

LICENSING AND REGULATION COMMITTEE

25 January 2011

SEX ESTABLISHMENTS – POLICY, FEES AND DELEGATION ARRANGEMENTS

REPORT OF HEAD OF LEGAL SERVICES

Contact Officer: Howard Bone Tel No: 01962 848 552 hbone@winchester.gov.uk

RECENT REFERENCES:

[LR 333](#) - Policing and Crime Act 2009 – Sexual Entertainment Venues – 5 October 2010

EXECUTIVE SUMMARY:

Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, as amended by Section 27 of the Policing and Crime Act 2009, provides that local authorities are responsible for the licensing of sex establishments in their areas. Full Council (at its meeting of 3 November 2010) agreed the recommendations from the Licensing and Regulation Committee (report [LR 333](#) refers). The Council's Constitution therefore provides that this function shall be the responsibility of the Licensing and Regulation Committee.

This report recommends the necessary delegation arrangements and fees to be charged, and also sets out the results of the consultation on the draft Sex Establishment Licensing Policy approved by the Committee on 5 October 2010. As no representations were received to the consultation, the report therefore proposes that the draft policy is now recommended to full Council for adoption after any amendments required by Members have been incorporated.

**RECOMMENDATIONS:**

- 1 That the procedures for dealing with applications and hearings pursuant to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 regarding the licensing of Sex Establishments as proposed in Appendices 1 and 2 be agreed.
- 2 That the fees for applications pursuant to Schedule 3 of the 1982 Act in respect of the licensing of Sex Establishments be as set out in Appendix 3.
- 3 That the Head of Legal Services be authorised to determine the forms and procedures for applications for a licence for a Sex Establishment.

**TO COUNCIL** (subject to any comments or revisions by Licensing and Regulation Committee) that:

- 1 Amendments to the Constitution as set out in Appendices 1 and 2 to Report LR353 (Responsibilities for Functions and Scheme of Delegation) be approved, to give effect to the implementation of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, as amended by section 27 of the Policing and Crime Act 2009 (licensing of Sex Establishments).
- 2 the draft Sex Establishment Licensing Policy set out in Appendix 5 to Report LR 353 be adopted.

## LICENSING AND REGULATION COMMITTEE

25 January 2011

### SEX ESTABLISHMENTS – POLICY, FEES AND DELEGATION ARRANGEMENTS

#### REPORT OF HEAD OF LEGAL SERVICES

##### DETAIL:

#### 1 Introduction

1.1 At its meeting on 3 November 2010, Council resolved to adopt Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (“Schedule 3”) as amended by Section 27 of the Policing and Crime Act 2009. This came into effect on 20 December 2010 (the “first appointed day”), and provides for the licensing of sex establishments, which include sex shops, sex cinemas and sexual entertainment venues. Transitional provisions will apply to any new applications received before 19 December 2011 (as there are no existing licences, the transitional provisions will only apply to new applications).

1.2 Under section 101 of the Local Government Act 1972, Councils may designate a committee or sub committee to discharge its functions under Schedule 3. Following the decision of full Council on 3 November 2010 (acting on the recommendations of the Licensing and Regulation Committee of 5 October 2010), the Council’s Constitution already provides for the Licensing and Regulation Committee to be the Council’s Licensing Committee. Further amendments to the Constitution are required to specify that the Licensing Sub-Committee will deal with these applications, and extend officer delegation arrangements to deal with the additional functions allocated to the Council under Schedule 3. Proposals for these delegated arrangements are set out in Appendices 1 and 2.

#### 2 Procedural Matters

2.1 Unlike under the Licensing Act 2003, there is no prescribed application form for an application made under Schedule 3 of the 1982 Act. However, the application must be in writing and contain certain details which are set out in paragraph 10 of Schedule 3. It is proposed that, using the principles set out in the Sex Establishment Licensing Policy, an application form and process similar to that used for premises licence applications under the Licensing Act 2003 be used for any sex establishment licence applications that may be received.

2.2 The Schedule provides that when considering an application for the grant renewal or transfer of a licence, regard should be given to any comments by the police and also any objections received from any other person within 28 days of the application being made. Any person may object provided that the objection is relevant to the grounds set out in paragraph 12 of Schedule 3. Relevant considerations include the suitability of the applicant or of the premises but objections based on moral grounds or values are not relevant.

- 2.3 Under paragraph 10 (19) of Schedule 3, before an application is refused, the applicant must be given the opportunity to appear before a committee or sub committee responsible for determining applications. The Schedule does not make explicit provision for objectors to be heard but there is a duty to consider any objections received within 28 days of the application, with discretion to consider later objections, provided the applicant is given an opportunity to address them.
- 2.4 The current lack of any sex establishments in the District requiring a licence means it is unlikely that many hearings will need to be held. However, it is proposed that any hearings should be dealt with by the Licensing Sub-Committee in line with the approach adopted under the licensing legislation, and the proposed changes to the Constitution in Appendices 1 and 2 follow this suggestion.
- 2.5 If an application is refused, the applicant may appeal to a magistrates' court unless the application was refused on grounds that, if granted, the number of sex establishments would equal or exceed the number which the Council considers appropriate for the locality, or that the grant of a licence would be inappropriate having regard to the locality, the layout of the premises or the use to which any premises in the vicinity are put. In these cases, the applicant could only challenge the refusal by way of judicial review.
- 2.6 Schedule 3 states that an applicant for the grant, renewal, variation or transfer of a sex establishment licence shall pay a reasonable fee determined by the Council but it does not expand on what would be considered to be reasonable.
- 2.7 However, the Home Office Guidance relating to sexual entertainment venues states that councils should have regard to the European Services Directive and Local Government Regulation (formerly LACORS) Guidance when setting fees. The Directive aims to ensure that any process used in setting fees is transparent, accessible, objective and non-discriminatory and, that fees are clear, justified, made public in advance and proportionate to the cost of the authorisation procedures and formalities. Fees set must not exceed the cost of those procedures and formalities.
- 2.8 Appendix 3 includes a table showing fees to be levied by local authorities in Hampshire and the Isle of Wight for the licensing of Sex Establishments. The Appendix also includes proposed fees for any such applications received in the Winchester District. These are based on estimates of the average cost of anticipated officer and administrative time for applications requiring referral to Sub-committee; those for which no representations are received and those for which any representations are subsequently withdrawn.

### 3 Constitution Issues

- 3.1 Council designated the Licensing and Regulation Committee to carry out this licensing function by amending item 9 of the Table in Paragraph 4.4 of Section 4 of Part 3 of the Constitution at its meeting on 3 November 2010 to read: "Power to license Sex Establishments" and "The Local Government (Miscellaneous Provisions) Act 1982, Section 2 and Schedule 3 (as amended by Section 27 of the Policing and Crime Act 2009".

- 3.2 As mentioned in Paragraph 2.4 above, it is considered appropriate for applications for these licences to be considered by the Licensing Sub-Committee. Appendix 1 to this Report sets out an additional table to be inserted in Part 3 Section 4 of the Council's Constitution (Responsibility for Functions) to provide for this.
- 3.3 Changes to the officer scheme of delegation are also required to deal with these applications. Appendix 2 sets out a table to be inserted into Part 3 Section 6 of the Council's Constitution (Responsibility for Functions – Scheme of Delegation to Officers) which sets out the matters which would be dealt with by a sub committee and those which would be dealt with by officers.
- 4 Draft Sex Entertainment Licensing Policy
- 4.1 The draft Sex Entertainment Licensing Policy was approved and put out for consultation as a draft following the Council meeting on 3 November 2010. A copy of the draft policy is attached at Appendix 5 and a list of consultees is attached at Appendix 4.
- 4.2 No comments have been received. It is therefore recommended that the Policy be adopted as per the draft. As with the Licensing and Gambling Policies, this recommendation will be considered by full Council.

#### OTHER CONSIDERATIONS:

- 5 SUSTAINABLE COMMUNITY STRATEGY AND CORPORATE BUSINESS PLAN (RELEVANCE TO):
- 5.1 The licensing function provisions Sex Establishment Policy referred to in this report relates to the "Safer and More Inclusive Communities" Priority.
- 6 RESOURCE IMPLICATIONS:
- 6.1 Given the expected level of applications, it is anticipated that ongoing costs can be maintained within existing budgets, supplemented by the application fees.
- 7 RISK MANAGEMENT:
- 7.1 The provisions of this report will ensure that applications are considered in a fair way, thereby reducing the risk of legal challenge.

#### BACKGROUND DOCUMENTS:

- Home Office Guidance for England and Wales 2010 – Sexual Entertainment Venues
- The European Services Directive
- Local Government Regulation (formerly LACORS) Guidance

APPENDICES:

Appendix 1 – Amendments to Constitution Part 3 Section 4

Appendix 2 – Amendments to Constitution Part 3 Section 6

Appendix 3 – Comparative Fees Table and Schedule of Proposed Fees

Appendix 4 - List of consultees on draft policy

Appendix 5 – Draft Sex Entertainment Licensing Policy

**Amendments to Constitution Part 3 Section 4 (Responsibility for Functions – Regulatory Committees)**

Insert after existing paragraph 2 and renumber remaining paragraphs accordingly.:-

3. To deal with applications under Schedule 3 of the Local Government (Miscellaneous Provisions ) Act 1982 as amended by section 27 of the Policing and Crime Act 2009 allocated to the Licensing Sub-Committee in the following table:-

<b>Matter to be dealt with</b>	<b>Licensing Sub-Committee</b>	<b>Head of Legal Services</b>
Application for sex establishment licence.	Where representations have been received and not withdrawn.	Where no representations received/representations have been withdrawn.
Application for variation to a for sex establishment licence	Where representations have been received and not withdrawn.	Where no representations received/representations have been withdrawn.
Application for a transfer of a for sex establishment licence.	Where representations have been received from the Police and not withdrawn.	Where no representations have been received from the Police.
Application for renewal of a sex establishment licence	Where representations have been received and not withdrawn.	Where no representations received/representations have been withdrawn.

**Amendments to Constitution, Part 3 Section 6 (Responsibility for Functions – Scheme of Delegation to Officers)**

Under “Head of Legal Services”, insert after existing paragraph 2 and renumber remaining paragraphs accordingly.:-

3. To deal with applications under Schedule 3 of the Local Government (Miscellaneous Provisions ) Act 1982 as amended by section 27 of the Policing and Crime Act 2009 allocated to the Licensing Sub-Committee in the following table:-

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Application for a transfer of a for sex establishment licence.	Where representations have been received from the Police and not withdrawn.	Where no representations have been received from the Police.
Application for renewal of a sex establishment licence	Where representations have been received and not withdrawn.	Where no representations received/representations have been withdrawn.



## WINCHESTER CITY COUNCIL

### PROPOSED FEES FOR SEX ESTABLISHMENT LICENSING

Matter to be dealt with	Proposed Fee 2011/2012
Application for sex establishment licence	£4,070
Application for variation to a sex establishment licence	£2,300
Application for a transfer of a sex establishment licence	£1,800
Application for renewal of a sex establishment licence	£1,800

### COMPARATIVE TABLE

#### Hampshire and Isle of Wight Licensing Officers Group – Licensing of Sexual Entertainment Venues - Position as at November 2010

Authority	Adopted provisions?	Any special policy issues i.e. limit on number of venues	Fee	Comments
Fareham	Yes	No	£1,480	-
Gosport	Yes	Total number of venues limited to two	£6,370	Renewal fee £3,359
Havant	About to adopt	Number of venues set at NIL	None set	-
Isle of Wight	Yes	Policy to be determined on 6/12 but no suggested limit	£3,500	-
New Forest	Yes	No	£6,955	Looking to reduce fee next financial year
Portsmouth	Not yet. Deciding whether to adopt	-	-	-
Rushmoor	Not yet. Deciding whether to adopt	-	-	-
Southampton	Not yet. Deciding whether to adopt	-	-	-
Test Valley	Yes	No	£1,460	-
Winchester	Yes	Number of venues set at NIL	None set	Policy out for consultation

### Draft Sex Establishment Licensing Policy 2010 – Consultees

NAME	COMMENT
British Beer and Pub Association	None
British Institute of Innkeeping	None
Compton Tenants' Association	None
Hampshire Fire and Rescue	None
Hampshire Police	None
Highcliffe Tenants' Association	None
Lap Dancing Association UK	None
Lower Stanmore Residents' Association	None
North Stanmore Residents' Association	None
Portsmouth and South East Hants Chamber of Commerce	None
TACT	None
The Worthys Tenants' Association	None
Weeke Tenants' and Residents' Association	None
Winchester BID	None
Winchester Chamber of Commerce	None
Winchester City Centre Partnership	None
Winchester Community Safety Partnership	None
Winchester Pub Watch	None
Winchester Safeguarding Unit	None
Winchester Safety Advisory Group	None



**[DRAFT] SEX  
ESTABLISHMENT LICENSING  
POLICY**

## Consultation Process

The Council has issued this draft Policy for consultation purposes, prior to adopting a final policy in April 2011. This section sets out the consultation process.

The timetable for the adoption process is set out in the following table:-

Action	Date
Public Notice of Adoption and Start of Consultation Period	18 November 2010
Second Public Notice of Adoption	25 November 2010
Adoption of amended Schedule 3 takes effect	20 December 2010
Close of Consultation Period	7 January 2011
Report to Licensing and Regulation Committee on outcome of Consultation (if any representations received)	25 January 2011
Full Council to consider report on representations and formally adopt Policy.	6 April 2011.

The Council recognises the important role that regulatory authorities, the licensed trade, residents, businesses and other stakeholders have to play in influencing this Policy. It therefore intends to take a wide range of views on the Policy as part of its consultation which takes place over a seven week period before finalising and adopting the Policy. Any comments received outside the published consultation period may not be considered.

Consultation on this Policy will take place with:

- the Chief Officer of Police for the Winchester District
- the Lap Dancing Association (being a trade association which appears to the Council to represent the interests of persons who may wish to carry on sex establishment businesses in the authority's area
- Winchester Pubwatch
- Winchester Business Improvement District (BID)

- Hampshire Fire and Rescue Service;
- British Institute of Innkeeping;
- British Beer and Pub Association;
- Winchester City Centre Partnership;
- The Winchester Community Safety Partnership;
- North Hampshire Chamber of Commerce and Industry;
- Portsmouth and South East Hampshire Chamber of Commerce and Industry;
- Safeguarding Unit, Hampshire County Council (Child Protection)
- The following residents' associations:-
  - Compton Tenants' Association
  - Highcliffe Tenants' Association
  - Lower Stanmore Residents' Association
  - North Stanmore Residents' Association
  - TACT
  - The Worthys Tenants' Association
  - Weeke Tenants' & Residents' Association

The Council will give due weight to the views of those consulted and amend the Policy where appropriate following responses received. In determining what weight to give particular representations, the factors to be taken into account will include:

- who is making the representation (what is their expertise or interest)
- what their motivation may be for their views
- how many other people have expressed the same or similar views
- how far representations relate to matters the Council should include in its Policy.

Public notice of the consultation will be published on 18 and 25 November, and the Policy will be made available on the Council's website:-

[www.winchester.gov.uk/licensing](http://www.winchester.gov.uk/licensing)

Hard copies are available upon request from the Licensing Section.

The Consultation Period will be from 18 November 2010 to 7 January 2011.  
Anyone wishing to comment on the draft Policy should send these via email or letter to:

[licensing@winchester.gov.uk](mailto:licensing@winchester.gov.uk)

Licensing Section  
Winchester City Council  
City Offices  
Colebrook Street  
Winchester  
SO23 9LJ

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## Appendix 1: Character and Locality Maps (Sports and Leisure Facilities, and Schools and Churches)

### 1. Introduction

1.1 This document sets out Winchester City Council's policy (the "Policy") regarding the regulation of sex establishments and the procedure relating to applications for sex establishment licences.

1.2 This document relates to applications for sex establishment licences covering:

- sex entertainment venues
- sex cinemas
- sex shops

as set out in the Local Government (Miscellaneous Provisions) Act 1982, and amended by the Policing and Crime Act 2009.

1.3 The Council adopted the Act with effect from 28 February 2010.

1.4 The Council is mindful of possible concerns of the local community and that there can be conflict between applicants and objectors. The Policy will guide the Council when considering applications for licences in balancing the conflicting needs of commercial interests, patrons, employees, residents and communities.

1.5 The Council has considered the character of its wards and determined that the appropriate number of sex establishments for each ward is nil. It may not allow further licences to be granted where the appropriate number is exceeded, although each application will be considered on its own merits. Please refer to paragraph 5 for more details.

1.6 The procedure sets out:

- the process for making an application, and
- the process the Council will follow in considering and determining

an application for a sex establishment.

## **2. Review and Consultation**

2.1 In developing the Policy for the three kinds of sex establishment (sex shop, sex cinema and sex entertainment venue), the Council has had regard to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, as amended under the Policing and Crime Act 2009; Home Office Guidance 2010 on Sexual Entertainment Venues, and relevant secondary legislation. The draft Policy was approved for consultation by full Council Licensing Committee on 3 November 2010.

2.2 The Council recognises the important role that regulatory authorities, the licensed trade, residents, businesses and other stakeholders have to play in influencing this Policy. It therefore took a wide range of views on the Policy as part of its consultation which took place over a seven week period before finalising and publishing the Policy.

2.3 Consultation on this Policy took place with:

- the Chief Officer of Police for the Winchester District
- any relevant trade associations who appear to the Council to represent the interests of persons who may wish to carry on sex establishment businesses in the Council's area or who may be affected by or otherwise have an interest in the Policy including:-
  - Chambers of Trade
  - Winchester Business Improvement District
  - Winchester City Centre Partnership
  - The Lap Dancing Association Limited
- Winchester Pubwatch and any other person who appear to the Council to represent the interests of existing holders of Premises Licences in the area.
- one or more persons who appear to the Council to represent the interests of persons who are likely to be affected by or otherwise have an interest in the Policy. This includes but is not limited to:
  - regulatory authorities such as the fire authority, community safety and child protection agencies
  - interested parties such as residents' associations.

2.4 The Policy is available via the Licensing website



[www.winchester.gov.uk/licensing](http://www.winchester.gov.uk/licensing). Hard copies are available upon request from the Licensing Section.

- 2.6 Should you have any comments regarding this Policy, please send them via email or letter to:

[licensing@winchester.gov.uk](mailto:licensing@winchester.gov.uk)

Licensing Section  
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- 2.7 Following adoption, the Council may review the Policy from time to time as it deems appropriate.

### **3. Definitions**

#### **The Act**

This refers to Schedule 3 of the Local Government Miscellaneous Provisions Act 1982 (as amended by the Policing and Crime Act 2009).

#### **The Policy**

This refers to the sex establishment licensing policy.

#### **Relevant locality**

This is the locality where premises are situated or where the vehicle, vessel or stall is going to be used. The locality and the area that this covers is a matter for the local authority to decide. The Council has determined that each ward within the district represents a relevant locality for the purposes of decision making. The Council may have regard to the area of more than one locality/ ward.

#### **Character of the relevant locality**

The character or characteristics of the locality where the premises are situated will be instrumental in determining whether or not the grant of a licence will be appropriate. This is a proper matter for the Council to consider based on local knowledge, factors and circumstances.

#### **The Council**

This means the Winchester City Council.

#### **Display of nudity**

This means:

- In the case of a woman: exposure of her nipples, pubic area, genitals or anus; and
- In the case of a man: exposure of his pubic area, genitals or anus

**The licensed premises**

This is the premises, vessel, vehicle or stall which is subject to a sex establishment licence. The premises must be in possession of all appropriate consents and permissions required to operate. Note that licences are not required for the sale, supply or demonstration of birth control items.

**The Organiser**

This is any person who is responsible for the organisation or management of the relevant entertainment or the premises.

**Permitted hours**

These are the hours of activity and operation that have been authorised under a sex establishment licence.

**Sex Articles**

A sex article is anything for use in connection with or for stimulating or encouraging sexual activity or acts of force or restraint which are associated with sexual activity.

**Sex Cinema**

A sex cinema is any premises, vessel, vehicle or stall used to a significant degree for the exhibition of moving pictures however produced, which are concerned primarily with the portrayal of, or primarily deal with or relate to or intending to stimulate or encourage sexual activity or genital organs or urinary excretory functions.

**Sexual Entertainment Venue**

A sexual entertainment venue is any premises where any live performance or any live display of nudity is of such a nature that, regardless of financial gain, it must reasonably be assumed to have been provided solely or mainly for the purpose of sexually stimulating any member of the audience.

**Sex Shop**

A sex shop is any premises, vehicle, vessel or stall used for a business which consists to a significant degree of selling, hiring, exchanging, lending, displaying or demonstrating sex articles or other things intended for use in connection with or for stimulating or encouraging sexual activity or acts of force or restraint which are associated with sexual activity.

## **4. Policy Considerations**

- 4.1 This Policy applies to the Winchester District. The Winchester area has a population of approximately 112,000 residents and is situated in the central part of the County of Hampshire. It covers an area of approximately 250 square miles and is largely countryside, with urban areas being the city of Winchester itself (the largest area in the District) and smaller towns such as New Alresford, Bishop's Waltham and Wickham, together with many villages. Tourism is a major part of the

- local economy and every year approximately 4.25 million visits are made to the area, particularly to Winchester City Centre. The Winchester area faces many challenges if its special character is not to be eroded by modern day pressures of people, housing, industry and traffic.
- 4.2 At the time of publication there are no sex establishments in the District.
- 4.3 The Council's vision is to achieve balanced, sustainable communities and neighbourhoods to enable a good quality of life for all. In consultation with its partners it has developed and adopted a number of strategies, policies and plans that set out how we mean to achieve this vision and it is the Council's view that the granting of sex establishment licences would undermine the said vision.
- 4.4 In devising this Policy, regard has been given to the available data, findings, shared vision and plans informing Winchester's Sustainable Community Strategy, and the Local Strategic Partnership as well as data at Appendix 1 to this Policy.
- 4.5 Winchester is a prosperous city with a diverse population and low levels of unemployment compared with the region.
- 4.6 Local people continue to be concerned about the level of crime. Although crime levels have been falling significantly in recent years, attending to the need of people to feel safe is important. Winchester seeks to further reduce crime and help people feel safer in the district. Community policing and improved joint working have contributed to crime reduction.
- 4.7 The Council aims to integrate this Policy with the objectives of its Sustainable Community Strategy so that it contributes to achieving the vision of the District. As such, the provision of sex establishments is considered by the Council to contradict and undermine its stated aims and exacerbate the challenges it faces in bringing about positive, genuinely sustainable and thriving neighbourhoods. The Council's "nil per ward policy" responds to this concern and, in addition to the above, is based on the following factors which justify this safeguarding regulatory step:
- The relative size of the District taken as a whole
  - The status of Winchester as a Cathedral City with an international reputation for heritage and tourism
  - Population density and growth trends
  - Ward profiles
  - District profile
  - Economic and health specific deprivation indices
  - Level of social housing and tenure
  - Locations of:
    - Areas and premises attracting families such as leisure and sport facilities and play spaces, parks and open spaces
    - Premises attracting young people such as schools, nurseries and other educational establishments
    - Our diverse cultural communities

- o Places of worship

4.8 It is the Council's view that having regard to each ward and recognising that because of the mix of uses, the character, the strategic vision and the existing locations of particular types of premises in those wards, it would be inappropriate for sex establishments to be located in its wards. The association that sex establishments have with a part of the "sex industry" and adult entertainment means that they are not suitable for location in those parts of the District associated with commerce, family, retail and entrepreneurship, nor are they appropriate for location in residential areas or areas frequented by families and children. This applies equally to the town centre area of Winchester itself, but also to the villages and market towns within the District. Any applications in the open countryside are likely to be contrary to planning policies in any event, but the traffic movements and other disturbance which would result from sex establishments also means that such locations are inappropriate.

4.9 Working with its partners in Health, Education, the Police and the business and voluntary sectors, the Council will continue to ensure that it reasonably and proportionately reflects the needs of its local communities through:

- continued meaningful consultation
- the promotion of a consistent and fair approach to regulation
- consultation with the police and other agencies as appropriate, to establish protocols for effective enforcement

4.10 The Council understands that the co-ordination and integration of policies, strategies and initiatives is important. This Policy takes account of, and is supported by, other Council policies and relevant legislation mentioned below. Through partnership working, the Council will seek to secure the proper integration of its Policy with its other licensing policies, local crime prevention, planning, tourism, race equality schemes and cultural strategies, and any other plans introduced for the management of town centres and the night time economy.

4.11 This Policy has therefore had regard to:

- Winchester District Community Strategy
- Winchester's Local Area Agreement
- Winchester Community Safety Partnership
- Economic Prosperity Strategy for the Winchester District
- Winchester's Local Development Framework (LDF)
- Winchester Business Improvement District
- Section 17 of the Crime and Disorder Act 1998
- The Human Rights Act 1998
- The Disability Discrimination Act 1995
- Winchester's Statement of Licensing Policy (Licensing Act 2003)
- Winchester's Statement of Principles (Gambling Act 2005)
- Provision of Services Regulations 2009

- Winchester District Children and Young People's Partnership

## **5. General Policy**

### **5.1 Principles to be applied**

5.1.1 Specific mandatory grounds for refusal of a licence are set out in the Act.

A licence cannot be granted:

- a) to anyone under 18 years of age
- b) to someone who has held a licence that was revoked in the last 12 months (from the date of revocation)
- c) to someone who has been refused a new or renewal of licence within the last 12 months (from the date of making the application)
- d) to an individual who is not resident in the United Kingdom or has not been resident for six months prior to the making of an application
- e) to a company not incorporated in the United Kingdom

5.1.2 The Council has determined that the following principles will apply.

5.1.3 The Council has set a limit on the number of sex establishments that it thinks is appropriate for its relevant localities. The Council treats each ward in the district as a relevant locality. Having regard to its analysis, the Council has determined that the appropriate number of sex establishments for each ward is as follows:

WARD	APPROPRIATE NUMBER
Bishops Waltham	Nil
Boarhunt & Southwick	Nil
Cheriton & Bishops Sutton	Nil
Colden Common & Twyford	Nil
Compton & Otterbourne	Nil
Denmead	Nil
Droxford, Soberton & Hambleton	Nil
Itchen Valley	Nil
Kings Worthy	Nil
Littleton & Harestock	Nil
Olivers Battery & Badger Farm	Nil
Owslebury & Curdridge	Nil
St Barnabas	Nil
St Bartholomew	Nil
St John & All Saints	Nil
St Luke	Nil
St Michael	Nil
St Paul	Nil
Shedfield	Nil
Sparsholt	Nil
Swanmore & Newtown	Nil
The Alresfords	Nil
Upper Meon Valley	Nil
Whiteley	Nil
Wickham	Nil
Wonston & Micheldever	Nil

5.1.4 There is no right of appeal against a decision based on this element of the Policy.

## **5.2 Other considerations**

### General

5.2.1 Notwithstanding the Policy limitation set out in Paragraph 5.1 above, each applicant is entitled to submit an application to the Council for consideration. Such application will be considered on its merits on a case by case basis in determining applications to grant, refuse, renew, transfer or vary a licence.

5.2.2 The applicant must effectively address the policies on the appropriate number and the character of the relevant locality/ ward in order for any grant of an application to be considered. If notwithstanding the “nil” policy for each ward, an application is to be considered for approval, it will need to deal with all of the relevant points set out in the remainder of this Policy.

5.2.3 Sex establishments are not to be functionally visible to passers by on retail thoroughfares or pedestrian routes. Premises should be at basement level or with a main entrance away from such routes.

5.2.4 The Council shall have regard to all relevant considerations, including any representations received and comments made by:

- Ward Councillors
- Police
- Fire Service
- Planning Management Team, Winchester City Council
- Community Safety Team, Winchester City Council
- Environmental Health Team, Winchester City Council
- Licensing Authority
- Safeguarding Unit, Hampshire County Council
- Interested Parties (local residents / businesses)
- Any representations made by the applicant.

5.2.5 The Council may refuse a licence if:

- a) the applicant is unsuitable to hold a licence because they have been convicted of an offence or for any other reason
- b) were the licence to be granted, renewed or transferred, the business to which it relates would be managed or carried on for the benefit of a person other than the applicant, who would have been refused a licence if they had applied themselves
- c) the number of sex establishments or sex establishments of a particular kind in the relevant locality at the time the application is determined is equal to or exceeds the number which the authority consider is appropriate for that locality (please refer to paragraph 5.1.3)

- d) the grant or renewal of a licence would be inappropriate having regard to:
  - i. the character of the relevant locality
  - ii. the use to which any premises in the vicinity are put; or
  - ii. the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.

5.2.6 The Council shall not normally grant a licence to operate as a sex establishment if the character of the surrounding area to the proposed licensed premises is such that granting a licence is considered inappropriate.

5.2.7 The Council shall not normally grant a licence to operate as a sex establishment where there are residentially occupied premises, schools (including nursery groups) and other places / access routes used to a significant degree by children or young persons, or places of worship within 100 metres of the premises seeking a licence.

5.2.8 In any event, the Council may also have regard to the following factors:

- a) the proximity of residents to the premises, including any sheltered housing and accommodation for vulnerable persons
- b) the proximity of educational establishments to the premises
- c) the proximity of places of worship to the premises
- d) access routes to and from schools, play areas, nurseries, children's centres or similar premises
- e) the proximity to shopping centres
- f) the proximity to community facilities / halls and public buildings such as swimming pools, leisure centres, public parks, youth centres / clubs (this list is not exhaustive)
- g) the potential impact of the licensed activity on crime and disorder and public nuisance
- h) the potential cumulative impact of licensed premises in the area taking into account the days and hours of operation of the activity and the character of the locality where the premises are situated
- i) the nature and concerns of any objections received from residents/establishments objecting to the licence application.
- j) any evidence of complaints about noise and/or disturbance caused by the premises.
- k) current planning permission/ planning requirements on the premises



- l) proximity of other sex establishments
- m) any current licensing permissions relating to the premises in relation to activities, uses and hours
- n) comments/observations of the Police and Council officers, including compliance with licensing conditions, relevant history (including noise complaints) together with details of previous convictions/ prosecutions pending.
- o) the suitability and fitness of an applicant to hold a licence. In determining suitability for a licence, the Council shall normally take into account:
  - previous knowledge and experience of the applicant
  - any evidence of the operation of any existing / previous licence held by the applicant, including any licence held in any other district
  - any report about the applicant and management of the premises received from objectors or the Police and any criminal convictions or cautions of the applicant
  - any other relevant reason

5.2.9 The above factors are not an exhaustive list of considerations but are merely indicative of the types of factors which may be considered in dealing with an application.

5.2.10 All applications for new licences for sex establishments, as described in the Act shall be referred to the Licensing Sub-Committee for decision.

#### Renewal Applications

5.2.11 Where a licence was in existence before the introduction of this Policy, this Policy will become a consideration when the licence is due for renewal.

5.2.12 When considering a renewal application the Council may take into account the criteria set out at paragraph 5.2.9 a) – o), and:

- a) the type of activity to which the application relates
- b) the duration of the proposed licence
- c) the days and hours of operation of the activity
- d) the layout and condition of the premises
- e) the use to which other premises in the vicinity are put
- f) the character of the locality in which the proposed premises are situated
- g) the levels of crime and disorder in the area
- h) past demonstrable adverse impact from the activity
- i) whether appropriate measures have been agreed and put into effect by the applicant to mitigate any adverse impacts

- 5.2.13 It should be noted that the Council in applying its decision-making discretion may consider it appropriate to refuse the renewal of the licence even where there has been no change in the character of the relevant locality or in the use to which any premises in the locality are put.
- 5.2.14 If a renewal application is not opposed, it may be approved under authority delegated to relevant officer(s). All contested applications for renewal, as described in the Act shall be referred to the Licensing Sub-Committee for decision.

#### Variation Applications

- 5.2.15 Where an application is made to vary any of the terms and conditions of an existing licence, whether on renewal or not, the Council will take into account the criteria as set out in paragraphs 5.2.9 a) – 0) and 5.2.13 a) – i) above.

## **6. The Application Process**

#### Making an application

- 6.1 Applications should be submitted to the Licensing Section in the Legal Services Team. The relevant form together with documentation specified in the form should be submitted. In addition, the Council's published requirements for publicity for such applications should be complied with.

#### Renewal of Licences

- 6.2 To continue operating as a sex establishment, licence holders must make a renewal application prior to the expiry of the existing licence.
- 6.3 The Council will not determine an application for renewal of a licence unless the applicant allows an authorised officer a reasonable opportunity to enter the proposed sex establishment to make such examination and enquiries as may be necessary to determine the suitability of the applicant and the sex establishment.

#### Variation of Licence

- 6.4 The application form, with relevant plans and fee should be sent to the Licensing Service. Please note that applications for variation of licence are also subject to the site and newspaper notice requirements set out in the above paragraphs 6.3 and 6.4.
- 6.5 Variation applications relate only to proposed changes to such matters as the hours and area of the premises covered by the licence. Any changes of licence holder must be the subject of a transfer application.
- 6.6 All variation applications for sex establishment licences must be referred to the Council's Licensing Sub-Committee for decision. Applicants must

not operate any revised or varied arrangements until such an application has been approved and any revised or varied licence has been issued.

### Transfer of Licence

- 6.7 The Council will not determine an application for transfer of a licence unless the applicant allows an authorised officer a reasonable opportunity to enter the proposed sex establishment to make such examination and enquiries as may be necessary to determine the suitability of the applicant and the sex establishment.

### Representations on an Application

- 6.8 Any person wishing to object to an application must submit a written representation within the 28 day consultation period specified to the Licensing Department, setting out the grounds of objection.
- 6.9 The Council will weigh up and balance the interests of the applicant with those of the local community in reaching a decision on a licence application. Valid representations must be made within 28 days of the application being submitted. Representations made before the application is submitted can be taken into account. The Council also has discretion to consider representations made after the 28 day consultation period although this will be assessed on a case by case basis.
- 6.10 The legislation dictates that, unless a person making representations consents, their name and address shall not be revealed to the applicant. They may also be reluctant to appear before a hearing of the Sub-Committee.
- 6.11 However, the grounds of any objection made on the application must be provided to the applicant prior to the determination of the application. The report to the Licensing Sub-Committee may have full details of the objections, including any actions / undertakings proposed by the applicant to address matters raised.
- 6.12 Additionally, the applicant and any persons who made representations and who wish to attend the hearing will have the opportunity to address the Licensing Sub-committee before the application is determined.

## **7. Duration of Licence**

- 7.1 Sex Establishment Licences will normally expire on an annual basis, but can be issued for a shorter term if deemed appropriate.

## **8 Appeals**

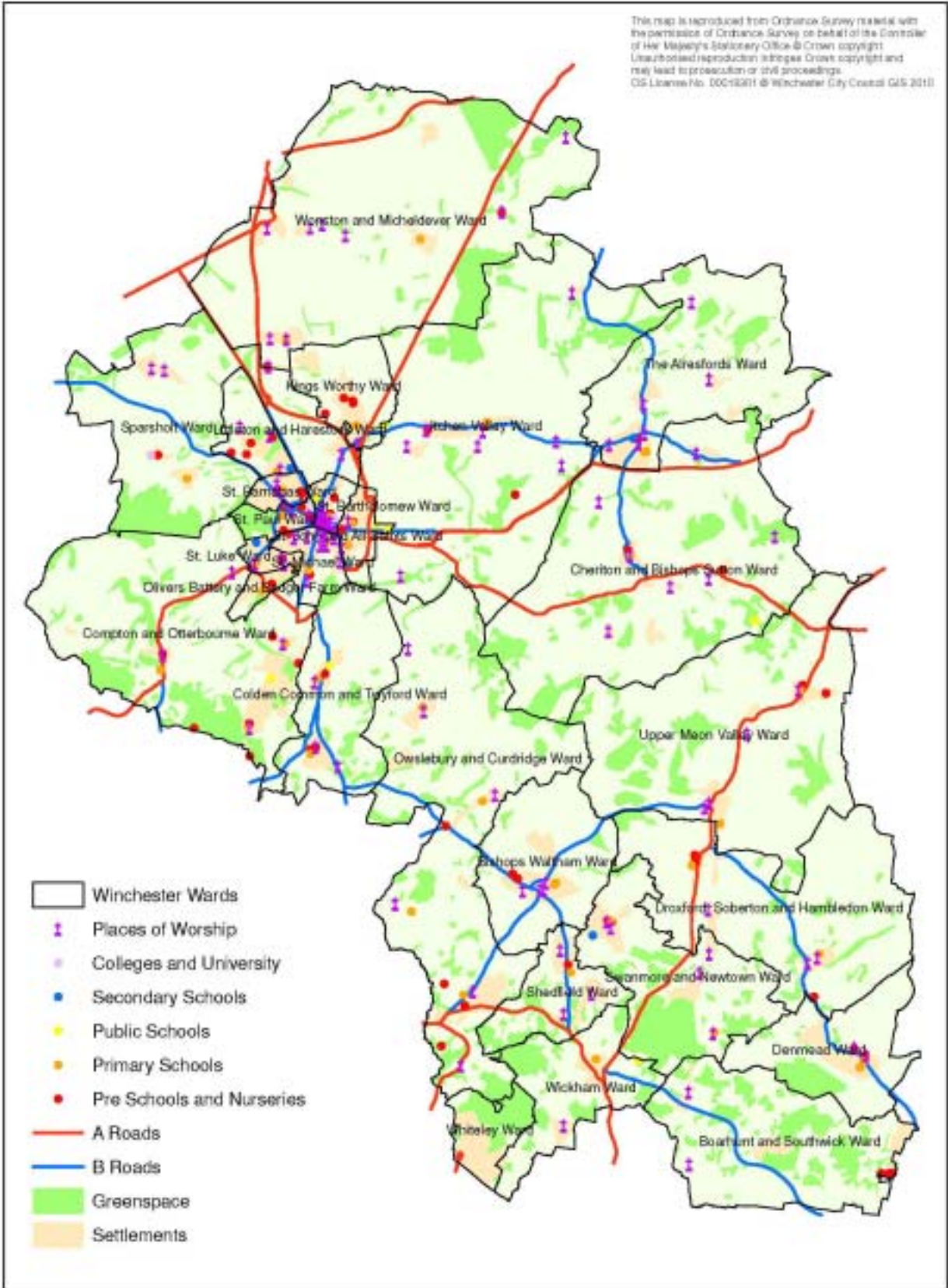
- 8.1 There is no right of appeal:
- against refusal of licence on the grounds set out in paragraph 5.1.1 or 5.1.3 above, unless an applicant can prove the appropriate ground of refusal does not apply to

- them
  - where refusal of licence is based on the grounds set out in paragraph 5.2.5 (c) and (d) above
  - against conditions applied to a licence
- 8.2 Any appeal to the Magistrates' Court must be made within 21 days from the date on which the person is notified of the decision or became aware of the condition.
- 8.3 Where an appeal is lodged (other than on grounds stated at paragraph 8.1) against refusal to renew or for revocation, the licence remains in force until such time as the appeal is determined. Where an appeal is lodged against conditions applied to a licence, the conditions are deemed not to come into force until the determination or abandonment of the appeal.

## **Appendix 1:**

### **Four 'Character and Locality Maps' (Sports and Leisure Facilities, and Schools and Churches, covering City area and whole District)**

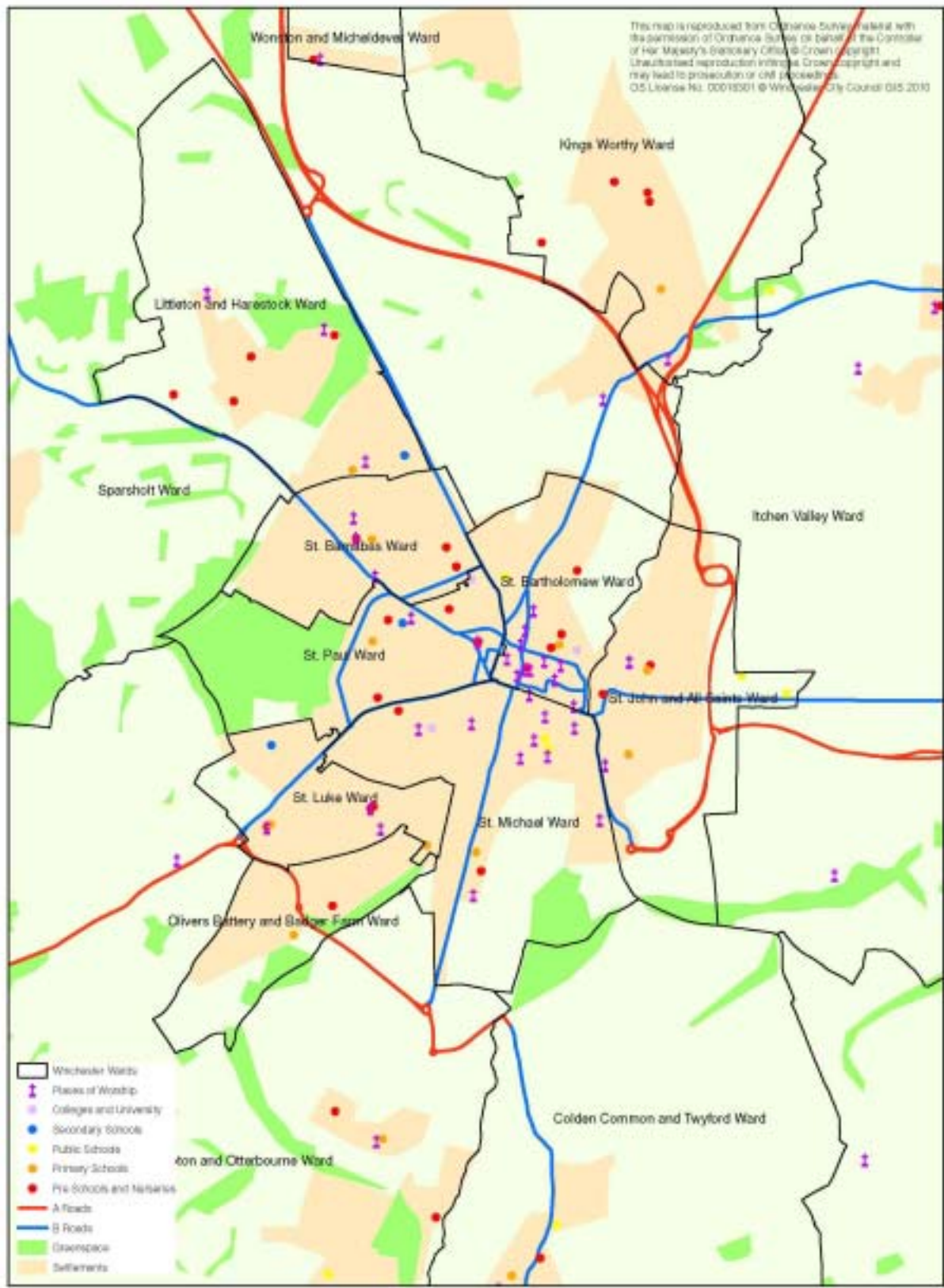
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- Winchester Wards
- + Places of Worship
- Colleges and University
- Secondary Schools
- Public Schools
- Primary Schools
- Pre Schools and Nurseries
- A Roads
- B Roads
- Greenspace
- Settlements

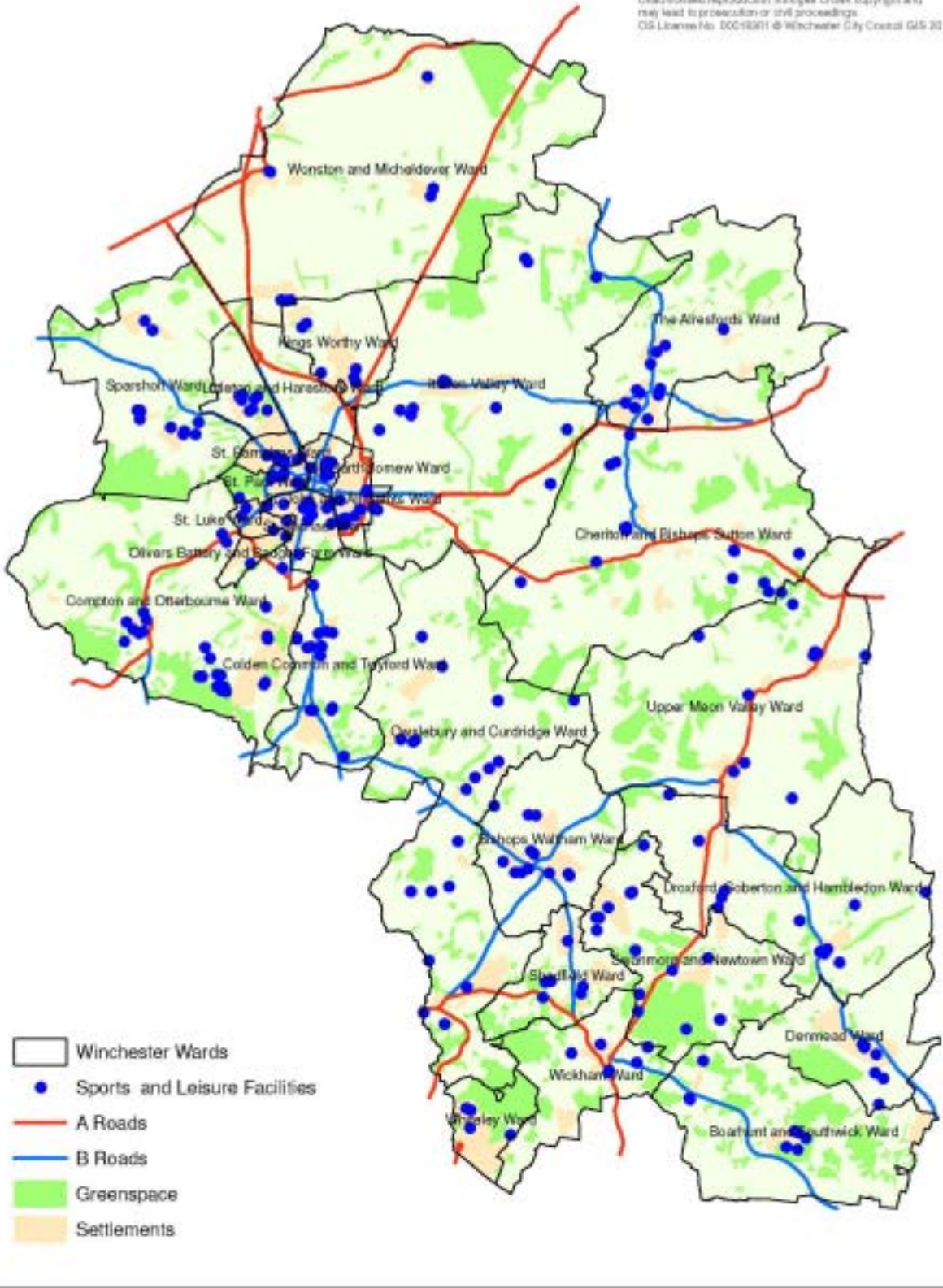
0 3 6 12 Kilometers

Settlement Schools and Churches



Winchester Schools and Churches

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- Winchester Wards
- Sports and Leisure Facilities
- A Roads
- B Roads
- Greenspace
- Settlements

0 3 6 12 Kilometers

Settlement Sports and Leisure

