

LICENSING AND REGULATION COMMITTEE

5 October 2010

POLICING AND CRIME ACT 2009 – SEXUAL ENTERTAINMENT VENUES

REPORT OF HEAD OF LEGAL SERVICES

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RECENT REFERENCES:

None

EXECUTIVE SUMMARY:

This purpose of this report is firstly to inform Members about Section 27 of the Policing and Crime Act 2009 and its implications for local authorities when dealing with “sexual entertainment venues” so that they can consider whether to recommend to Council that it should adopt its provisions.

The second purpose of this report is to present to Council a draft Sex Establishment Licensing Policy for consideration and approval for public consultation.

RECOMMENDATIONS:

- 1 That the Committee decide whether Council should be asked to adopt the provisions of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, as amended by section 27 of the Policing and Crime Act 2009.
- 2 That, if Council decides to adopt the provisions, a report be brought to the Committee at its meeting of 25 January 2011 covering:-

- (i) the representations (if any) on the draft Policy;
- (ii) application procedure, fees, hearings procedure and any relevant officer delegations..

TO COUNCIL

- 3 (If the Licensing and Regulation Committee decide to recommend adoption) that
- (i) a resolution be passed that the amendments to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, as set out in Section 27 of the Policing and Crime Act 2009, shall apply in the Winchester District with effect from 20 December 2010;
 - (ii) the draft Sex Establishment Licensing Policy (attached as Appendix 1 to Report LR333) be approved for publication as a consultation draft;
 - (iii) the consultation process set out in Section 3 of Report LR333 be approved;
 - (iv) item 9 in the Table in Paragraph 4.4 of Section 4 of Part 3 of the Constitution be amended 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.”;
 - (v) the representations (if any) received following the consultation on the draft Policy be considered by the Licensing and Regulation Committee on 25 January 2011 and a report made to full Council on 6 April 2011 to adopt the Policy.

LICENSING AND REGULATION COMMITTEE

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REPORT OF HEAD OF LEGAL SERVICES

DETAIL:

1 Introduction

- 1.1 Section 27 of the Policing and Crime Act 2009 (“section 27”) came into force on 6 April 2010. It introduces a new category of sex establishment called “sexual entertainment venue”, which allows local authorities to regulate lap dancing clubs and similar venues under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (“Schedule 3”).
- 1.2 Winchester City Council adopted Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (as originally enacted) on 8 November 1982, to come into effect on 31 January 1983. The original provisions covered sex shops and sex cinemas. Winchester District currently licenses no venues regulated under these provisions.
- 1.3 As a result of the new provisions, a “Sex Establishment” means:
- A sex cinema
 - A sex shop
 - A sexual entertainment venue
- 1.4 A ‘sexual entertainment venue’ is defined in paragraph 2A of Schedule 3 (as inserted by section 27 of the 2009 Act) as “any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer.”
- 1.5 ‘Relevant entertainment’ is defined as “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 (for example, where the entertainment takes place in private booths).
- 1.6 Paragraph 2A(3) of Schedule 3, as amended by the new provisions, sets out those premises that are excluded from the definition of sexual entertainment venues. These include sex shops and sex cinemas (which are separately defined in Schedule 3 to the 1982 Act) and premises which provide relevant

entertainment on an infrequent basis, defined as those which, together with certain other conditions, provide such entertainment on no more than eleven occasions within a 12 month period. (These will continue to be regulated under the 2003 Licensing Act.) Spontaneous displays of nudity or a lap dance by a customer will not result in the premises being considered a sexual entertainment venue, unless an organiser has permitted the activity to take place expressly or impliedly.

- 1.7 Apart from extending the scope of the 1982 Act to cover the licensing of sexual entertainment venues and removing the sex encounter establishment category in those local authority areas that adopt the new provisions, the 2009 Act makes only minor changes to the operation of Schedule 3.

2 Effect of New Provisions

- 2.1 The new provisions allow local authorities to refuse an application on wider grounds than are permitted under the 2003 Licensing Act, to give them more powers to control the number and location of lap dancing clubs and similar venues in their area and give local people a greater say over the regulation of lap dancing clubs and similar venues.
- 2.2 Schedule 3 (as amended by Section 27) also allows councils to set terms and conditions and fees (proportionate to the effective cost of the process in accordance with European Services Directive Guidance) for the grant, renewal, transfer and variation of such licences. It also allows councils to limit the number of licences that may be issued in the area, including nil, if it was decided that such venues would be inappropriate given the character and locality of the area. Licences issued under this regime must be renewed annually at which point local people would have the opportunity to raise objections if they have concerns.
- 2.3 There are both mandatory and discretionary grounds for refusing a licence application.

The mandatory grounds include the following:

- the applicant is under 18 years old
- the applicant company is not incorporated in the UK
- a previous application has been refused for the premises

The discretionary grounds include the following:

- the applicant is unsuitable
- the licence would be for the benefit of a third party who would be refused a licence if he/she had applied

- to grant the application would result in the number of sex establishments in the locality equalling or exceeding the number the local authority considers appropriate (which can be set at “nil”)
- to grant the application would be inappropriate having regard to the character, use of premises in the vicinity, the layout, condition or location of premises, or proximity to other sexual entertainment venues or planned regeneration of the area

2.4 These powers are not mandatory and only apply if the new provisions are adopted by the Council. There is no obligation to adopt the new legislation nor any requirement for consultation prior to adoption. However, local authorities which have not made a resolution to adopt the new provisions by 6 April 2011 must, as soon as practicable thereafter, consult local people about whether they should make such a resolution. This applies equally to local authorities which, like Winchester, have already adopted Schedule 3 of the 1982 Act for the licensing of sex shops and sex cinemas. Transitional and consequential legislation applies in respect of any existing sex establishments (although this does not apply to Winchester, as there are no such establishments at present).

2.5 The procedure for local authorities to adopt Schedule 3, as amended by Section 27, is set out in Section 2 of the 1982 Act. The local authority must first pass a resolution specifying that Schedule 3 (as amended by Section 27) shall apply stating the date on which the new provisions shall come into force in their area. The specified date must be more than one month after the day on which the resolution was passed. Notices must then be placed in a local newspaper within a specified period, stating that a resolution has been passed. If no resolution has been made to adopt the provisions within one year of the relevant provisions of the 2009 Act coming into force (that is, by 6 April 2011) then there is a duty to consult local people who live or work in the area of the local authority as to whether or not the provisions should be adopted.

2.6 Once adopted, anyone who uses any premises, vehicle, vessel or stall as a ‘sex establishment’ shall be prohibited from doing so unless they have been granted a licence.

3 Policy

3.1 Should it adopt the new provisions, the Council will need to consider whether or not to adopt a policy capturing the principles that should be applied in determining any licence applications. Whilst there is no requirement to adopt a policy, to do so would ensure transparency and consistency in determining how any applications for licences are to be considered and dealt with.

3.2 A Sex Establishment Licensing Policy should set out:

- principles to be applied, including, for example, an approach to “locality”; an appropriate number of venues; “character” of areas where such venues would or would not be appropriate;
- local conditions
- grounds for refusal

3.3 A draft policy is attached as Appendix 1. As there is no statutory requirement for a policy, there are no prescribed processes for the adoption of a policy, although good practice would indicate that a draft should be prepared and issued for consultation purposes, and a final version then adopted, taking into account any representations received, in the same way as used for the Licensing Policy.

3.4 Should Members decide to adopt a policy, it is envisaged that the draft at Appendix 1 will undergo a broad consultation before a final version is brought forward for consideration. It is proposed that consultation on the draft Policy will take place with:

- the Chief Officer of Police for the Winchester District
- any relevant trade associations who appear to officers to represent the interests of persons who may wish to carry on sex establishment businesses in the Council’s area
- Winchester Pubwatch and any other person who appear to officers to represent the interests of existing holders of Premises Licences in the area.
- one or more persons who appear to officers 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.

3.5 The Policy proposes to use the powers included in Schedule 3 (as amended) to limit the number of sex establishments in a particular locality. The Ward areas have been adopted as “localities” for this purpose. The Policy analyses the District’s Wards in the light of various factors and concludes that for all Wards, the maximum number of establishments should be set at zero.

3.6 A timetable for the adoption of the new provisions and the Policy is set out in the table below:-

Action	Date
Consideration of recommendation from Licensing and Regulation Committee to adopt new provisions and amend constitution.	Full Council 3 November 2010
Approval of draft Policy for public consultation.	Full Council 3 November 2010
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.

4 Further Reports required

4.1 Whilst policy forms one aspect for consideration in overseeing and implementing this regime, there are a number of others:

- application procedures and fees
- hearings procedures
- delegations to officers

4.2 As set out in the timetable above, a report on these matters will be brought to the Committee on 25 January 2011.

OTHER CONSIDERATIONS:

5 SUSTAINABLE COMMUNITY STRATEGY AND CORPORATE BUSINESS PLAN (RELEVANCE TO):

5.1 The adoption of the amended provisions in Schedule 3 and a Sex Establishment Policy referred to in this report relates to the “Safer and More Inclusive Communities” Priority.

6 RESOURCE IMPLICATIONS:

6.1 Adoption of the provisions and consideration of the draft Sex Establishment Licensing Policy can be dealt with within existing officer resources. Minimal expenditure is required for the publication of public notices which can be contained within existing budgets.

6.2 Following adoption, given the expected level of applications, it is anticipated that ongoing costs can be maintained within existing budgets, supplemented by the application fees.

BACKGROUND DOCUMENTS:

- Home Office Guidance for England and Wales 2010 – Sexual Entertainment Venues

APPENDICES:

Appendix 1 – draft Sex Establishment Licensing Policy



Winchester
City Council

**[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
- 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 authority's area
- 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.

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

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

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

Contents

1. Introduction
2. Review and Consultation
3. Definitions
4. Policy Considerations
5. General Policy
6. The Application Process
7. Duration of Licence
8. Appeals

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, as 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
 - **[TO BE SPECIFIED]** 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 including:-
 - Chambers of Trade
 - Winchester Business Improvement District
 - Winchester City Centre Partnership
 - **[TO BE SPECIFIED]** Winchester Pubwatch and any other person who appear to the Council to represent the interests of existing holders of Premises Licences in the area.
 - **[TO BE SPECIFIED]** 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. 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

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Colebrook Street
Winchester
SO23 9LJ

- 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
 - Places of worship

4.12 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.

4.13 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

4.14 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.

4.15 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 numbers of sex establishments for each ward is as follows:

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

WARD	APPROPRIATE NUMBER
Bishops Waltham	Nil
Boarhunt & Southwick	Nil
Cheriton & Bishops Sutton	Nil
Colden Common & Twyford	Nil
Compton & Otterbourne	Nil
Denmead	Nil
Droxford, Soberton & Hambledon	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

5.2 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 Service
 - Community Safety
 - Environmental Health
 - Licensing Authority
 - 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

5.2.10 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.

5.2.11 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

5.2.12 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.

5.2.13 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

5.2.14 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.

- 5.2.15 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

- 5.2.16 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

- 6.12 To continue operating as a sex establishment, licence holders must make a renewal application prior to the expiry of the existing licence.
- 6.13 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

- 6.14 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.
- 6.15 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.
- 6.16 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

- 6.17 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

- 6.18 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.
- 6.19 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.
- 6.20 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.
- 6.21 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.
- 6.22 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

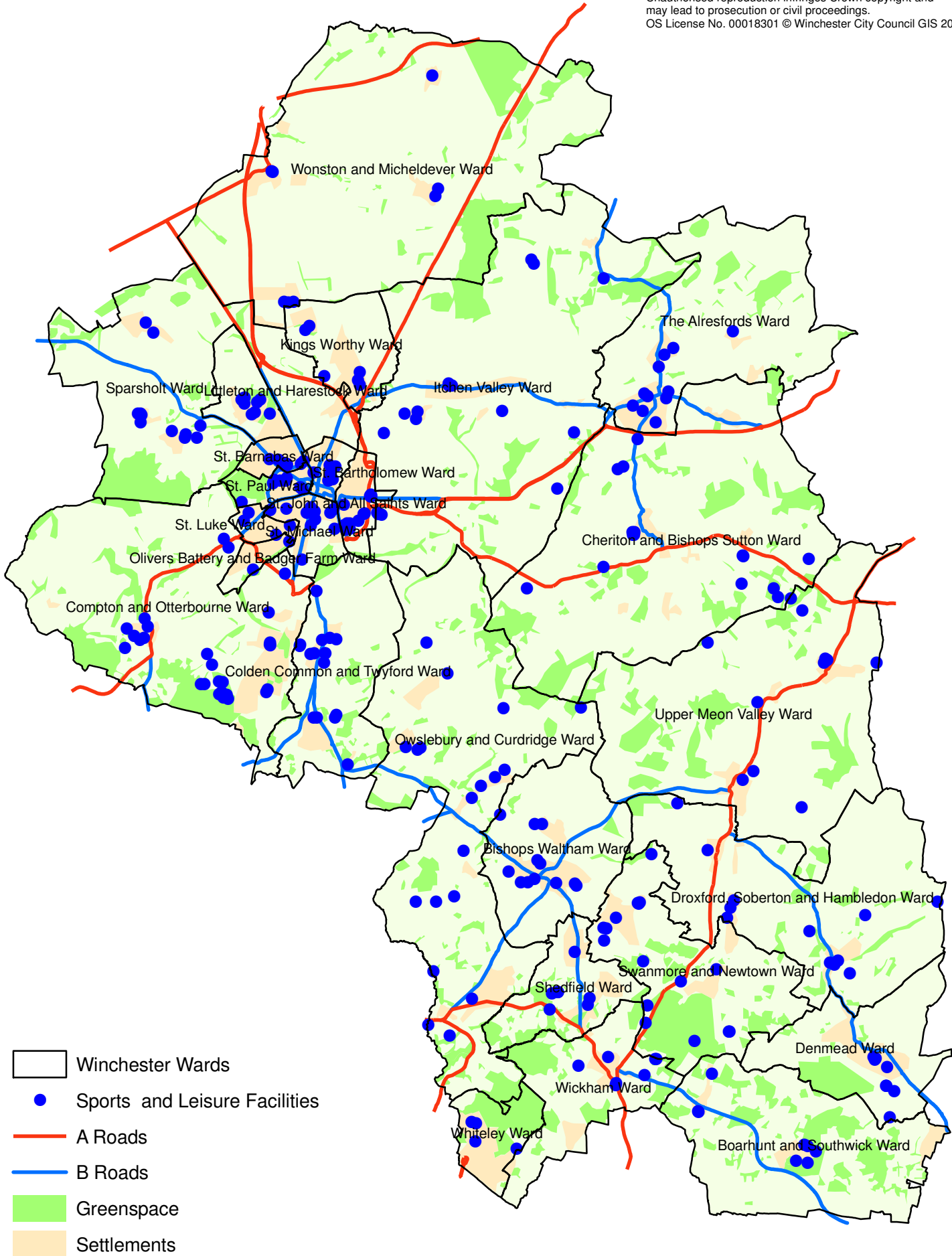
- 8.1 There is no right of appeal:
- | against refusal of licence on the grounds set out in paragraph 5.1.1 or 5.1.3 above, unless an applicant can prove the appropriate ground of refusal does not apply to them
 - | where refusal of licence is based on the grounds set out in paragraph 5.2.5 (c) and (d) 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:

INSERT Character and Locality Maps (Sports and Leisure Facilities, and Schools and Churches)

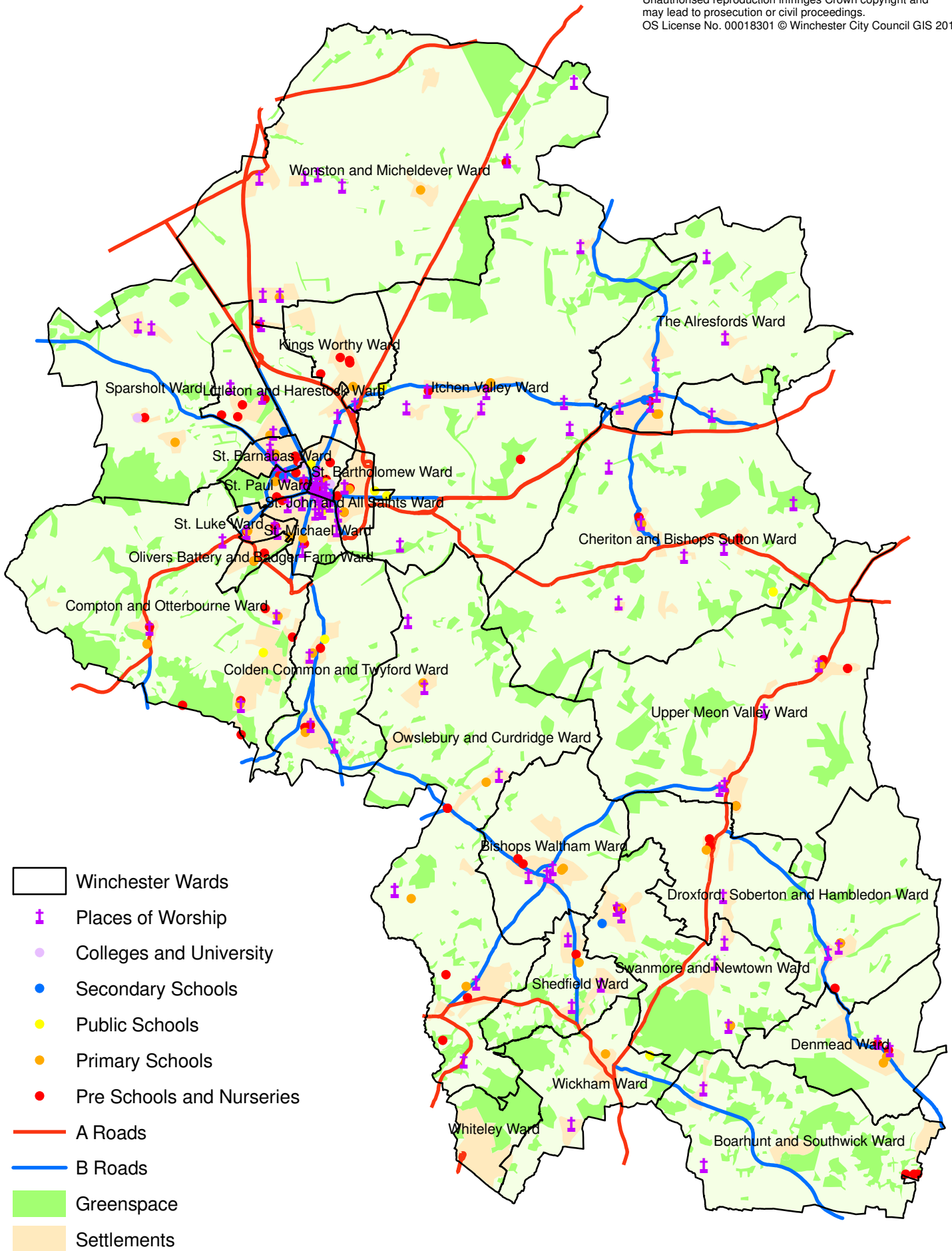
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- Winchester Wards
- Sports and Leisure Facilities
- A Roads
- B Roads
- Greenspace
- Settlements

0 3 6 12 Kilometers

Settlement Sports and Leisure



- 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