

Local Government (Miscellaneous Provisions) Act 1982, Schedule 3 Control of Sex Establishments within Fenland

Making Representations to Applications for a Sex Establishment Licence

Purpose of the Act

No person within Fenland may use any premises, vehicle, vessel or stall as a sex establishment except under and in accordance with the terms of a licence granted by Fenland District Council as the licensing authority.

A sex establishment is either a '**sex shop**' or a '**sex cinema**', or a combination of both.

A **sex shop** is a business which consists to a significant degree of selling, hiring, displaying or demonstrating sex articles or other things intended for use in connection with, or for the purpose of stimulating or encouraging, sexual activity.

A **sex cinema** is concerned primarily with the exhibition of moving pictures, which are concerned primarily with the portrayal of, or are intended to stimulate or encourage, sexual activity.

It should be noted that a certain level of activity can occur before a licence is required. For example, many magazines, videos (rated 18), clothing and some toys would fall outside the relevant regulations. A principal indicator would be the selling of R18 videos rather than just certificate 18 videos.

Advertising the application

The applicant must publish an advertisement in a local newspaper circulating in the licensing authority's area no later than 7 days after the date of the application.

The applicant must also display a notice for 21 days beginning with the date of the application on or near the premises in a place where the public can conveniently read the notice.

Who can make representations?

Any person may object to the application for a sex establishment licence, they need not live within Fenland.

Notice should be given in writing to the appropriate licensing authority stating in general terms the grounds of the objection.

When can a representation be made?

The period for receipt of representations is 28 days from the date of application.

The final date for the receipt of representations will be stated in both the newspaper advertisement and public notice.

How can representations be made?

Representations must be made in writing by letter to the Licensing Authority and should contain details of the:

- a) name, full address and signature of the person(s) making the representation;
- b) date of the representation;
- c) premises to which the representations refers;
- d) reasons for the representations and how they relate to the grounds for refusal of an application for a sex establishment licence (see below);
- e) whether the person making the representation is prepared for their name and address to be disclosed to the applicant.

Consideration of representations

Where the licensing authority receives representations against an application, it must give notice in writing of the objections to the applicant.

The licensing authority may not, without the consent of the person(s) making the objection, reveal the name or address of the objector(s) to the applicant.

The licensing authority will also have regard to any observations submitted by Cambridgeshire Constabulary.

What happens when a relevant representation is received?

If the representations received fall within the reasons for refusal, the licensing authority may liaise with the applicant and person(s) making representations to mediate a satisfactory resolution (for example, amending proposed signage), to enable the representations to be withdrawn. In this instance and if all parties are in agreement there will be no need for a hearing.

On all other occasions the application will be referred to the licensing authority's licensing committee to determine the matter.

Licensing hearings

When considering an application, the licensing committee will give both the applicant and persons raising representations the opportunity of being heard, however, this will be in accordance with the usual hearings procedures.

The licensing authority will hold a hearing within a reasonable period where relevant representations are made and mediation (if tried) has not been successful. Notices will be sent to each party informing them of the date so that they may attend if they wish to give evidence to support their representation.

Approval of licences

If a licence is granted, the licensing authority will impose standard conditions, however, a committee may impose additional conditions to address specific representations. These could include:

- the opening and closing hours of the premises;
- displays of advertisements on or in the premises;
- the visibility of the interior of the premises to passers-by; and
- any change of a sex cinema to a sex shop or a sex shop to a sex cinema.

Refusal of licences

The only grounds on which a licensing authority may refuse an application for a sex establishment licence are as follows:

- a) that the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other appropriate reason;
- b) that if the licence were to be granted the business to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant of such a licence if he/she made the application him/herself;
- c) that the number of sex establishments in the area at the time the application is made is equal to or exceeds the number which the authority consider is appropriate for that area;
- d) that the grant of the licence would be inappropriate, having regard to:
 - (i) the character or relevant area; or
 - (ii) the use to which any premises in the vicinity of the proposed site are put; or
 - (iii) the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.

Appeals against decisions

Any applicant who is not satisfied with the result of the decision of the licensing committee can appeal to the Magistrates' Court within 21 days of the decision.

Alterations to buildings

It may be that any alteration to the building, or change of use, will require planning consent or building regulation approval. The grant of a licence does not alter this and the relevant applications under those schemes will still need to be made.

More Information

You can write to us at:

Fenland District Council
Licensing Authority
Fenland Hall
County Road
March
PE15 8NQ

Email: licensing@fenland.gov.uk
Telephone: 01354 654321
Fax: 01354 606917
Web site: www.fenland.gov.uk