christmas Day.

Conduct of the Premises

13. No change from a sex cinema to a sex shop or a sex shop to a sex cinema shall be made without the written consent of the Authority.
14. No sex articles or other things intended for use in connection with, or for the purpose of stimulating or encouraging sexual activity or acts of force or restraint which are associated with sexual activity shall be displayed, sold, hired, exchanged, loaned or demonstrated in a sex cinema.
15. A sex shop shall be conducted primarily for the purpose of the sale of goods by retail.
16. No film or video recording (or computer game) shall be exhibited, sold or supplied unless it has been passed by the British Board of Film Classification and bears a certificate to the effect.
17. No moving picture shall be provided on display at the licensed premises unless it is that of advertising videos on a loop system or allowing a prospective purchaser a short preview, being no longer than 3 minutes in length of films upon request.

External Appearance

18. The holder of a sex establishment licence may exhibit on the outside of the Premises the name of the business and a notice, capable of being enclosed by a rectangle one square metre in area or such other size as agreed with the Authority, consisting of the words 'Licensed Adult Establishment'.
19. The holder of a sex establishment licence shall exhibit on the outside of the Premises a notice, capable of being enclosed by a rectangle one square metre in area, of the times of opening and of the words 'No person under the age of 18 allowed. People under the age of 21 will be required to show proof of their age.'
20. (a) No other words, advertisement, letter, model, sign, placard, board, notice sign, device, representation, drawing, writing, display or any other matter,

shall be displayed on the outside of the Premises or in the vicinity of the Premises, except those mentioned in conditions 18 and 19 or otherwise approved by the Authority in writing;

20.(b) No external loudspeakers may be installed.

21. The windows and openings of the Premises shall be of a material or covered with material, which will render the interior of the Premises invisible to passers-by.

State, Condition and Layout of the Premises

22. Notwithstanding the Licensee's duties under the Health and Safety at Work etc Act 1974 and related legislation and his obligations under any lease or other agreement for the use of the Premises, he shall maintain the Premises in good repair and condition.

23. External doors shall be closed at all times other than when persons are entering or leaving the Premises. The external doors shall be fitted with a device to provide for their automatic closure and such devices shall be maintained in good working order.

24. The Premises shall be fitted with an inner entrance door or screen so that no part of the interior of the Premises or any of the contents of the Premises shall be visible when persons are entering or leaving the Premises.

25. No access shall be permitted through the Premises to any other Premises adjoining or adjacent except in the case of emergency.

26. Lighting shall be in operation continuously during the whole of the time that the Sex Establishment is open to the public.

27. Alterations or additions, either internal or external, shall be not be made to the Premises without prior written consent from the Authority.

28. Any facilities for previewing films, video recordings or other similar material shall be physically separated from the display area of the shop in such a

manner that no material being displayed by way of preview shall be visible or audible outside the preview area.

29. No fastenings of any description shall be fitted upon any booth or cubicle within the Sex Establishment nor shall more than one person (including any employee) be present in any such booth or cubicle at any time.

Safety and Security

30. The Licensee shall submit details of the steps to be taken, for the approval of the authority, to check the age of customers entering the shop who appear to be between the ages of 18 and 21 in order to ensure that they are not younger than 18. He/she shall ensure the approved steps are implemented.
31. The Licensee shall ensure a closed-circuit television system is installed internally and externally to the satisfaction of the Authority.

Goods Available in Sex Establishments

32. All Sex Articles as defined in Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 and other things displayed for sale, hire, exchange or loan within a Sex Establishment shall be clearly marked to show to persons who are inside the Sex Shop the respective prices being charged.
33. All printed matter, films and video films offered for sale, hire, exchange or loan shall be openly displayed and available for inspection prior to purchase and a notice to this effect is to be prominently displayed inside the Sex Establishment. (This regulation does not require that films or video films be exhibited (played) to customers).
34. The Licensee shall without charge display and make available in the Sex Establishment such free literature on counselling on matters related to sexual problems as may be published by the FPA (formerly the Family Planning Association) and by such other similar organisations from time to time and in particular any such material related to AIDS. Such literature is to

be displayed in a prominent position approved by the Authority adjacent to all cash collection points in the Sex Establishment.

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SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

REPORT TO:	Licensing Committee	21 October 2010
AUTHOR/S:	Executive Director, Operational Services / Environment Services Manager	

DRAFT STREET TRADING LICENSING POLICY**Purpose**

1. To seek approval of the draft Street Trading Licensing Policy, as attached at **APPENDIX A** for consultation purposes, as South Cambridgeshire's formal Statement of Licensing Policy for Street Trading Consents licensed under Schedule 2 of the Local Government (Miscellaneous Provisions) Act 1982.
2. This is a key decision as it raises new issues of policy.

Recommendation

3. That the Licensing Committee approves the draft Licensing Policy as attached at **Appendix A** in order to commence a consultation process.

Reasons for Recommendation

4. To enable the Council to be transparent in its decision making process.

Background

5. South Cambridgeshire District Council adopted the provisions of Section 3, Schedule 4 in 1990 and in doing so introduced a number of mandatory conditions but no formal policy detailing how the Council would deal with applications and enforcement.
6. At present there are approximately 25 traders within South Cambridgeshire that have annual Street Trading Consent licences, all of which will be consulted.
7. There is no statutory requirement for a local authority to adopt a policy on the licensing of street trading consents, however, it is the view of the licensing officer that it would be best practice to consider such a policy.
8. Attached as **APPENDIX A** is a draft policy in relation to the licensing of street traders. It is the officer's view that such a policy would provide guidance to prospective applicants and members of the public and would assist with consistency of decision making. The report requests that the authority consult in relation to a draft policy.
9. The policy will remain a document that continually develops to reflect the changing nature of the street trading environment, Government initiatives and the needs of local businesses and residents alike.

Considerations

10. In order to proceed with the final policy it will be forwarded in the following manner:

- a. A Licensing Committee will be held in late February 2011 to consider and recommend to the Leader at his Portfolio Holder meeting on 31 March 2011 any amendments to the draft policy as a result of the consultation process.
- b. The Leader will make a recommendation to Council at its meeting on 14 April 2011 to approve and adopt the policy. The policy will then form the basis of any decision taken in respect of applications or enforcement under Schedule 3, Section 4 of the Local Government Miscellaneous provisions Act 1982 by officers or any Committee or Sub-committee involved in licensing decisions.
- c. The statement of Licensing Policy will be open to review at any time in the future should it prove necessary to do so

Options

11. The report requests the authority to consult in relation to a draft policy. The alternative option would be not to progress such a policy or to make amendments to the draft policy prior to consultation.

Implications

12. Financial	None arising from this report
Legal	The adoption of a policy contributes to a transparency and consistency of decision making
Staffing	None arising from this report
Risk Management	The introduction of a policy reduces the risk of future legal challenge against decisions made under the Act
Equality and Diversity	The consultation process will comply with the Council's Equal Opportunities Policy
Equality Impact Assessment completed	Awaiting completion
Climate Change	N/A

Consultations

13. As part of the consultation process, officers will consult with a broad range of people including but not exclusively:
 - Police
 - Fire Authority
 - Trading Standards
 - Environmental Health
 - Planning
 - Health & Safety
 - Parish Councils
 - Existing Licence holders
 - Ward Councillors
14. The consultation document will also available for general comment via the Council's website and at reception.

Effect on Strategic Aims

15.	Commitment to being a listening council, providing first class services accessible to all.
	Consultation will take place for a twelve-week period allowing relevant parties to raise any issues regarding the revised policy for consideration by the authority.
	Commitment to ensuring that South Cambridgeshire continues to be a safe and healthy place for all.
	The policy clearly states the objectives of the Council.
	Commitment to making South Cambridgeshire a place in which residents can feel proud to live.
	The policy clearly states the objectives of the Council.
	Commitment to assisting provision for local jobs for all.
The policy clearly states the objectives of the Council.	
Commitment to providing a voice for rural life.	
The Licensing Committee (or a sub Committee appointed by the Committee) will determine applications where any relevant representations have been made against applications.	

Conclusions/Summary

16. The adoption of Licensing policy in respect of Street Trading Consent under Schedule 3 section 4 of the 1982 Act will, in particular:
- Allow local people to understand the processes involved in making an application for a street trading licence and how to make representations either for or against such applications.
 - Give clear and transparent guidelines to prospective applicants, enabling them to understand the stance of the Council in respect of such applications.
 - Give a clear framework to officers under the scheme of delegation when determining applications.

Background Papers: the following background papers were used in the preparation of this report:

Section 3 Schedule 4 of Local Government (Miscellaneous Provisions) Act 1982

Contact Officer: Myles Bebbington, Licensing Officer
Telephone: (01954) 713132

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**SOUTH CAMBRIDGESHIRE
DISTRICT COUNCIL**

**DRAFT POLICY
STREET TRADING**

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PREAMBLE

The overarching objectives of the policy are to;

- promote the Authorities visions and values,
- protect the rights and health and safety of the general public, workers, residents, small businesses, minority and vulnerable groups,
- and to ensure consistent and transparent decision making.

- 1.1 This document outlines the policy, which will guide South Cambridgeshire District Council when considering applications for licences. The Authority will determine each application on its' individual merits and this policy should not be regarded or interpreted as an indication that any requirement of the relevant law may be overridden.
- 1.2 The Local Government (Miscellaneous Provisions) Act 1982 (1982 Act) Schedule 4 is the licensing regime to control Street Trading consent within determined locations within the district of South Cambridgeshire

2. Purpose

- 2.1 The Council's street trading policy is to create a street trading environment which complements premises-based trading, is sensitive to the needs of residents, provides diversity and consumer choice, and seeks to enhance the character, ambience and safety of local environments.

3. What is Street Trading?

- 3.1 Street trading means selling, exposing or offering for sale any article in a street. The term 'street' includes any road, footway or other area to which the public has access without payment.
- 3.2 South Cambridgeshire District Council has adopted Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 for parts of its area and has designated all streets in the named area as 'consent streets' for street trading purposes. The adoption was advertised in the Cambridge Evening News in 1990.
- 3.3 The effect of this designation is that street trading in any street within the villages adopted by South Cambridgeshire District Council (APPENDIX A) is prohibited, subject to legal exemptions, without first obtaining a street trading consent from the Council.

4. Exemptions from the need to obtain Consent

4.1 Some types of trade are legally exempt from the need to obtain a street trading consent. These include:

- a person trading under the authority of a pedlars' certificate granted under the Pedlars Act 1871 – by the Police Authority
- trade carried out by roundsmen e.g. milkmen
- trade carried on at a petrol filling station

5. Street Trading Consents for which fees are not payable

5.1 South Cambridgeshire District Council will not require the payment of fees for the following Street trading activities:

- fetes, carnivals or similar community based and run events
- non-commercial or charitable events
- farmers markets (producer-managed marketplace for local producers to sell their own produce direct to local people)
- sales of articles by householders on land contiguous with their homes

6. Site Assessment

6.1 The Council will identify suitable 'pitches' for street trading from information given by applicants.

6.2 Consents may also be issued to mobile artists who sketch or paint, sell their own work and move from location to location.

6.3 In determining whether to create a consent street trading pitch the Council will have regard to:

- any effect on road safety, either arising from the site of the pitch or from customers visiting or leaving
- any loss of amenity caused by noise, traffic or smell
- existing Traffic Orders e.g. waiting restrictions
- any potential obstruction of pedestrian or vehicular access
- any obstruction to the safe passage of pedestrians
- the safe access and egress of customers and staff from the pitch and immediate vicinity
- any Planning Implications for change of use

7. Consultations

7.1 Before a new pitch is created or at such a time as the status of any existing pitch is being reviewed the Council will consult and seek written observations from:

- occupiers of premises immediately adjacent and opposite
- ward Councilors
- Parish Council
- Cambridgeshire Constabulary

- Development Control
- Highways & Transportation/County Council
- existing holders of street trading consents in the immediate area.

7.2 Any objection from consultees will be assessed against the criteria in 6.3 above.

7.3 Any proposed change to standard conditions (APPENDIX B) will be consulted with consent holders and others, if relevant.

8. Nature of Goods and Trading Hours

8.1 The nature of goods that may be sold from any pitch will be specified in the consultation process. Any subsequent substantial change will be subject to the level of consultation in 7.1 above.

8.2 The Council would not normally grant consent for the sale of goods or services which conflict with those provided by nearby shops.

8.3 Goods will normally consist of food, drinks, fresh flowers, Fresh fish, ice cream or soft drinks. Other types including services will be considered on a pitch by pitch basis and have particular regard to local needs shopping, product/ service diversity and balance.

8.4 Street trading hours will normally mirror those of shops in the immediate vicinity. In the case of hot food takeaways trading hours will be determined on a pitch-by-pitch basis.

8.5 Any Food vans wanting to sell goods after 23.00 hours are required to hold a Premises License under the Licensing Act 2003, for the supply of late night refreshment.

8.6 The design and appearance of the stall, barrow, van or cart etc. used must be agreed by the Council's Licensing Officer.

9. Issue of Street Trading Consents

9.1 Street trading consents will normally be issued for a period of twelve months.

9.2 Consents will be issued for a minimum of two days per week, unless the applicant can provide an alternative scheme acceptable to the Licensing Officer.

9.3 The Council reserves the right to review a consent status area at any time subject to or at the request of a consultee detailed above or if any byelaw or legislative changes require change.

9.4 Fees for consents are to be paid in full in advance, or in exceptional circumstances in the case of traders on "A" roads quarterly. Renewal

payments for “A” road traders can be made on a quarterly basis and will be due on or before the following dates:

- 1 April
- 1 July
- 1 October
- 1 January

- 9.5 Failure to maintain payments as above will result in the consent not being renewed. Once a licence has lapsed any subsequent application will be treated as a new application.
- 9.6 Where consent has expired due to non payment the pitch will become available to others to apply for immediately.
- 9.7 Applications will be determined by the Licensing Officer. Available pitches will be offered to applicants on a first come first served basis.
- 9.8 Consent cannot be issued to a person under the age of 17 years. An application may also be refused if the applicant is unsuitable to hold the consent by reason of having been convicted of an offence or for any other reason.

10. Fee Structure

- 10.1 The fee structure will primarily reflect pitch location, trading days and hours requested.
- 10.2 The Licensing Officer will consult with the Licensing Committee to set fees and to annually review the fee structure.
- 10.3 Where a street trading consent pitch has to be withdrawn for a temporary period for reasons beyond the direct control of South Cambridgeshire District Council, i.e roadworks, road relaying etc no fee in whole or part of shall be refundable.

11. Conditions and Enforcement

- 11.1 Standard conditions (APPENDIX B) will be attached to every street trading consent detailing the holder's responsibilities to maintain public safety, avoid nuisance and generally preserve the amenity of the locality.
- 11.2 Specific conditions will also be attached such as the days and hours when street trading is permitted, the goods, which may be sold, and the size of the pitch.
- 11.3.1 Failure to comply with conditions may lead to revocation or non-renewal of consent.
- 11.4 Persons trading without a consent and who are not exempt (see 4.1

above for examples) will be the subject of enforcement action in accordance with the South Cambridgeshire District Council Enforcement Policy (APPENDIX C). This will include any person who holds a certificate granted under the Pedlars Act 1871, but who fails to operate in accordance with the Act.

- 11.5 Where consent status is revoked due to non compliance of licensing conditions or where the Council determines that the status of a consent pitch is to be withdrawn, no part of the fee or other associated costs shall be refundable.

12. Social Inclusion

- 12.1 Within this policy the District Council will consider local and regional strategies and policies including the Local Community Strategy, Crime Prevention, Tourism and cultural strategies. However it recognises the need to avoid, so far as possible, duplication of existing legislation and other regulatory regimes that place obligations on employers and operators such as The Health and Safety at Work Act 1974, The Environmental Protection Act 1990, Children Act 2004, Disability Discrimination legislation and the Regulatory Reform (Fire Safety) Order 2005.
- 12.2 The Council is aware of its obligations under the Race Relations Act 1976 as amended with the Council's Race Equality Scheme and will have due regard to the need to eliminate unlawful discrimination; and to promote equality of opportunity and good relations between persons of different racial groups.

13. General

- 13.1 This policy will complement and inform other Council initiatives including those on street markets and life in the public realm.
- 13.2 This policy will be the subject of periodic monitoring and review.
- 13.3 This policy will inform the detailed conditions attached to every street trading consent.
- 13.4 This policy will be applied in a manner that is consistent with the Council's equalities policies.
- 13.5 This Policy does not override any requirements or powers conferred by the Local Government (Miscellaneous Provisions) Act 1982, Schedule 4. Where any conflict arises the wording within legislation shall take precedence.

APPENDIX A

South Cambridgeshire Hall
 Cambourne Business Park
 Cambourne
 Cambridge
 CB23 6EA

t: 03450 450 063
 f: 01954 713248
 dx: DX 729500 Cambridge 15
 minicom: 01480 376743
www.scambs.gov.uk

**STREET TRADING APPLICATION FORM**

What type of application is this? **NEW/ RENEWAL**

First Grant	Renewal
Vehicle Change	Trailer Change

A. APPLICANT'S PERSONAL DETAILS:

Title: (Mr/Mrs/Miss)		Surname:	Forename:
Address:			
DOB:		Tel No:	
NI number:		DVLA Driver Licence Number:	

B. DRIVER'S PERSONAL DETAILS: (if different from applicant)

Title: (Mr/Mrs/Miss)		Surname:	Forename:
Address:			
DOB:		Tel No:	
NI number:		DVLA Driver Licence Number:	

C. VEHICLE DETAILS:

Vehicle Registration No:	Trading:	Towing:	Plate No:
Make:		Model:	
Colour:		Photographs of trading vehicle attached:	Front view Side view YES / NO
Vehicle owner if different from above:			

Address at which trailer will normally be kept:	

Trailer (if applicable)

Make:		Model:	
Colour:		Photographs of trading vehicle attached:	Front view Side view YES / NO
Vehicle owner if different from above:			
Address at which trailer will normally be kept:			

D. TRADING DETAILS:

Trading Name:	
Type of goods traded:	
Address or location at which trading will take place (specific sites/streets required):	
Days of the week and times of trading:	

E. ICE CREAM TRADERS ONLY

Name of Supplier:	
Address of Supplier:	
Telephone Number of Supplier:	
Contact Name at Supplier Company:	

Signature:

F. DECLARATION OF CONVICTIONS, FIXED PENALTIES & FORMAL CAUTIONS:

1. Have you ever been refused a Street Trading Consent or Street Trading Licence or had such a Consent or Licence revoked or suspended?
2. If YES, please give details including the local authority, date and reason:

YES / NO

.....

3.(a) You must disclose **ALL** convictions for offences (including traffic offences) in the spaces on the page opposite, unless that conviction is regarded as 'spent' by the Rehabilitation of Offenders Act 1974. 'Spent' convictions need not be disclosed to the council.

(b) As a general guide **ALL** convictions must be disclosed (including traffic offences) unless the conviction falls into one of the following categories:

- I. Imprisonment for a term exceeding 6 months not exceeding 30 months over 10 years ago
- II. Imprisonment for a term not exceeding 6 months over 7 years ago
- III. A fine (including most traffic offences), probation, community service over 5 years ago
- IV. Conditional discharge, bound over, supervision order over 1 year ago or period of sentence, whichever is longer
- V. Absolute discharge over 6 months ago
- VI. Cashiering, discharge with ignominy, dismissal with disgrace from HM Forces over 10 years ago
- VII. Dismissal from HM forces over 7 years ago
- VIII. Disqualification, disability, prohibition
- IX.
 - c) Formal cautions must be declared for a period of 5 years
 - d) Generally **TRAFFIC OFFENCES** are declarable for a period of **5 years** (because fines are normally imposed) and has nothing to do with removal of endorsements from licences, etc.
 - e) **FIXED PENALTIES** which resulted in an endorsement on your DVLA Driving Licence must be declared for a period of **5 years** from the date of endorsement.
 - f) If you are in any doubt, or your particular sentence is not listed above then ask the advice of the licensing staff or consult a solicitor.
 - g) A sentence exceeding 30 months imprisonment must **always** be declared.
 - h) All requested details must be declared for each offence. Any gaps or vagueness may result in delay to the application.
 - i) The coding system for driving offences may be used if you wish.
 - j) All calculations as to whether or not a conviction is 'spent' are made with reference to the conviction date and **not** the date of the offence.
 - k) The rehabilitation period may be automatically extended by the commission of a further offence during the rehabilitation period in respect of indictable offences.
 - l) **One final word of warning**, do not be tempted to omit an offence because you are not sure it has to be declared or not. Ask the licensing staff. It will be considered a very serious matter and may result in suspension or revocation of your licence.

LIST BELOW ALL THE OFFENCES FOR WHICH YOU HAVE BEEN CONVICTED BY A COURT AND ALL RELEVANT FIXED PENALTIES AND FORMAL CAUTIONS.

COURT (OR POLICE FORCE)	DATE OF CONVICTION OR FIXED PENALTY OR FORMAL CAUTION	OFFENCE(S)	SENTENCE OR ORDER OF THE COURT

Are you or have you ever been subject to the notification requirements of Section 1 of the Sex Offenders Act 1997?

YES / NO

Your attention is drawn to Schedule 4 Paragraph 10(3) of the Local Government (Miscellaneous Provisions) Act 1982 in that :

Any person who, in connection with an application for a street trading consent, makes a false statement which he knows to be false in any material respect, or which he does not believe to be true, shall be guilty of an offence.

DECLARATION

I DECLARE THAT TO THE BEST OF MY KNOWLEDGE AND BELIEF THE ANSWERS GIVEN ABOVE ARE TRUE. IF A CONSENT IS GRANTED I UNDERTAKE TO COMPLY WITH THE CONDITIONS ATTACHED TO THE CONSENT.

I LIST ABOVE ALL OFFENCES FOR WHICH I HAVE BEEN CONVICTED WHICH NEED TO BE DECLARED, AND ALL FIXED PENALTIES AND FORMAL CAUTIONS WHICH BEED TO BE DECLARED.

Usual Signature Date

G. MAKING AN APPLICATION

PLEASE BRING/SEND TO THE LICENSING SECTION:

1. THIS FORM COMPLETED IN FULL
2. EMPLOYEE REGISTRATION FORMS FOR ALL EMPLOYEES
3. 2 IDENTICAL PASSPORT STYLE PHOTOGRAPHS OF YOURSELF AND ANY EMPLOYEES CLEARLY NAMED ON THE REVERSE OF THE IMAGE
4. PROOF OF YOUR NATIONAL INSURANCE NUMBER
5. YOUR DRIVING LICENCE, OR THAT OF THE PERSON WHO WILL TOW YOUR TRAILER
6. 2 COLOUR PHOTOGRAPHS OF THE TRADING VEHICLE TO BE USED FOR THE BUSINESS – FRONT AND SIDE VIEW
7. THE CONSENT FEE
8. PROOF THAT YOU HAVE REGISTERED WITH FOOD HYGIENE SECTION

When completed please sign and date and return the form to:-

South Cambridgeshire District Council
Licesning section
Cambourne Business Park
Cambourne
Cambridgeshire
CB23 6EA.

APPENDIX B

STREET TRADING "CONSENT STREET" MANDATORY LICENCE CONDITIONS

- i) The structure (hereinafter referred to as "the facility") shall be of such size, design and construction as may be approved in writing by the District Council. The facility approved by the District Council shall not be materially altered in external appearance without the prior approval of the District Council.
- ii) There shall be clearly displayed on the facility a notice stating that "this unit is licensed by South Cambridgeshire District Council to trade on the (*INSERT PERMITTED AREA*) licence number :-.
- iii) The facility shall be maintained in good repair and condition.
- iv) All refuse, whether liquid or solid matter, arising from the operation of the facility shall be stored in a proper manner in accordance with details approved by the District Council and removed from the site at the end of each working day. The Consent holder shall provide two litter bins adjacent to their food stall for public use.
- v) The Consent holder shall take all reasonable steps to keep the site free from litter and in particular shall ensure that the two litter bins are emptied and the area around the stall is free of litter at the end of each day's trading.
- vi) No signs or advertisements relating to the facility shall be displayed at the site, or on the approaches thereto, except as may be approved by the District Council after consultation with the Highway Authority.
- vii) No structure, erection or object, other than the facility permitted by this Consent, shall be placed on the site and no works affecting the surface or sub-structure of the highway shall be carried out, except with the prior written approval of the District Council.
- viii) This Consent is personal to the Consent holder to whom it is granted and subject to the District Council's power to vary or revoke the Consent in accordance with the provisions of Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 and shall be valid for a period of up to twelve months from the date on which it is granted.
- ix) Upon the termination or revocation of this Consent, the Consent holder shall forthwith remove the facility and leave the site in a clean and tidy condition.
- x) The Consent holder must hold an appropriate food hygiene qualification or attend a food hygiene training course approved by the District Council within six months of first being licensed.
- xi) Food handlers must wear clean white over-clothing when working in the facility.
- xii) No obstruction of the layby or danger to persons using it or any nuisance or annoyance shall be caused, whether to persons using the layby or otherwise.

APPENDIX C - ENVIRONMENTAL HEALTH ENFORCEMENT POLICY

1. INTRODUCTION

The Cabinet Office and Local Government Association have jointly published an Enforcement Concordat. This sets out a blueprint for fair, practical and consistent enforcement across the Country and South Cambridgeshire District Council has formally adopted the Concordat for all its enforcement based services and in so doing gave a commitment to ensure best practice in enforcement policy and activities. This policy lays out the principles to be adopted by Officers exercising any enforcement function within Health & Environmental Services.

This enforcement policy helps to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens. This is in accordance with the Regulator's Compliance Code. In certain instances the Council may conclude that a provision in the Code is either not relevant or is outweighed by another provision. The council will ensure that any decision to depart from the code will be properly reasoned, based on material evidence and documented.

The primary function of Local Government enforcement work is to protect the citizens, the environment and groups such as consumers and workers. At the same time carrying out enforcement activity in an equitable, practical and consistent manner helps promote a thriving national and local economy. South Cambridgeshire District Council is committed to these aims and to maintaining a fair and safe trading environment. This is reflected in the Health & Environmental Services statement of purpose.

The effectiveness of legislation in protecting society depends crucially on the compliance of those regulated. The Council believes in providing a balanced approach to enforcement, providing help to those who need it, while taking firm action, including prosecution where appropriate. We will, therefore, provide a service which is courteous and helpful and which works with individuals and businesses, wherever possible, to help them comply with the law. Officers will have regard to the needs of people covered by the Council's Vulnerable Adult and Child Protection Policies.

In drafting this policy, the Council has considered the implications of the Human Rights Act 1998 and believes that it is compatible with Convention Rights. The first part of the policy sets out the general principles adopted and is annexed with specialist service specific policies.

1.1 Health & Environmental Services Statement of Purpose

1.1.1 **Objectives** – The objectives of Health & Environmental Services within South Cambridgeshire District Council are to work in partnership with local organisations, businesses and the wider community to:

- ❖ Protect & enhance the environment, now and in the future.
- ❖ Improve on the sense of well being within our existing & future villages, communities and businesses.
- ❖ Safeguard and improve public health.
- ❖ Enhance the quality of life of citizen's generally and for those disadvantaged specifically.
- ❖ Instil a sense of pride in being associated with Environmental Health at SCDC.

1.1.2 Values

- ❖ High quality customer service to the public.
- ❖ Target resources to areas of greatest risk/effect/change.
- ❖ Consult and provide sensible, clear, open, honest and fair decisions.
- ❖ To improve service to the public that represents best value
- ❖ Be professional, consistent & equitable, showing mutual respect towards others.
- ❖ Use common sense.
- ❖ Be responsive and flexible to people's needs.
- ❖ Set standards by which to be judged.

1.2 What do we mean by Enforcement?

The Health & Environmental Services function enforces a wide range of laws, primarily designed to ensure public health and safety and improve the quality of life of citizens. Primary responsibility to abide by these laws rests with us all, as individuals, and we recognise that most people and businesses wish to comply. Effective enforcement is not just about inspection, instruction, licensing or prosecution; it is much

more than this. We will, therefore, provide free information and advice to help people understand legal requirements and will proactively seek to raise awareness of the requirements and good practice.

2. PRINCIPLES OF ENFORCEMENT

Enforcement activities will be guided by the framework principles of good enforcement contained in both the Enforcement Concordat and the Regulator's Compliance Code. This policy is built on the principles of proportionality, consistency, openness and targeting of enforcement action.

2.1 **Proportionately** – The enforcement action taken will be proportionate to the risks posed and to the seriousness of the breach of the law. In coming to a decision we will consider not only the seriousness of the risk to public health and safety, environmental damage or loss of public or residential amenity but also the attitude of the alleged offender. We will also minimise the costs of compliance by ensuring the required action or works are proportionate to the risks.

2.2 **Consistency** – Individuals and businesses with similar legal obligations expect consistency from the Council. This includes any advice given, its response to complaints and other incidents, the use of powers and in decisions on whether to prosecute.

However, consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar ends. Officers are faced with many variables; the level of hazard, the attitude and competence of management and the compliance history may vary. Decisions on enforcement action are a matter of professional judgement and the Officer must exercise discretion, the Council has arrangements in place and will continue to develop them to promote consistency including effective arrangements for liaison with other enforcement authorities. Where applicable we will use the Home Authority/Lead Authority schemes to help further ensure regulatory consistency.

2.3 **Openness** – The public must have confidence in the Council's ability to protect them via effective regulation. This confidence can only be attained if the Council is open in what it does. This means helping them to understand what is expected of them and what they should expect from the Council. It means making clear not only what they have to do but also where it is relevant and what they do not. This entails distinguishing between legal requirements and advice or guidance about what is desirable but not compulsory.

We will:

- (a) provide advice and information in plain language;

- (b) discuss what is required to comply with the law before formal enforcement action is taken, unless urgent action is required, for example to protect the environment, to prevent the destruction of evidence or to protect health and safety; where such urgent action is required a written explanation will be provided as soon as practicable after the event;
- (c) provide a clear explanation (in writing if necessary and/or requested) as to why any action is necessary, when it must be carried out and distinguish between legal requirements and best practice recommendations;
- (d) provide a written explanation on any rights of appeal against formal enforcement action;
- (e) provide contact details, including e.mail and telephone details, to encourage customers to seek advice, information and clarification;
- (f) Officers will identify themselves by name except for surveillance purposes; in any event, if requested Officers will show their identification and provide a means of checking that identity if necessary;
- (g) publicise our complaints service;
- (h) translate letters into other languages and arrange for interpreters, if necessary.

2.4 **Targeting** – Regulatory effort will be directed towards those who are responsible for risk to health and safety or whose activity gives rise to serious risks, where the risks are less well controlled or against deliberate or organised crime. Action will be focused on lawbreakers or those directly responsible for the risk and who are best placed to control it.

The Council has systems in place for prioritising regulatory effort. They include the response to complaints from the public about regulated activities, the assessment of the risks posed by operations and the gathering and acting on intelligence about illegal activity. Business management actions and competence are important. Repeated related incidents or breaches may be an indication of an unwillingness to change behaviour, or inability to achieve sufficient control and may require greater regulatory control from the Council. A relatively low hazard activity or site, poorly managed, has the potential for greater risk to the environment and/or health and safety than a higher hazard activity or site when proper control measures are in place.

Where practicable and appropriate the Council will provide incentives for businesses consistently achieving high levels of compliance i.e. through its Scores on the Doors scheme, lighter touch inspections or

use of alternative inspection regimes. Risk ratings for businesses will be updated regularly to reflect the latest agreed position.

3. **SPECIFIC ENFORCEMENT ACTIVITIES**

3.1 ***Routine/Programme Inspections***

The Officer will state the purpose of the inspection at the start of the visit. At the conclusion of all inspections, the Officer will offer to discuss their findings with the responsible person. Written inspection reports will be issued following all programmed inspections, even in those circumstances where conditions at the time of the inspection were satisfactory.

Revisits will be made to ensure that significant breaches have been remedied and to check on compliance with formal notices once they have expired.

3.2 ***Investigations***

The Environmental Health unit will respond to and, where appropriate, investigate all complaints. The response may vary according to the nature of the allegation and its seriousness. In most circumstances, the identity of the complainant will not initially be disclosed.

3.3 ***Powers of Entry***

Inspection and visits to premises and work activities will normally be made without prior warning. In instances where it is appropriate to do so, appointments may be arranged, eg where the presence of a particular manager, owner or employee is required to discuss a particular issue.

In appropriate circumstances, Notice of Entry will be served or an application made to the Magistrates Court for a warrant to enter, eg if access is refused or the premises are vacant or the seriousness of the investigation requires timely access. Such Notices will be served in accordance with the relevant legislation's powers of entry.

3.4 ***Working Hours***

The Council recognises that enforcement activity is not solely a Monday to Friday, 09.00 to 17.00 hours function and that the District has a 24 hour society. Accordingly, the Council provides a 24 x 7 reactive environmental health emergency response service available to all. In addition, planned inspections, visits and investigations are carried out outside normal working hours to cater for times when businesses are operating or when the activity under investigation is occurring.

3.5 ***Shared Enforcement Roles***

Situations often occur where the enforcement responsibility is shared with another agency or body or a multi-agency approach is required. In such circumstances the Council will liaise with the appropriate agency, e.g. Health & Safety Executive, Food Standards Agency, Health Protection Agency, Environment Agency, Fire Authority, Police and Trading Standards. The service specific enforcement policies annexed to this General Policy contains the detailed references.

4. ENFORCEMENT OPTIONS

4.1 Much of our enforcement activity is governed by guidance in the form of Codes of Practice, Government Circulars, orders etc. When making enforcement decisions, Officers must have regard to any relevant national or other guidance, as well as the provisions of the Human Rights Act 1998, RIPA and this Enforcement Policy.

The enforcement action and sanction taken will:

- ❖ aim to change behaviour of the offender
- ❖ aim to eliminate any financial gain or benefit from non-compliance
- ❖ be responsive & consider what is appropriate for the particular offender and regulatory issue, which can include the punishment and public stigma that should be associated with a criminal conviction.
- ❖ be proportionate to the nature of the offence and the harm caused
- ❖ aim to restore the harm caused by the regulatory non-compliance, where appropriate and
- ❖ aim to deter future non-compliance.

The decision as to which types of enforcement action is appropriate must always be governed by the particular circumstances of the case. In coming to a decision the criteria to be considered will include:

- ❖ the seriousness of the offence;
- ❖ the history of the activity/offender
- ❖ contamination of the environment or risk to health;
- ❖ public expectation;
- ❖ any special or local circumstances which make the problem more or less acute;
- ❖ confidence in achieving compliance;
- ❖ consequences of non-compliance;

- ❖ likely effectiveness of various enforcement options.

The criteria are not exhaustive and those that apply will depend on the particular circumstances in each case. This does not mean that all factors must be in favour of enforcement action, rather than, on balance, the preponderance is in favour.

4.2 **Options** – Having considered the enforcement criteria the following options are available.

- (a) To take no action;
- (b) to take informal action;
- (c) to serve statutory notices;
- (d) to issue formal cautions;
- (e) to suspend, revoke or refuse to renew a licence;
- (f) to impose an administrative penalty;
- (g) to do the work in default and recover all costs in so doing;
- (h) to prosecute;
- (i) apply for a Court Order or Injunction.

Where appropriate, a staged approach to enforcement should be adopted. In the first instance every opportunity should be given to discuss and remedy problems before any formal action is taken, unless immediate action is required.

4.3 **Informal Action** – Informal action may consist of any or all of the following:

- ❖ Giving advice, offering general assistance and guidance;
- ❖ issuing verbal warnings;
- ❖ written communications requiring attention.

Informal action will be taken when:

- (a) the act or omission is not serious enough to warrant formal action; or
- (b) from the individual's or business' past history it can be reasonably expected that informal action will achieve compliance; or
- (c) the confidence in an individual or business proprietor is high; or
- (d) the consequences of non-compliance will not pose a significant risk to public health, safety or the environment;
- (e) the informal action will not produce a lower standard of compliance than would be achieved by the use of formal legal procedures.

When an informal approach is used to secure compliance with legislation confirmation of what action is required must be in writing and in accordance with Section 2.3 of this Policy.

4.4 **Statutory Notices** – Statutory Notices will be used after first considering the informal action route as detailed in Section 4.3. If the criteria under informal action cannot be met and/or

- (a) where there is a statutory duty to serve a Notice;
- (b) where, in addition to prosecution, measures need to be taken to remedy conditions that are serious, deteriorating, or where the service of a Notice is needed to support a prosecution:

then the service of a Notice will follow. Failure to comply with a statutory Notice will normally, where relevant, result in prosecution and/or works in default as appropriate.

4.5 **Prohibition Notices** – The service of a Prohibition Notice or Injunction will be considered in one or more of the following circumstances:

- (a) an imminent risk of injury to health or safety can be demonstrated;
- (b) an imminent risk of serious pollution to the environment can be demonstrated;
- (c) the consequence of not taking immediate and decisive action to protect the public would be unacceptable;
- (d) there is no confidence in the integrity of an unprompted offer made by a proprietor to voluntarily close premises or cease the use of any equipment, process or treatment associated with the imminent risk; or
- (e) a proprietor is unwilling to confirm in writing his/her unprompted offer of a voluntary prohibition;
- (f) where it would be the most effective remedy available.

4.6 **Prosecution**

4.6.1 **General** – The Council recognises that the decision to prosecute is significant and would have far reaching consequences on the offender. The decision to undertake a prosecution will normally be taken by the Corporate Manager Health & Environmental Services together with the Council's Principal Solicitor. No prosecution will be undertaken without consideration to the tests outlined in "The Code for Crown Prosecutors". The criteria for the issue of proceedings are:

- (a) The alleged offence involves a flagrant breach of the law, such that public health, safety or well being is or has been put at risk or irreversible damage has resulted.
- (b) There has been a disregard for the environment.
- (c) The integrity of the licensing framework is threatened.
- (d) The alleged offence involves a failure by the suspected offender to correct an identified serious potential risk having been given a reasonable opportunity to comply with the lawful requirements of an authorised Officer.
- (e) The alleged offence involves a failure to comply in full or in part with the requirements of a statutory Notice.
- (f) There is a history of similar offences.
- (g) The alleged offence causes public alarm and it is desirable to reassure the public and deter other offenders.
- (h) The alleged offence involves obstruction, failure to disclose information or making a false statement or an assault on an enforcement officer.
- (i) A prosecution is in the public interest; there is a realistic prospect of conviction and sufficient evidence to support proceedings.

The Council will always seek to recover the costs of the investigation and court proceedings.

4.6.2 ***Prosecution without Warning***

The general guiding principle of this policy is to give a person or a company a reasonable opportunity to comply with the law. However, there are circumstances where prosecution may be undertaken without prior warning, eg:

- ❖ the contravention is a particularly serious one;
- ❖ there has been a particularly blatant disregard of the law;
- ❖ a statutory Notice has been previously issued for a similar offence; or
- ❖ the integrity of the licensing framework is threatened.

4.6.3 ***Formal Caution***

A formal caution may be issued by the Corporate Manager Health & Environmental Services as an alternative to a prosecution. Formal cautions will be issued to:

- ❖ deal quickly and simply with less serious offences;

- ❖ divert less serious offences away from the courts; or
- ❖ reduce the chances of repeat offences.

To safeguard the suspected offender's interests the following conditions will be fulfilled before a caution is administered:

- ❖ there must be evidence of the suspected offender's guilt, sufficient to give a realistic prospect of conviction; and
- ❖ the suspected offender must admit the offence; and
- ❖ the suspected offender must understand the significance of a formal caution and give an informed consent to being cautioned.

No pressure will be applied to a person to accept a formal caution. Should a person decline the offer of a formal caution a prosecution will be pursued.

5. NON-COMPLIANCE WITH POLICY AND COMPLAINTS

If any person is unhappy with the action taken, or information or advice, given, then they will be given the opportunity of discussing the matter with the relevant manager. Should they still be aggrieved then their views should be made known directly to the Corporate Manager Health & Environmental Services or the Council's corporate complaint procedure should be followed (copy available on request).

This is without prejudice to any formal appeals mechanism.

6. TRAINING AND APPOINTMENT OF OFFICERS

All Officers undertaking enforcement duties will be suitably trained and qualified so as to ensure that they are fully competent to undertake enforcement activities. The Department supports the principle of continuing professional development and will ensure that all Officers are provided with additional in post training to maintain up-to-date knowledge and skills commensurate with their position.

All Officers will be formally authorised by the Council, as delegated, to exercise specific powers under relevant statutes. The Corporate Manager Health & Environmental Services will determine the level of authorisation for each Officer, by their qualifications, experience and competence having regard to any relevant national guidelines.

Authorisation will be in writing and in a form that can be shown on request.

7. MONITORING OF ENFORCEMENT

The Corporate Manager Health & Environmental Services will review staff competency and the consistency of enforcement on a regular

basis. The Department maintains systems to monitor the quality and nature of enforcement activities undertaken so as to ensure, as far as is reasonably practicable, a uniform and consistent approach. Where local or national co-ordinating bodies exist, such as FSA, HSE, LACORS, Cambridgeshire Food Liaison Group and Cambridgeshire Health & Safety Liaison Group, the Department will ensure that wherever possible its enforcement practices are consistent with best practice.

The review of the enforcement services may involve any of the following activities and any variations from the policy will be addressed within the appropriate service plan:

- ❖ supervisory officer for enforcement action;
- ❖ monitoring visits by line managers;
- ❖ shadowing visits by colleagues;
- ❖ monitoring of correspondence and statutory notices;
- ❖ complaint procedures
- ❖ peer review exercise
- ❖ internal training sessions and workshops on enforcement issues;
- ❖ employee development scheme;
- ❖ customer satisfaction surveys.
- ❖ National Indicator results
- ❖ Business stakeholder forum feedback

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