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# Law, sex and the city: regulating sexual entertainment venues in England and Wales

Law, sex and the city

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## Abstract

**Purpose** – This paper aims to explore how municipal law, in its various guises, serves to police the boundaries of acceptable sexual conduct by considering how Sexual Entertainment Venues (SEVs) in British cities are controlled through diverse techniques of licensing and planning control.

**Design/methodology/approach** – The paper describes the emergence of permissive new licensing controls that provide local authorities considerable control over SEVs. Licensing decisions, judicial review cases and planning inspectorate adjudications since the inception of the new powers are examined to explore the logic of judgements preventing SEVs operating in specific localities.

**Findings** – Through analysis of case studies, it is shown that local authorities have almost total discretion to prevent SEVs operating in specific localities, particularly those undergoing, or anticipated to be undergoing, redevelopment and regeneration.

**Originality/value** – This paper offers unique insights on the “scope” of municipal law by highlighting how land uses associated with “sexual minority” interests are regulated in the interests of urban regeneration, redevelopment and restructuring.

**Keywords** Planning, UK, Sexuality, Licensing, Nuisance, Sexual entertainment venue

**Paper type** Research paper

## Introduction

It is widely understood that law profoundly influences sexual attitudes, practices and subjectivities, with criminal laws concerning obscenity, sexual consent and public nudity constructing boundaries between “good” sex and that condemned variously as perverse, dangerous or immoral (Munro and Stychin, 2007). Those who transgress these laws can find themselves marginalized, with the law used as an instrument for ostracizing and punishing those whose sexual practices and attitudes deviate from the norm (Johnson and Dalton, 2011). Much of the scholarship in this field accordingly explores the impacts of policing on sexual conduct and feeds into campaigns arguing for extended rights of citizenship for those “queer” subjects marginalized by dominant norms. Typically, such scholarship also takes aim at legislation passed at the national or even supra-national scale, arguing that this

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fundamentally influences and shapes sexual rights. Yet this is to miss the important point that sexual citizenship is an ongoing process wherein the rights secured at the national level can enmesh with laws enacted or enforced at other scales to produce contradictory effects (Hubbard, 2013). Drawing on debates concerning “the right to the city”[1], it can be argued that the “right” to pursue a particular sexual lifestyle is only a right in so far that space needs to exist in the city which is conducive to the expression of that lifestyle. Without spaces to flourish, marginal sexualities dwindle.

This type of argument has been most forcibly made in North American analyses of the role of zoning in displacing lesbian and gay venues from specific neighbourhoods (e.g. Frisch, 2002; Brink, 2011), with rezoning effectively instigating gentrification by displacing “queer” business regarded as an obstacle to the attraction of family-friendly corporations and investment in specific urban neighbourhoods (Doan, 2011). This suggests that zoning reinforces heterosexuality (Frisch, 2002) at the same time that it supports capital accumulation (Papayanis, 2000). However, zoning ordinances are merely one of many instruments associated with municipal law, which Valverde (2005, p. 36) describes as concerning “access to, control over, and enjoyment of spaces, buildings, parcels of land, and other largely material entities”. Municipal law also shapes space through development control (Keenan, 2010), the licensing of premises (Valverde and Cirak, 2003), the enactment of local by-laws (Blomley, 2010) and environmental health regulation (Koch and Latham, 2013).

In the remainder of this article, I describe how such practices of municipal law enact a regulation of sex through space in a manner that has yet to be adequately explored in England and Wales[2]. Here, I focus on the regulation of an activity that is lawful (i.e. striptease entertainment), but which has become a focus of regulation in recent years because its manifestation in the urban landscape (i.e. in the form of the “lap dance club”) has, in many instances, been determined to disturb urban order. As I demonstrate, both planning and licensing have been implicated in the removal of sexual entertainment from specific localities on the basis it is “out of place”, not because it has been deemed unlawful *per se*. Through an analysis of all licensing and planning determinations of what have become known as the “Sexual Entertainment Venues” (SEVs), between 2011-2013[3], this paper draws out some of the distinctive qualities of municipal law which bequeath it considerable, and often unnoted, power to determine the place and space of sex in the city. A key consequence of such qualities – it is argued – is that rights to run businesses or work in sexual entertainment are being over-ruled by local decision-making processes that are biased towards the moral and aesthetic values of middle-class, middle-aged property owners and developers[4]. As will be shown, this contributes to the processes by which SEVs are pushed from valued to less valued spaces, fuelling gentrification and creative destruction in the process.

#### *Creating an object of regulation: defining the sexual entertainment venue*

Striptease entertainment has long existed in England and Wales, mainly in inner city public houses catering for a male, working class clientele (Sanders and Hardy, 2012). However, this characterization began to break down in the 1990s as “USA style” striptease clubs emerged. These clubs, dedicated to offering sexual entertainment, quickly became known as “lap dance” clubs because they were (erroneously) thought to specialize in the forms of close-contact “straddle dancing”. By 2003, there were estimated to be as many as 350 such clubs in England and Wales (Jones *et al.*, 2003), many highly visible, well-advertised clubs

located in town or city centres. Objections to the new crop of striptease clubs came thick and fast from predictable sources – religious organizations and anti-pornography feminists in particular (Patiniotis and Standing, 2012) – coalescing with those of residents, businesses and local councillors to precipitate what often appeared co-ordinated NIMBY (“Not in My Back Yard”) style protests. In such protests, stereotypes of both striptease artistes and their clientele were deployed to construct the club as a potential source of nuisance, the former depicted as vulnerable and exploited women, and the latter as anti-social men (Hubbard, 2009). Such discourses entwined to position such clubs as offering entertainment that was lawful, but thought to attract criminal elements.

The evidence base to support claims that striptease clubs are associated with more criminality than other venues in the nighttime economy remains thin. Recent evidence from England and Wales (Hubbard and Colosi, 2015) mirrors US studies suggesting any association between the presence of striptease clubs and high neighbourhood rates of criminality can be explained through generally higher rates of crime in the areas they are located, with anti-social behaviour, noise and littering around lap dance clubs generally lower than around pubs, clubs and late night takeaways (Enriquez *et al.*, 2006; Seaman and Linz, 2014). Likewise, in a notable Australian study, it was reported that most residents experience little nuisance from sex premises, with objectors constituting a minority usually rejecting such venues on grounds of morality and taste, not nuisance (Prior and Crofts, 2012; Hubbard *et al.*, 2013). Nevertheless, the force of opposition in England and Wales was such that some MPs joined campaigns designed to prevent new club openings, and began to argue for new regulatory powers. Here, the seeming inability of local authorities to prevent the opening of lap dance clubs under the *Licensing Act 2003* provoked a Ten Minute Rule Bill in June 2008 – the *Sex Encounter Establishments (Licensing) Bill* – sponsored by Durham MP Roberta Blackman-Woods. This ultimately led to the inclusion of clauses in the *Policing and Crime Act 2009* allowing local authorities to license striptease venues as SEVs, subjecting them to the same determination criteria by which sex cinemas and sex shops had been judged since the introduction of the *Local Government (Miscellaneous Provisions) Act* in 1982[5].

The consequence of this – exhaustively catalogued by Kolvin (2011) – is that any venue offering “relevant entertainment”[6] more than once a month requires an SEV licence in addition to a licence for the sale of alcohol. Significantly, the new licensing powers allow a local authority to refuse a licence application if the applicant is not a “fit and proper person” to run such establishment, or if:

[...] the number of sex establishments, or of 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 [*or*] that the grant or renewal of the licence would be inappropriate, having regard (i) to the character of the relevant locality (ii) to the use to which any premises in the vicinity are put; or (iii) to the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made (Home Office, 2010, p. 10).

Given a locality can be defined by the local authority “on the facts of the individual application”[7], Kolvin (2011, p. 65) concludes this gives authorities “a high degree of control, even amounting to an embargo, on licences for particular types of sex establishment within particular localities”, noting that “the width of the discretion is consolidated by the absence of any appeal against a refusal on this ground”[8].

*Regulation in practice: determining the appropriateness of lap dance venues*

As described above, the government's reaction to the furore surrounding lap dance clubs was to allow local authorities to bring such premises under the aegis of a separate licensing regime. The logic underpinning this decision appears clear: "arm's length" regulation via the delegation of day-to-day responsibility of premise to non-technical and non-expert personnel (i.e. venue managers and door-staff) appears both adequate and proportionate, given striptease is lawful, but regarded as more problematic than some other licensable activities. Yet, this delegation of regulatory responsibility should not distract from the fact it is a committee of elected councillors who ultimately determine which businesses are appropriate in which spaces. These councillors are reliant on licensing officers informing them as to the merits of the case, and presenting a succinct set of options which are defensible when faced by the legal teams that can be drafted in by applicants. This said, councillors are empowered to act on behalf of the local communities, and may claim to instinctively "know" what is appropriate in specific geographical locales. The implication here is that there is room for subjectivity – and even individual morality – to influence the processing of applications. In this sense, the gender, age, class and party affiliation of the councillors who sit on licensing committees can be significant in colouring their opinion of sexual entertainment, and disposing them for, or against, such venues[9].

These new adoptive powers accordingly grant considerable discretion to licensing committee members, allowing them to respond to local objections to new lap dance clubs according to their interpretation of the "facts of the case". Though most local authorities suggest they will consider each application on its merits, in some cases, local policies approved by licensing committees have stated a presumption against the award of licences, stating there are no localities where sexual entertainment premises are suitable (a "nil limit")[10]. In many other cases, local authorities state they will pay particular attention to the proximity of schools, religious facilities, shopping districts, "family" housing and any facilities which might routinely be used by children. This resulted in 35 refusals of SEV licences between 2011 and 2013, with all but two justified with reference to the unsuitability of the locality or the presence of "sensitive" land uses in the vicinity[11]. While guidelines suggest that while "the moral case against such establishments cannot be used as a ground for refusal" (Home Office, 2010, p. 5), the fact that objection letters rarely restrict their comments to the environmental impacts of lap dance clubs means that these judgements may be coloured by general assertions that the presence of a club would "lower the tone" of a given locality or attract "unsavoury" characters (Hubbard and Colosi, 2015). Even when a local authority grants a licence, licensing conditions can severely limit the hours of opening and general operation of the club[12]. Combined, this produces a restrictive operating environment for SEVs in many local authorities.

However, there are other municipal laws which can be brought to bear on SEVs. Development control, for example, also provides a basis for preventing the opening of a lap dance club despite not being mentioned in any parliamentary debates concerning the introduction of new licensing powers. This use of planning powers was perhaps unacknowledged because, unlike other jurisdictions where the sex industry is recognised as a distinct category of land use (e.g. see Prior, 2008 and Prior and Crofts, 2012, on Sydney), sex establishments are not defined in the Use Classes Order[13] in England and Wales. This means that while a change of use from residential use to a business use involving sexual commerce would require planning permission (as shown

when residential properties have been used for the purposes of prostitution[14]), permission for the conversion of a nightclub (which is *sui generis* within the *Use Classes Order*) to a lap dance club has seemingly been waived by some local authorities on the basis that this does not constitute a material change of use. This has been challenged in some recent cases which have suggested that the conversion of a nightclub to a SEV – itself a *sui generis* category – always constitutes a change of use. For example, in 2010, the planning inspector upheld the decision of Bristol City Council to refuse the conversion of residential flats to Use Class A3/A4 use by day and *sui generis* lap dance club by night, noting the lap dancing club could have a “materially detrimental effect on schemes for continuing regeneration in the area and stimulating the vitality and viability” of the street on which it was located[15].

Like licensing, planning is manifestly not concerned with morality, and is concerned only with valid material considerations (i.e. the visual appearance of a development, its impact on the setting and potential environmental nuisance). This was underlined in *Sidhu v Birmingham City Council* (2013) when an applicant argued that refusal of planning permission for conversion of an inner city pub to an SEV was a moral judgement, and not grounded in the facts of the application. In this case, the Planning Inspector concluded:

Several local organizations and people have commented on the acceptability of this type of use in this district centre, raising moral considerations. Some of the nearby community, cultural and religious uses are sometimes open at night, and some members of the local community might not see this type of use as a compatible activity. However, I have considered this proposal purely in terms of valid land-use and planning considerations [...]. I conclude that the proposed change of use would be detrimental to the character and function of the [area], with the risk of crime and unsocial behaviour. These are sound and clear-cut reasons to refuse planning permission, and the appeal should therefore be dismissed[16].

This stance has been echoed elsewhere. For example, in Leeds there was a vocal campaign against the proliferation of lap dancing clubs in the city centre, with the discovery that one club lacked planning permission triggering objections to its (retrospective) change of use. In this case, chief planning officer suggested that:

The courts are the arbiters of what constitutes a material consideration and have held that public opposition *per se* is not. In cases where fears or concerns are genuinely held by members of the public, these may constitute a material consideration but case law suggests that such fears would have to be shown to relate to material considerations, or be objectively justified or have land use consequences in their own right. Moral objections to developments, such as those involving gambling, drinking or sex, are given little weight in decision making unless there is some tangible land use or amenity impact deriving from such activities which can be shown[17].

In this case, approval was thus granted despite opposition, with the judgement suggesting that “the use would be likely to have less of a direct impact on the amenities of the locality than the use of the building primarily as a drinking establishment”[18]. Likewise, in reversing refusal of retrospective planning permission for a lap dance club by Portsmouth City Council, the planning inspector suggested the council had taken account of representations made with regard to gender equality, child safeguarding and moral issues, all of which are not admissible when dealing with a proposal solely on its planning merits[19].

*Nuisance and the curious case of SEVs*

In considering the scope of municipal law in the regulation of lap dance clubs, it becomes apparent that two overlapping techniques of governance are in play in England and Wales: licensing and planning. While distinct in principle[20], both techniques sidestep questions of decency, obscenity or manners to focus instead on what is seen as the rightful provenance of municipal law: the production of orderly and liveable cities via the reduction of nuisance. Here, nuisance can be conceived as any interference with an occupier's use and enjoyment of their land (Cooper, 2002). In general terms, town and country planning in England and Wales has aimed to prevent any development which could produce demonstrable nuisance, such as unwanted forms of noise, vapour or vibration across a property boundary. Licensing also has the reduction of nuisance as one of its main objectives, with this understood to encompass "all the concerns likely to arise from the operation of any premises conducting licensable activities in terms of the impact of nuisance on people living or doing business nearby"[21]. In the absence of such municipal control, the traditional recourse for property owners experiencing nuisance would be through the common law of torts. Municipal law – as a subset of environmental law (Wightman, 1998) – accordingly relegates tort-law to what some commentators describe as a "back-stop" role (Latham *et al.*, 2011), the state acting in the public interest to prevent private litigation.

Here, it is worth considering two distinct forms of nuisance: amenity nuisance and stigma nuisance. The former has been well explored in case law, understood as a harmful or noxious emission (i.e. what geographers term a *negative externality*) impinging on another's use or enjoyment of land through contamination. Tort law here shows us that physical contamination of this type (e.g. the impact of noise, vibration, smoke and air pollution) can entitle a landowner to compensation or the serving of an injunction to prevent future contamination of land. However, cases also suggest that where one land use causes a decline in the value of another property, but there is no physical damage or noxious effect measurable, then the possibility of recompense is more distant[22]. This suggests that tort law's ability to deal with what we might term stigma nuisance is somewhat limited. Yet, in the case of SEVs, this appears to be precisely what is at stake: opponents of lap dance venues may allege nuisances such as parking, noise and littering, but these are unlikely to be any more pronounced than for a pub or club that operates in the night-time economy (Hubbard and Colosi, 2015). This means that when a nightclub or pub converts to a lap dance club, opponents are, in essence, not objecting to the environmental nuisances that will be associated with the venue but the idea that it will lower the "tone" of the area via association. This appears a classic case of *stigma nuisance* whereby the presence of an activity regarded as "immoral" is accused of lowering the reputation of an area and, hence, its property values (Nagle, 2001)[23]. Though such stigma nuisance can theoretically be dealt with through common law[24], the difficulties in determining questions of compensation means that municipal law has generally been deployed to head off such claims. As histories of sex establishments show, there is a general association between sex industry premises and lower value areas (Papayanis, 2000), and it is extremely difficult to assemble evidence that a sex premise is more of a "noxious neighbour" than any number of other premises which might lower property prices through association (e.g. homeless shelters, drug injection centres, alcoholic treatment facilities and so on) (Hubbard *et al.*, 2013).

Accordingly, one of the key roles of municipal law in England and Wales is arguably to prevent the need for complex deliberations on the nature of stigma nuisance through actions foreclosing the possibility of private actions being pursued through common law. Here, it is worth reflecting on the *chronopolitics*[25] of different forms of municipal law. Planning, in effect, seeks to minimize reliance on tort by regulating land markets through an appeal to particular notions of spatial justice. In broad terms, it does this by assessing the potential nuisance a development might cause, and refusing development rights where the nuisance caused will outweigh the social benefits of development. Of course, the nuisances that might be caused by a development cannot be determined with any degree of accuracy *ex ante*, so committees need to make determinations as to the likely consequences of a development. Here, a precautionary logic must prevail, meaning that the mere possibility of nuisance arising might become a basis for refusal. In this sense, planning and licensing officers make an assessment of lap dancing clubs that determines whether they are appropriate in given localities on the basis of nuisances that *might* occur, not ones that have occurred, presenting this for determination by the relevant committee. Once permission has been granted, it is difficult for any local resident or business to seek redress through private injunctions or nuisance tort: *Coventry v Lawrence* (2012)[26] shows that if the granting of planning permission changes the character of an area, then it is difficult for a claimant to later suggest that this change caused them nuisance for which they deserve redress. Planning, therefore, seeks to project forward to a city-yet-to-come, an ordered city where land uses are distributed so there is no possibility of conflict and everything is “in its place”. Licensing similarly seeks to pre-empt conflicts of use, but is both remedial *and* preventative, as any failure of licensing conditions to prevent nuisance can be reacted to via annual licence renewal.

This perspective suggests that licensing offers something of a back-up to planning, so that even if the material use of land is approved of, and the right to development bequeathed, conditions can be applied to negate the risk of nuisance. As noted above, this can cause problems for premise owners who can obtain planning permission for a lap dance club and then find their SEV licence application is refused. This precautionary logic is doubly galling when both planning permission and a licence have already been granted, yet at the annual point of renewal, a licence is refused despite a lack of any evidence of nuisance having occurred. This has occurred several times, with some licensing committees deciding that the use of a premise as a SEV is no longer appropriate, given changes in the nature of a locality. For instance, Platinum Lounge in Chester opened in 2005 and obtained an SEV licence in 2012, but this licence was revoked by Cheshire West & Chester’s licensing committee in 2013 on the grounds that the area had become more residential since the initial granting of a licence[27]. In this case, there was no evidence that noise and littering around the venue had changed or increased, merely that the change in the nature of the locality was making nuisance more likely to be experienced by local residents.

A related case underlines the distinctive scope that municipal law has to determine the present with reference to the (imagined) future. This concerned Oxford City Council’s refusal to renew an SEV licence for a lap-dancing club on the Oxpens Road, Oxford. These premises had operated without incident since November 2011, though in September 2012, the authority refused to renew the SEV licence having regard to “the character of the relevant locality or use to which premises in the vicinity were put” noting that future development of student accommodation in the vicinity would make the premise inappropriate because of increased use of the locality by “young and

possibly vulnerable students”[28]. The decision letter acknowledged this was a departure from its decision to initially grant an SEV licence in July 2011, but suggested that with the benefit of evidence concerning the operation of the premises over the previous year, it was entitled to reach a different conclusion. The claimant issued judicial review proceedings challenging the lawfulness of this decision, citing a previous decision where a local authority had refused a licence for a sex shop on the basis of change in the character of the relevant locality, but where the courts concluded there was insufficient evidence of change[29]. However, the judge in this case held that as matter of law, licensing decision-makers are entitled to take into account both the present and future character of an area, stating there is no reason to limit the reference to character to the present. In his view:

“Prospective licenses required a prospective view [...]. The fact that an area is developing and in a continued state of change is a relevant consideration to why renewal might be inappropriate”[30].

This was underlined in *Bridgerow Ltd, R (on the application of) v Cheshire West and Chester Borough Council* [2014], where it was concluded that licensing committees are empowered to take a “fresh look” at the nature of the locality at point of renewal, and reach different conclusions about the present and future suitability of the locality than in a previous licensing hearing[31].

These cases show that municipal law can be prospective in its attempt to mitigate future nuisances. While this is entirely logical in terms of municipal law’s desire to produce an orderly, liveable city, it shows that space, time and jurisdiction can intersect to produce outcomes that might be viewed as unjust with reference to other “higher” laws. In the instance cited above, a landowner acquired a property, sought the right to develop it as a lap dance club through planning consent, and then acquired a licence that permitted striptease to occur. However, one year later, and despite no legal infraction having occurred, the club’s licence renewal was refused. In this case, the applicant had invested in the development and marketing of the club, but their right to run a business was removed on the basis of a development that was yet to occur. The fact that one local land use (university accommodation) was privileged over another (a lap dance club) confirms Blandy and Fang’s view that:

[...] successful actors can usually ensure that legal and administrative discretion is exercised in their favour through exerting influence to shape “policy” law, and emerge victorious from “facilitative” law disputes by use of authority (2013, p. 201).

In SEV cases, it is evident that corporate lap dance chains able to afford good licensing solicitors are more likely to obtain licenses than independent operators, with powerful local interests generally able to overwhelm the latter, especially in inner city areas discoursed as undergoing regeneration.

This serves to underline the wider point that while municipal law was borne out of a desire to tackle urban disorder and improve the living conditions of all urban dwellers, contemporary processes of planning and licensing favour the powerful, entrenching established inequalities (Valverde, 2012). Read through the lens of neo-Marxist scholarship on “neoliberal urbanism” (e.g. Brenner and Theodore, 2002), we might then conclude that the legislation introduced to allow local authorities to more tightly regulate the SEVs has allowed them to enact a deliberate “purification of space” that supports corporate gentrification and regeneration through the displacement of “sexual minorities” from

particular localities (see also Hubbard, 2004). However, as Blomley (2010) notes in the case of the regulation of pedestrianism in North America[32], municipal law rarely utilises a language of purification, censorship or “Otherness”, as it focuses on more narrow concerns with urbanity that are indifferent to, or ignorant of, debates concerning human rights. In that sense, it appears that SEVs are being removed from particular localities simply because they are “out of place”, not because the local authority is opposed to sexual entertainment *per se*. Indeed, scant reference is made in planning and licensing documents to the rights of those who produce and consume sexual entertainment, as the focus is squarely on the suitability of the venue in given localities, not the wider principle of whether sexual entertainment is morally acceptable or not.

### Conclusion

This paper has shown that any premise in England and Wales offering striptease entertainment is potentially subject to both planning and licensing control, both of which are capable of preventing a club opening in a given locality with little right of appeal: as stated in *Bridgerow Ltd, R (on the application of) v Cheshire West and Chester Borough Council* [2014], “licensing and planning functions are paradigm examples of matters that are matters for local policy and local knowledge to determine, subject to intervention by the Courts only where necessary”[33]. This suggests that the discretion of a local authority is effectively total (so long as correct legal procedures are followed and refusals justified). Yet, because these different systems of municipal regulation are based on a unique interpretation of the facts of a case, and guided by different professional knowledge, it is possible for both to reach different decisions. This is logical in so much that planning is concerned with the material impacts of a premise on its locality, but licensing is concerned with the impacts of the use of that premise, which can of course be temporary. However, this can cause problems for applicants, given the possibility for contradictory outcomes: some clubs are granted a licence but refused planning permission while, conversely, some clubs have obtained planning permission but then failed to obtain an SEV licence. This opens up important questions concerning the *administrative* and *bureaucratic fairness* of different forms of municipal law, as well the appropriate scale at which law is enacted[34].

Irrespective, this article has shown that local authorities have a range of instruments at their disposal bequeath them considerable power to shape the place and space of sexual entertainment. This evidential ability to shape conduct is the result of at least three important, but often unremarked, characteristics of municipal law. The first is that municipal law works with particular notions of space and time, being precautionary and forward-looking. This is perhaps not surprising, given town planning’s utopian ambition, but it is significant: rather than reacting to nuisances that have occurred, municipal law seeks to prevent nuisances by preventing particular uses of land being enacted in the first instance. This means that the evidence of the here-and-now can be discounted or downplayed with reference to a possible future: lap dance clubs can be prevented from opening on the basis of nuisances they are imagined they *might* cause. This means local authorities can effectively zone, move and close down SEVs for political or urban policy reasons without ever being explicit as to why a venue offering sexual entertainment might prove less compatible with “sensitive” land uses than pubs, clubs or other night-time venues.

The second is that municipal law is focused on local contingencies, meaning the enactment of municipal law can ride roughshod over rights secured on other scales, such as the right to sexual expression, rights to develop a business and even rights to property. All of this is legitimate, given the municipal law is concerned with the creation of an orderly city and the avoidance of nuisance: rights to produce or consume sexual entertainment are irrelevant in determining the legality of adult entertainment premises in a given locality; as noted in *Bean Leisure and Ruby May v Leeds City Council* [2013]:

If the licensing regime engages the Human Rights of operators of lap dancing clubs at all, it does so at a very low level [...]. If the local authority exercises that power rationally [...] in accordance with the purposes of the statute, it would require very unusual facts for it to amount to a disproportionate restriction on Convention rights[35].

This suggests that so long as a local authority acts in the general public interest, restrictive policies are justifiable. Which takes us back to the crux of the matter: who defines what is in the “general public” interest? Are local authorities consulting adequately to ensure different publics have their views felt? Do we trust Licensing Committees to balance the interests of the “general public” with the rights of those who want to run a legitimate business? Such questions seem particularly important, given the dominant type of nuisance associated with lap dancing is moral or stigma nuisance, with most objections to sex premises based on disgust and prejudicial thinking rather than any consideration of (actual) environmental nuisance (Nussbaum, 2009; Nagle, 2001).

A third significant characteristic of municipal law is that it works with a notion of spatial, rather than social, justice. In the case of lap dance clubs, it means that the use of land is considered without reference to the identities of those who are benefitting from that use. Lap dancing itself becomes a “black box”: whether the sexual entertainment is for a male/female, straight/gay audience is not considered relevant, and often not even explored by regulators. Nor is the nature of the performance considered: burlesque performances and “bump and grind” striptease are treated as equivalent. This is perhaps dangerous, as it reproduces a general stigma around striptease: the reproduction of a “commonsense” view that all striptease clubs generate similar nuisances stigmatizes all those who buy and sell sexual entertainment, irrespective of their intent. The crude dichotomy imposed here is all too apparent: the division of land use into acceptable and unacceptable produces distinctions between different bodies (Hubbard, 2011). The population of the city is accordingly split between those who are legitimately pursuing their rights to property, while “those whose bodies constitute a nuisance become objectified, their existence reduced to an impediment caused to others” (Cooper, 2002, p. 29).

Taken together, these three characteristics of municipal law make it extremely powerful in shaping sexual conduct through use. The fact that this is creating a “spatial mosaic” whereby a legitimate sexual activity is permitted in one area, but not another, is not a problem if we consider there are enough places in which the conduct will be considered inoffensive and unlikely to produce nuisances (Nussbaum, 2009). Yet, many local authorities suggest such spaces simply do not exist, arguing that SEVs are not merely incompatible with residential land use, but also retail, commercial and industrial land. It is this tightening of municipal regulation that might ultimately ensure that striptease entertainment disappears from cities in England and Wales despite its lawful status. Indeed, the number of clubs has dropped from an estimated 350 in 2005 to fewer than 200 by 2013, with 35 licence applications refused between 2011 and the beginning

of 2014 and many clubs deciding not to apply for a licence, given the likelihood of refusal. This may not be of concern for the majority who do not consume or produce sexual entertainment, but, as Valverde (2012) notes, this indicates the problem of systems of municipal law that afford different socio-economic groups varying degrees of legal protection and further entrench established inequalities. Given this, we should not be particularly surprised that the new powers to regulate SEVs are being enacted in ways that support dominant ideals of land use, and that venues associated with “sexual minority” interests are being sacrificed in the interests of urban regeneration, redevelopment and restructuring.

## Notes

1. The “right to the city” is a term most associated with Lefebvre Henri (1968), and has become a key thematic in critical urban scholarship. Such scholarship considers the city as a political instrument for state control as well as the basis on which particular property relations are reproduced (Butler, 2009). In this light, arguing for the right to the city is a call to transform the power relations that underlie the production of space, shifting control away from capital and the state towards urban inhabitants (Purcell, 2003, pp. 101-2).
2. This paper focuses on England and Wales, noting that legislation to effect a regulation of similar premises in Scotland was only introduced in draft form in 2014 in the *Air Weapons and Licensing (Scotland) Bill*, with this legislation including clauses modelled on those in Section 27 of the *Policing and Crime Act 2009* (England and Wales).
3. This research complemented the largest ever commissioned study of public attitudes to Sexual Entertainment Venues, and involved the analysis of all 240 licensing applications for SEV licenses made between April 2010 to April 2013 in England & Wales along with scrutiny of all publically available objection letters and written submissions accompanying these. In addition, the author attended eight licence application hearings, speaking to licensing officers and applicants in most cases. Relevant judicial review and planning inspectorate decisions were also obtained where appropriate. This research was supported by the Economic and Social Research Council, Grant ES/J002755/1 “Sexualisation, nuisance and safety: Sexual Entertainment Venues and the management of risk”.
4. See Valverde (2012) on the more general democratic deficit associated with municipal law.
5. The *Local Government (Miscellaneous Powers) Act 1982* introduced powers to allow for the licensing of sex shops and sex cinemas: see especially Goudie and Goudie (1986), Manchester (1990) and Coulmont and Hubbard (2010).
6. Relevant entertainment is defined as including “any live performance or live display of nudity which is of such nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purpose of sexual stimulating any member of an audience (whether by verbal or other means)”. Guidance suggests lap dancing, table dancing, pole dancing, strip shows and live sex shows all fit into this definition (Home Office, 2010).
7. *R V Peterborough City Council ex p Quietlynn* (1987) 85 LGR 249.
8. The breadth of the powers given to local authorities as licensing authorities under Schedule 3 of the *Local Government (Miscellaneous Powers) Act 1982* as applied to sex shops and sex cinemas has been repeatedly emphasised by the courts. In *R (The Christine Institute) v Newcastle-Upon-Tyne City Council* [2001] BLGR 165, Collins J stated (para 17) “It will, therefore, be apparent that the local authority is granted a very wide discretion by the

provisions of the Schedule in deciding whether or not a licence should be granted.” This was confirmed with reference to SEVs in the case of *R (on the application of KVP Ent Ltd) v. South Bucks District Council* [2013] EWHC 926 (Admin), CO/1927/2012 which suggested “A local authority has a very broad power to make an evaluative judgment whether the grant of a licence would be inappropriate having regard to the character of the relevant locality [...] which involves questions of fact and degree and local knowledge which import [...] a broad power of evaluative judgment to be exercised by the local authority”. See also *Bean Leisure and Ruby May v Leeds City Council* [2013] EWHC 878 (Admin) Case No: CO/17374/2013 and CO/17440/2013 where it was reasserted that the discretion available to local authorities to refuse renewal or initial license consent is considerable, with restrictive policies reasonable as long as there is a clear justification given.

9. It is worth noting that the campaign pushing for the introduction of this legislation was prominently supported by female Labour MPs. However, it is difficult to generalize about the attitudes of individual councillors to SEVs, as Committees are often mixed in composition with opposition not simply evident from Labour dominated committees.
10. Examples include Coventry, Hackney, Haringey, Mid Sussex, Richmond, Wellingborough, Whitley Bay and Winchester.
11. As detailed at <http://sevlicensing.wordpress.com/>. The majority of refusals have involved independently owned SEVs in inner city locations rather than “corporate chains” such as *Spearmint Rhino*, *For Your Eyes Only* and *Platinum Lace*.
12. For example, conditions control the conduct of dancers through imposition of minimum clothing rules or stipulations concerning permitted interactions with clients; restrict opening hours; limit external advertising; and demand that no view of the area where striptease occurs should be possible from the street. Whilst some of these conditions could be interpreted as overly restrictive and contrary to the right to business, appeal cases have suggested that such conditions are not unreasonable so long as they are clearly justified: see *Spearmint Rhino Lt (Europe) v London Borough of Camden* 2013 which ruled that the Council was entitled to apply its standard conditions given the right of the community to expect steps to be taken to limit the impact of the premises on the character and amenity of the locality.
13. Town and Country Planning (Use Classes) Order 1987 (as amended).
14. See Planning Inspectorate decision letter in case of *E Parchment v Birmingham City Council* T/APP/C/94/P4605/633044, which stated that the impact of a use on the community provided the basis for deciding material change of use had occurred. In this case, the planning inspector ruled that irrespective of moral considerations, the use of a residential property for the purposes of prostitution constituted a material change of use because of the impacts on the residential character of the locality.
15. *E Zadeh v Bristol City Council* APP/Z0116/A/10/2127967 (2010)
16. Appeal Decision, *Sidhu v Birmingham City Council* (2013) Ref: APP/P4605/A/12/2188977 concerning conversion of *The Barrel* Public House, 211-213 Soho Road, Birmingham.
17. Para 9.2.1, Report of chief planning officer, Change of Use of building to form a lap dancing club, 68-72 New Briggate, Leeds 1 (reference 13/01428/fu), Aug 2013.
18. Paragraph 9.6, *ibid*. It is worth noting in the Leeds example that licensing powers were subsequently deployed to reduce the number of clubs in the city centre from seven to four. See <http://sevlicensing.wordpress.com/2014/03/28/leeds-clubs-lose-judicial-review/>

19. APP/Z1775/A/12/2175006, 1-7 Surrey Street, Portsmouth, Hampshire, PO1 1JT (19 Oct 2012).
20. *R (on the application of KVP Ent Ltd) v South Bucks District Council* [2013] EWHC 926 (Admin), CO/1927/2012, states “despite the existence of overlap in objectives and relevant factors between the licensing and planning regimes, there is nonetheless a difference in focus between them. Planning controls in relation to the use of land are concerned with the wider impact of a proposed change of use and not so directly with the individual operation of premises. The licensing regime is focused more on the specific ways in which premises are operated and the impact of such operation”.
21. Lord McKintosh of Haringey, House of Lords Debate 19 June 2003 c913.
22. See especially *Merlin v British Nuclear Fuels* [1990] All ER 7 1 1, 1 66, 223.
23. Prostitution has long been understood as constituting an actionable nuisance, with *Thompson-Schwab v Costaki* [1956] 1 WLR 335 suggesting that someone with interest in land can claim its use has been unreasonably interfered with by the proximity of a property used for the purpose of prostitution. In this case, the sight and sounds of sex itself appeared to constitute the nuisance.
24. Before the passing of the *Local Government (Miscellaneous Provisions) Act 1982*, there was no licensing of sex shops, which meant recourse to tort was the only route available to those claiming a sex shop was impinging on the ‘ordinary enjoyment’ of their neighbourhood. In the case of *Laws and other v Florinplace Ltd and Another* (1981) All ER 1 660 663 b c, concerning the opening of a sex shop in Pimlico, it was ruled that nuisance was not confined to cases where there was some “physical emanation of a damaging kind”. This judgement noted “the use made by the defendant of the property was such that, while not necessarily involving a breach of the criminal law, it was an affront to the reasonable susceptibilities of ordinary men and women in that [...] its nature was apparent to neighbours and visitors and constituted an interference with the reasonable domestic enjoyment of their property”.
25. This term is used to refer to the politics of time, noting that political acts are both retrospective and anticipatory, with understandings of the past always constituted through a future-oriented vision (Klinke, 2013).
26. *Coventry v Lawrence* [2012] EWCA Civ 26 Court of Appeal.
27. Cheshire West & Chester, Licensing Committee, 17 September 2013, Item 5: <http://cmttpublic.cheshirewestandchester.gov.uk/documents/g3973/Printed%20minutes,%2017th-Sep-2013%2010.00,%20Licensing%20Committee.pdf?T=1>
28. See *Decision of 24<sup>th</sup> September 2012 refusing renewal of SEV licence for Oxpens Road*, appendix to Agenda Item 8 Oxford City Council, Licensing and Registration Sub-committee Monday 12 October 2012: <http://mycouncil.oxford.gov.uk/documents/g2806/Public%20reports%20pack%20Monday%2029-Oct%2012%2017.00%20Licensing%20and%20Registration%20Sub%20Committee.pdf?T=10>
29. See *R v Birmingham City Council, ex parte; Sheptonhurst Ltd and other appeals* (1990) 1 All ER 1026 (see p 1035 *h* to p 1036 *c g h*, p 1038 *d e* and p 1039 *e f*, post).
30. *R (on the application of Thompson) v Oxford City Council* [2013] All ER (D) 30 (Jul) p. 11. However, *R v Metropolitan Borough of Bury Ex parte Sheptonhurst Ltd* (1992) suggests the existence of an improvement plan for Bury city centre was not an adequate ground for rejecting renewal of a sex shop licence in 1989 because the same plan was extant in 1986 when planning permission for the shop was first granted.

31. Paragraph 38, *Bridgerow Ltd, R (on the application of) v Cheshire West and Chester Borough Council* [2014] EWHC 1187 (Admin) Case No: CO/13995/2013.
32. This concerns the way that highway engineers and municipalities enforce by-laws designed to promote pedestrian flow. Blomley (2010, p. 45) notes that while it is possible to view the removal of beggars and soliciting sex workers from Vancouver's public spaces as a deliberate vengeful act against marginal groups, regulators have a narrow focus on flow which means they are not particularly interested in the human rights of users of the streets, with their actions not "sinisterly motivated".
33. Paragraph 40, *Bridgerow Ltd, R (on the application of) v Cheshire West and Chester Borough Council* [2014] EWHC 1187 (Admin) Case No: CO/13995/2013.
34. There are important links here to questions of spatial juridification: i.e. the spatial and legal framing of premises, localities and neighbourhoods as realms of regulation. As Layard (2010) argues in the context of the UK localism agenda, the legal process of identifying a "scale" of regulation establishes it as a site of governance, spatially, socially and institutionally. As such, the construction of a "locality" as performed through SEV regulatory processes is worthy of note.
35. Paragraph 54, *Bean Leisure and Ruby May v Leeds City Council* [2013] EWHC 878 (Admin) Case No: CO/17374/2013 and CO/17440/2013.

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