PLANNING

AND

THE SEX INDUSTRY:

The role of the planning system
in the regulation of commercial sex.

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The regulation of commercial sex in England and Wales, in terms of its form, function and location, is characterised by a disparate body of legislation covering both criminal and civil law. To establish the role of the land use planning system in this context the diverse elements of the regulatory structure are defined, looking in particular at the spatial manifestations of prostitution and the sale and display of pornography.

The information is examined within a wider European historical context to elaborate on two points of interest. The first is that the spatial regulation of prostitution is a persistent feature of its history. The second aims to establish the basis of both the current law and the proposals for change in the control exercised over the industry.

The role that the planning system plays is established through analysis of current practice at central and local government level. What emerges from this is that although the sex industry is not perceived as a planning issue, planning mechanisms have been used to control it. Where this has occurred the action has been both reactive and negative, revealing the application of a 'moral' code to decision making.

The political nature of the issues around commercial sex inhibits radical changes to the laws governing it. The inconsistencies in the current system, however, invite a reevaluation of the approaches to the control of this industry. To begin to address how and what changes might be wrought both the moral structure of the law and attitudes to sexuality are examined. This allows an understanding of why the current operational procedures and facilitates a mechanism to propose change.

The proposed changes to the laws governing commercial sex have implications for the planning system. These are examined with regard to their implementation under planning law. The present structure of the planning system has the capacity and the operational structure to accommodate the land use implications of commercial sex, what is needed to achieve this is a will to change.
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Abstract</td>
<td>2</td>
</tr>
<tr>
<td>List of Tables</td>
<td>5</td>
</tr>
<tr>
<td>List of Figures</td>
<td>6</td>
</tr>
<tr>
<td>List of Plates</td>
<td>7</td>
</tr>
<tr>
<td>Acknowledgements</td>
<td>8</td>
</tr>
<tr>
<td>Introduction</td>
<td>9</td>
</tr>
<tr>
<td>Chapter 1: An Historical account of the regulation of commercial sex.</td>
<td>17</td>
</tr>
<tr>
<td>1.1 Historical Sources</td>
<td>17</td>
</tr>
<tr>
<td>1.2 Origins and development of prostitution</td>
<td>19</td>
</tr>
<tr>
<td>1.3 The geography of commercial sex</td>
<td>20</td>
</tr>
<tr>
<td>1.4 Mechanisms of control</td>
<td>22</td>
</tr>
<tr>
<td>1.4.1 Thirteenth to Sixteenth Centuries</td>
<td>22</td>
</tr>
<tr>
<td>1.4.2 Why regulate prostitution?</td>
<td>28</td>
</tr>
<tr>
<td>1.4.3 Eighteenth and Nineteenth Centuries</td>
<td>29</td>
</tr>
<tr>
<td>1.4.3.1 'The French System'</td>
<td>30</td>
</tr>
<tr>
<td>1.4.3.2 Victorian England &amp; the Abolition Movement</td>
<td>34</td>
</tr>
<tr>
<td>Chapter 2: Legislation of the Sex Industry</td>
<td>38</td>
</tr>
<tr>
<td>2.1 On-Street Prostitution</td>
<td>38</td>
</tr>
<tr>
<td>2.2 Off-Street Prostitution</td>
<td>40</td>
</tr>
<tr>
<td>2.3 Sex Establishments (not involving Prostitution)</td>
<td>42</td>
</tr>
<tr>
<td>2.3.1 Controls of the 1970's</td>
<td>43</td>
</tr>
<tr>
<td>2.3.2 The Licensing of Sex shops and Cinemas</td>
<td>44</td>
</tr>
<tr>
<td>2.3.3 The current position on Licensing sex establishments in London</td>
<td>46</td>
</tr>
<tr>
<td>2.4 Discussion and Conclusion</td>
<td>48</td>
</tr>
<tr>
<td>Chapter 3: The Planning System and the Sex Industry</td>
<td>52</td>
</tr>
<tr>
<td>3.1 Sex and Planning : Is there a connection?</td>
<td>54</td>
</tr>
<tr>
<td>3.2 Strategic Planning and the Sex Industry : London</td>
<td>57</td>
</tr>
<tr>
<td>Chapter 4: Local Planning and the Sex Industry : Sex Establishments</td>
<td>59</td>
</tr>
<tr>
<td>4.1 Survey of Local Planning Authority Practice : London</td>
<td>59</td>
</tr>
<tr>
<td>4.2 Survey Results</td>
<td>60</td>
</tr>
<tr>
<td>4.3 Discussion of the results</td>
<td>64</td>
</tr>
<tr>
<td>4.4 Enforcement : Planning's prophylaxis?</td>
<td>67</td>
</tr>
<tr>
<td>4.5 Planning and Sex Establishments beyond London : an Example from</td>
<td>78</td>
</tr>
<tr>
<td>Paris</td>
<td>78</td>
</tr>
<tr>
<td>4.5.1 Commercial Sex in Paris</td>
<td>78</td>
</tr>
<tr>
<td>4.5.2 Rue de la Gaîté, Paris</td>
<td>80</td>
</tr>
<tr>
<td>Chapter 5: Prostitution and Local Planning</td>
<td>83</td>
</tr>
<tr>
<td>5.1 Premises used for prostitution</td>
<td>83</td>
</tr>
<tr>
<td>5.2 Traffic management schemes &amp; Off-street prostitution</td>
<td>84</td>
</tr>
<tr>
<td>5.3 Conclusion : commercial sex and the public interest</td>
<td>88</td>
</tr>
<tr>
<td>Chapter 6: Sex, Morality and Regulation</td>
<td>94</td>
</tr>
<tr>
<td>6.1 Proposals for change</td>
<td>94</td>
</tr>
<tr>
<td>6.1.1 Prostitution</td>
<td>94</td>
</tr>
<tr>
<td>6.1.2 Pornography</td>
<td>98</td>
</tr>
<tr>
<td>6.2 Morality and the Law</td>
<td>99</td>
</tr>
<tr>
<td>6.3 A Question of Sexuality</td>
<td>102</td>
</tr>
<tr>
<td>6.4 A Planning Response to changes in the Law</td>
<td>105</td>
</tr>
<tr>
<td>6.4.1 Brothels</td>
<td>106</td>
</tr>
<tr>
<td>6.4.2 On-street Prostitution</td>
<td>109</td>
</tr>
<tr>
<td>6.4.3 Sex Establishments</td>
<td>109</td>
</tr>
<tr>
<td>Section</td>
<td>Page</td>
</tr>
<tr>
<td>---------------</td>
<td>------</td>
</tr>
<tr>
<td>Conclusion</td>
<td>112</td>
</tr>
<tr>
<td>Appendix 1</td>
<td>116</td>
</tr>
<tr>
<td>Appendix 2</td>
<td>118</td>
</tr>
<tr>
<td>Appendix 3</td>
<td>123</td>
</tr>
<tr>
<td>Bibliography</td>
<td>125</td>
</tr>
</tbody>
</table>
List of Tables.

Table 1: Planning and licensing of sex establishments in London. Survey results. 61

Table 2: Summary of enforcement appeals, London 1981-1984. 68
List of Figures.

Figure 1 : Areas designated for prostitution in fourteenth and fifteenth century London. 25

Figure 2 : The location and number of licensed sex shops and areas of on street prostitution, London 1991. 62

Figure 3 : Location of sex related activities (excluding prostitution) in Soho, London 1991. 65

Figure 4 : Location of premises subject to enforcement action, Soho, London 1981-1984. 70

Figure 5 : Location of commercial sex, Paris 1991. 79
List of Plates.

<table>
<thead>
<tr>
<th>Plate</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Illustration of the omnipresence of sex.</td>
<td>11</td>
</tr>
<tr>
<td>2</td>
<td>Walkers Court, Soho.</td>
<td>74</td>
</tr>
<tr>
<td>3</td>
<td>Tisbury Court, Soho.</td>
<td>74</td>
</tr>
<tr>
<td>4</td>
<td>Representation of the character of Soho.</td>
<td>76</td>
</tr>
<tr>
<td>5</td>
<td>Representation of the rue de la Gaîté, Paris.</td>
<td>81</td>
</tr>
<tr>
<td>6</td>
<td>Nighttime in Pigalle, Paris.</td>
<td>90</td>
</tr>
<tr>
<td>7</td>
<td>Impact of neon signs, Pigalle, Paris.</td>
<td>90</td>
</tr>
<tr>
<td>8</td>
<td>Night in Soho: bright lights of the city.</td>
<td>91</td>
</tr>
<tr>
<td>9</td>
<td>Sex establishment facades, Soho.</td>
<td>92</td>
</tr>
</tbody>
</table>
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Introduction.

"Christianity gave Eros poison to drink; he did not die of it but degenerated into vice" (Nietzsche quoted in Walker 1983).

Male demand for access to women's bodies as commodities in the market place has engendered an industry geared entirely to satisfying that demand. The growth of the sex industry has been most pronounced in the latter part of the twentieth century (Manchester 1986) reflecting changes in social attitudes toward sexual matters. This has facilitated a relaxation in the laws controlling sexuality and spawned a multi-million dollar industry comprised of individuals working for themselves to large scale organisations. The function of this industry is to supply sexual services and commodities for the gratification of a predominantly male clientele through the institutions of prostitution and pornography. The scale of the industry, its organisational structure and profitability are unknown for a variety of interconnected factors concerning societal attitudes to sex and their translation into regulatory practices.

The impulse to study the sex industry arose from two inter-related sources. The first evolved from my introduction to feminist ideas and literature which revealed inherent contradictions in analyses of commercial sex. This generated a confusion in how to think about the sex industry. If prostitution and pornography exploit, objectify and degrade women, the vilification of those who work in it will not help in understanding the issues behind commercial sex: why do women work in this trade, why do men demand commercial access to women's bodies? But how do we start to understand these issues? I admit that at the beginning of this research I had no direct experience of the sex industry and minimal indirect knowledge gained from reading accounts published by sex trade workers (see Bell 1987, Delacoste & Alexander 1988, Pheterson 1989). However I wanted to try to understand why the sex industry exists and operates in the way that it does.

The second perspective concerns an interest in the physical manifestations of the sex industry. The location of commercial sexual services in towns and cities is often identified with specific areas, for example Kings Cross in London is renowned for street prostitution as Soho is known for the provision of a diverse range of sexual services. This association of specific places with the provision of commercial sex is repeated in other English cities as well as European ones. How do these 'red light' areas evolve, how are they maintained, who or what determines the rules that define their existence and in whose interest are these regulations implemented? The fundamental question that arose from this was how could land be developed, used and identified for sex-
related purposes yet seemingly fail to be considered as a specific land use by the
authorities responsible for controlling the use of land? Even when the industry was not
recognised in this way why was there a pervasive obmutescence on sex-related land
uses in the planning literature?

This research is aimed at generating ideas and exploring possibilities, not at proving or
disproving pre-established theories on questions of sexuality. Therefore the thesis aims
to examine the regulations applied to the sex industry, particularly those that condition
the location of commercial sex in the urban milieu. The object will be to determine the
role that the land use planning system has in defining the extent, content and patterning
of the sex industry. Implicit in this objective is the notion that the sex industry, through
its operational structures, constitutes specific identifiable uses of land which should be
subject to the controls of the planning system.

The focus of the study is directed primarily at the legislative framework encompassing
the sex industry: how it is constructed and the impact of this on the spatial organisation
of commercial sex. This approach has been adopted for three reasons:
1) Despite an extensive literature on the social, economic and political aspects of
prostitution and pornography there is no comprehensive source covering the regulation
of the sex industry as a whole. Individual elements have been explored (e.g., Sion
1977 on prostitution, Manchester 1986 on sex shops) but this has not been extended to
an overall perspective. To understand the spatial manifestations of the sex industry it is
essential to examine the regulations extended to both prostitution and pornography.
Without this basic understanding of the legislation any evaluation of the role played by
the planning system within the current system of controls, or of any potential future
role, would be seriously flawed.

2) The land use planning system operates within a statutory framework which defines
the parameters of planning function. Any evaluation of the sex industry as a land use
must be carried out within these parameters if any viable propositions are to be
advanced.

3) The law is an expression of much more than an abstract set of rules. The law works
in the economy, in the family, in social and cultural institutions as well as in the legal
system itself. It operates on the customary, the moral and the personal as well as on the
technical, the abstract and the routine. In these spheres it defines relationships and
confers status and duties; it sets up ideals and goals and shapes the choices of us all as
workers, consumers, citizens etc. Most of all it operates at the ideological level to
provide us with an expression of the relationship between ourselves and our conditions
of existence - the lived relations between us and our world (Morison 1990:13).
Therefore to gain some insight into the place of commercial sex in society it is
necessary to examine the mechanisms that define and control it.

The main emphasis of the thesis is placed on the role of the English land use planning
system in the regulation of commercial sex. However the various manifestations of the
sex industry in England today are not unique to that country and could be viewed in a
much wider international context. Therefore to examine the present and potential role
of the English planning system, policy initiatives from other west European countries
will be drawn upon to illustrate the advantages and drawbacks of different approaches
employed to regulate commercial sex.

There are methodological constraints on undertaking research on the subject of sex. In
the History of Sexuality Foucault (1978) raises the fundamental question of how, in our
society, sex is seen not just as a means of biological reproduction nor a source of
harmless pleasure but on the contrary, has come to be seen as the central part of our
being, the privileged site in which the truth of ourselves is to be found (Weeks 1989).
The peculiarity of this situation is that, rather than being consigned to a shadow
existence, sex is constantly talked about while being exploited as the secret (op cit.:35).
This is aptly illustrated by the following cartoon which appeared in The Guardian prior
to the withdrawal of sterling from the Exchange Rate Mechanism.

Plate 1. Illustration of the omnipresence of sex.

Sex is omnipresent in western society yet it is constrained by conventions and controls
that keep it below the surface and prevent it from being openly discussed. However,
where 'the secret' sex of the private sphere encroaches the public realm as commercial
sex it does enter discourse but only negatively as a 'dirty' activity. Dirt means matter
out of place and the treatment of pornography and prostitution as dirty represents a
judgement on the place of what the sex industry offers: sex should not be publicly
available. This raises many questions which highlight the complexity of commercial
sex and reveal the contradictions in society: the public-private dichotomy (Davidoff
1990, Pateman 1987), the 'morality' of prostitution (Green 1989) and the field of sexual
politics for example. Although these are serious questions and attempts to address them
have been made below, the point to raise here is that the distinction between good/bad,
clean/dirty sex has promoted an environment in which questions challenging that
duality are unwelcome. Consequently this has had an impact on the structure of the
research design.

In undertaking this research both extensive and intensive research methods have been
employed. The rationale for utilising both methodologies reflects the different
questions being asked. In order to evaluate the position of planning authorities with
regard to the sex industry at present, and thus provide a basis on which to formulate
discussion, an extensive research technique was required. The aim of the method
utilised, a questionnaire survey, was to discover is there were common properties and
general patterns exhibited by local planning authorities on the question of the sex
industry. While this objective was achieved, the technique failed to permit an
explanation of the results. This is because the results have been abstracted from the
actual forms in which individuals and processes interact and combine (Sayer 1984,
Silvermann 1985).

In order to probe the causal processes that condition the character of the sex industry an
intensive, qualitative methodology was adopted. The main technique used was that of
informal interactive interviews with local and central government officers, the police,
sex trade workers and residents associations. The advantages of this approach are that
the sample does not have to be rigidly defined in advance as with a formalised
extensive survey, also the individuals chosen need not be typical and may be selected
one by one as the research proceeds (op cit.). This was particularly important where
levels of responsibility were ill defined and access to individuals constrained. In
addition, interactive interviews maximise the information flow by making use of a
flexible approach that allows the researcher to refer to and build upon knowledge
gained beforehand (Sayer 1984). The technique also allows for the adaptation of
preconceived questions and ideas in the course of the interview.

A major problem experienced during this research was one of access to subjects.
Commercial sex generates two responses in those who are associated with it. The first
is concerned with the stigma attached to the sex trade, and female prostitution in
particular. The 'whore stigma' is a social and legal branding of women who are
suspected of being or acting like prostitutes (Pheterson 1990). This stigma has legal,
social, economic and political ramifications for women that remain fixed regardless of a
change in behaviour (*ibid.*). Therefore it is not surprising that many sex trade workers are somewhat reticent about participating in research projects. The references throughout this text are to female sex trade workers although it is recognised that males constitute a growing element in the industry. An insight into the world of male prostitution can be found in West (1992) *Male Prostitution: gay sex services in London.*

Because prostitutes epitomise social illegitimacy they have been designated fair game for scrutiny and attack. This has generated two outcomes. The first is that sex trade workers have been categorised as a homogenous group which has failed to recognise the significance of differentiation: the differentiation between prostitutes and prostitution: the differentiation among sex trade workers: the differentiation between the 'moral' position adopted by officials and the practices they follow (Truong 1990). The second outcome has been that by singling out prostitutes as the sole target of research on the complex and taboo subject of sexual-economic behaviour an imbalance has been perpetuated which has failed to address the demand side of prostitution and its control (although see McLeod 1982 for research on this issue). A consequence of this homogenisation of the sex trade and its concomitant stigma has been a generalised published perspective on the present practice and future potential of the industry. This adheres to the same old stereotype of the Madonna/whore dichotomy and precludes access to those who supply or purchase sexual services.

The second response is rather more difficult to define and can best be described as an unwillingness to bear any responsibility for the regulation of commercial sex. Where responsibility is unequivocal, as with the police, there is still a difficulty in gaining access to those responsible.1 There appeared to be a reluctance to confront the question of where to locate commercial sex uses. Perhaps to acknowledge that there exists a specific identifiable use of land could be seen as condoning the activities therein. Therefore by ignoring locational questions by denying that the uses exist contains any potential backlash.

The constraints imposed by these responses reinforced the suitability of an intensive methodological approach by accommodating the complexity of the sex industry without imposing formal parameters on the research. This also facilitated the exposure of the policy implications of the sex industry for planning. Because intensive studies allow

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1While undertaking research in Paris to determine the structure and regulation of the sex industry as a comparison to London, all enquiries pointed to the Police as the sole agency responsible. Conventional approaches to the Prefect of Police requesting an interview with an appropriate officer met with the response that students were not admitted to the inner sanctum of 3 rue de Lutece (location of the *Brigade de Moeurs*). As the police were a crucial node of information for this research more unorthodox techniques were required which eventually succeeded. This illustrates the sensitivity of the research subject and the difficulty in gaining access to those who hold the information and the power.
the identification of causal agents in the particular contexts relevant to them, it provides a better basis than extensive studies for recommending policies which have a 'causal grip' on the agents of change (Sayer & Morgan 1985)

The growth of sex establishments, a product of the permissive society of the 1960s and 1970s, is a recent phenomenon. These developments and their concentration within specific locales have accentuated concerns expressed over prostitution and brought to public consciousness the issue of commercial sex. However, the problems confronting the authorities that deal with these questions are not unique to the late twentieth century and chapter one aims to illustrate the temporal and spatial development of the regulation of commercial sex. The chapter will focus on the controls exercised over prostitution in England and France from the thirteenth to the nineteenth centuries, examining their origins and development.

Particular attention is paid to the mechanisms of control employed and the resultant geography of commercial sex. The object of this is twofold. The first is to illustrate that although what goes on in one setting is not a simple corrective to what happens elsewhere, the spatial regulation of prostitution, first by the church and then later by secular authorities, is a persistent feature of its history and therefore needs to be examined in order to place any debate on the location of commercial sex uses in its historical context.

The second objective is that an examination of the nature and rationale for the regulations, from the banishment of prostitutes outside the city walls in thirteenth century France and England to the establishment of regulated brothels in nineteenth century France, will provide a basis for understanding the problems that arise today. This highlights that many of the 'solutions' proposed today, e.g., legalising brothels or designating areas for commercial sex, have been tried before. It is not the intention to suggest that adoption of these measures will produce similar results given that attitudes to sex have differed through time, but to emphasise the continuity of perceived 'problems' and 'solutions'.

The late nineteenth century saw the professionalisation of prostitution through the dual processes of law and science. A consideration of these processes establishes the basis for chapter two which draws together the legislation of the sex industry. The aim of this chapter is to present the diverse strands of criminal and civil law that constitute the legislative framework of the sex industry. The industry is broken down into its constituent parts of prostitution: on and off street; and pornography, in particular the establishments through which it is distributed and displayed. The laws relating to each are described. The presentation of these facts permits an evaluation of the place of
planning law in the overall scheme of controls. In this context examples are drawn from France and the Netherlands to provide an illustration of the alternative strategies in the control of commercial sex.

With the position of planning law in the wider legislative structure established, chapters three, four and five examine specific practices within the planning system with regard to the use of land for sex-related purposes. The aim of these chapters is to discern the role that the planning system has in this respect. Chapter three establishes the wider policy context by examining Government guidance on the principles of planning and their application to the sex industry. An example of how this is put into practice at the strategic level is assessed.

The approaches by local planning authorities to the question of sex-related land uses, with reference to sex establishments, is presented in chapter four. The data derives from a survey of planning and licensing departments in London. The intention is to determine if the sex industry is considered a planning issue and if so how it is dealt with in terms of policy formulation and implementation. The question of the use of enforcement powers against these uses is also addressed. Enforcement action, although a protracted exercise, is a potentially powerful mechanism and an analysis of appeals against enforcement notices is conducted to determine the grounds for action. The basis for this is to see if objections against sex-related land uses are founded on strong planning grounds or if moral objections are translated into planning objections where no other mechanisms are available to remove the use?

The theme of local planning and the sex industry continues into chapter five where the issue is that of prostitution. The concern here is divided into off street prostitution and the planning implications of premises used for prostitution, and on street prostitution. In the latter case the implementation of traffic management schemes to control on street prostitution is examined. It is hoped that these three chapters indicate that although the planning system has no clearly defined role in the regulation of commercial sex it has been influential in controlling land used for such purposes.

Commercial sex is a politically charged area and thus the potential for a change in the laws governing it is dependent on many inter-related factors. Chapter six aims to untangle some of these factors by looking at the wider theoretical context. Therefore in presenting proposals for change in the law, the formulation of the law itself is examined. This investigates questions of morality and the law and outlines the theories that determine moral codes of behaviour. The object of this is to indicate that the law does not operate in abstract but is subject to complex interacting influences. By identifying this complexity any potential role for the planning system in the regulation
of commercial sex can be fully addressed and the implications realised. Possibilities for both prostitution and pornography are presented and the ramifications explored in the hope that the ideas expressed will generate further discussion on what is a very complex subject.
Chapter 1. An Historical Account of the Regulation of Commercial Sex.

The problems associated with questions of control over commercial sex have not been limited to the twentieth century. This chapter aims to illustrate that urban commercial sex, in the form of prostitution, has been subject to some form of control, either in its spatial organisation or in the form of other codes that restrict an individual's choice and mobility. These various forms of regulation engender an environment in which the physical, social and economic life of the prostitute is placed in the control of external authorities who determine the locations for prostitution to take place, the clothes and ornaments to be worn or not to be worn, the hours within which work can occur, the rents to be charged and so on. The physical manifestation of this situation is often the creation of specific areas within the urban milieu that are identified with commercial sex: the eponymous red light area.

The aim of this chapter is to illustrate the historical development of the regulation of commercial sex in western Europe, both temporally and spatially, the forms it has taken and the rationale for this control where it can be divined. It is hoped that this approach will provide the context for an understanding of the 'problem' of the sex industry today, by illustrating the historical precedents for the 'solutions' currently advocated and highlighting the implicit/explicit role played by planning. It is recognised that it is not possible to attribute the same social meanings to prostitution through time as attitudes to sex have differed. However the evidence indicates that spatial regulation has been a persistent feature of the history of prostitution in Western Europe.

A question that immediately arises is why a sexual activity between two individuals, usually considered private, should receive the attention and regulation it has had over the past two millennia? Is sex for money to be considered a public affair to be conducted in publicly sanctioned places? For whom and for what purpose then have regulations been drawn up and more specifically what form have they taken? Implicit in this is a consideration of changing attitudes towards prostitution: can we establish discernible patterns or cycles in the regulation process which may reveal the reasons for the current impasse? Is there a logical progression from tolerance of prostitution to its institutionalisation and then repression? How much does this reflect changing social, economic and political attitudes of the time?

1.1 Historical Sources

To unravel the complexities of this regulatory process it is essential to survey historical accounts of commercial sex. In the main these refer only to prostitution as it is not until the twentieth century that large scale organised development of the sex industry occurred. The sources, such as medical accounts, are often indirect in their reference to
the organisation of prostitution, or they may be more direct, such as medieval
ordinances defining the conditions for the conduct of business. These accounts are by
their nature more prescriptive than analytic and thus do not always provide the rationale
for their existence.

The main body of data concerning regulation of prostitution in Europe derives from
documentation of the thirteenth to sixteenth centuries and then the eighteenth to
twentieth centuries. Although references are made to intervening periods there has
been limited analysis therein, particularly in respect of the spatial regulation of
prostitution. Emphasis is therefore on these two periods, which represent an evolution
in the policies towards public prostitution and those mechanisms of control which have
had a spatial manifestation.

Historical research highlights various inevitable inconsistencies. The social system of
the time in which work is conducted undoubtedly influences the perspective of the
historian. for example, Victorian accounts of the Stews on Bankside (Rendle 1882) are
imbued with the ideology of the era and thus transpose that perspective ontan
interpretation of laws passed 500 years before. It is appreciated that interpretation of
historical material will tend to reflect the politics of the interpreter: what is a danger is
the assignation of a rationale where one was not present. Also when one considers
groups of people or individuals who were forced onto, or who situated themselves on,
the margins of social life, who played no part in the formal processes of production, and
whose life remained immune to the norms of behaviour in operation one is forced to
view them negatively because they often only appear when they have contravened
social order, that is in court records. Part of the reason for this is that many analyses
of, for example, medieval society have been concerned with the fortunes of the upper
ranks, their economic functions, ownership of property, privileges in public life etc.
rather than with the marginal elements such as prostitutes.

In addition, many contemporary accounts of prostitution are written by observers,
usually male: the policeman, the doctor, the judge, the administrator, rather than by the
subject herself. Such documentation tells us a lot about the speakers and enables us to
gasp more clearly the configuration of the anxieties and forms of male desire that order
the history of venal sex (Corbin 1990). This also highlights another problem with
accounts of the origins and development of prostitution, namely that the obvious sexual
nature of the subject seems to engender a prurient response from some authors
appealing to the salacious expectations of their readers through unsubstantiated
anecdotal accounts (Burford 1990, Roberts 1992 to some extent).
As a predominantly urban phenomenon studies of prostitution have invariably focused on major urban areas. Cities such as London and Paris have been investigated in some depth, particularly concerning aspects of the control of commercial sex (Corbin 1990, Chevalier 1982, Geremek 1987, Parent-Duchatelet 1836, Burford 1990, Karras, 1989, Post 1977). However similar research has been carried out in smaller cities and regions and provides a valuable insight and comparison of attitudes and approaches to the control of sexuality (Finnegan 1979, Otis 1985, Rossiaud 1978, Walkowitz 1980).

Thus the aim of this chapter is to examine the construct that is prostitution; to outline its historical development and its modus operandi. The manifestation of regulatory practices imposed on prostitution, both their formulation and implementation, will be examined and their implications for future practice discussed.

1.2 Origins and Development of Prostitution.

When God created the world, according to the Jongleurs, he assured a living for each of the three orders: the noble's portion was to be the land, the clergy, charity and the tithe, and the peasantry work on the land. Before he left this world God was assailed by a crowd of prostitutes and all sorts of jongleurs and vagabonds demanding their own means of subsistence. The prostitutes he committed to the clergy and the jongleurs to the knightly orders. While the nobles often neglected their obligations, the clergy took good care of theirs and denied their protégés nothing (Geremek 1987: 211).

This anecdote highlights two pertinent points, one relating to the longevity of prostitution and the second that prostitution has always been deemed to be under the control of someone or something, and in particular it has commonly been associated with the church.

Implicit in the first of the two points is that prostitution, frequently described as the 'world's oldest profession', is simply a natural by-product of human social formation and as such needs no explanation (Lerner 1986). Alternative suggestions, such as that proposed by German physician Iwan Bloch (1912), associate prostitution with the development of the regulation of sexuality which strives to curtail and limit free sexual intercourse. Prostitution is seen as no more than a new form of primitive promiscuity (Bloch 1912, quoted in Lerner 1986). True as this may be, it fails to explain the circumstances under which prostitution arises and becomes institutionalised in a given society. It also ignores the commercial aspect of prostitution by treating it as though it were a variant form of sexual arrangement between consenting parties (op cit.: 237).

Ideas put forward by Engels (1978) in, The Origin of the Family, Private Property and the State go some way toward explaining the historic development of prostitution;
"surrender for money was at first a religious act; it took place in the temple of the goddess of love, and the money originally went into the temple treasury. Among other peoples hetaerism derives from the sexual freedom allowed girls before marriage. With the rise of the inequality of property, wage labour appears sporadically side by side with slave labour and at the same time, as its necessary correlate, the professional prostitution of free women side by side with the forced surrender of the slave. For hetaerism continues the old sexual freedom - to the advantage of the men" (Engels quoted in Lerner 1986)

The interesting feature of this is Engels' insight that the origin of prostitution derives both from changing attitudes toward sexuality and from certain religious beliefs, and that changes in economic and social conditions at the time of the institutionalisation of private property and of slavery affected sexual relations (op cit.: 237). Examination of the reasons women give for their entry into prostitution (see Bell 1987, Delacoste & Alexander 1988, James 1976) reveal that economic inequalities are a primary motivating factor. This connection is manifest in the double standard of morality that has pervaded sexual practice through history and is apparent in the rationale for regulations controlling prostitution, either physically or through other mechanisms.

As outlined in the introduction, prostitution takes various forms from specialised, somewhat elite services to the highly visible street prostitution. Although regulations through time have, in effect, attempted to control all women's sexuality it is the more visible prostitutes that have borne the burden of these measures. The identification and classification of prostitutes as a distinct group of women has engendered and perpetuated legal measures aimed at visibly discriminating against a sector of the population based on their sexual activities.

1.3 The Geography of Commercial Sex.
Organised prostitution can be seen to be an urban phenomenon, for only in towns is the demand for sexual services large enough to justify the existence of a professional category to satisfy it (Otis 1985). Evidence for rural prostitution exists, mostly from court records, where a hierarchy of mobile and fixed prostitution has been described (Finnegan 1979, Geremek 1987, Rossiaud 1978).

The urban nature of commercial sex is in part a function of the urban exchange economy where the amplitude of demand facilitates the development and provision of this service. This demand is engendered by the nature of social groups and the function of the town. Thus its function as a trade or banking centre, or perhaps intellectual cultural focus encourages and disguises the movements and activities of large groups of people from travelling merchants, soldiers, clergy, nobles to those engaged in a trade in
the town including women. This constant flow of potential clients, within a climate of demand for sexual services, provides the setting for the establishment of prostitution.

The geographical location of prostitution, other than the most visible forms, has rarely been recorded because of its covert character. Therefore regulatory measures have tended to focus on the most public manifestations of prostitution. These forms have frequently been associated with activity nodes because the attraction of a diverse transient population provides a potential client base. For example, medieval churches, served as centres for a wide range of commercial activities including the provision of sexual services, in addition to their religious function (Lerner 1986).

This correlation has continued through time with examples evident from most periods. For example in sixth century Greece the port of Piraeus was the hub of commercial sex (Wells 1982); the fornices (arches) of Roman stadia and circuses are one example from ancient Rome (Roberts 1992); Medieval bathhouses (Karras 1989, Rossiaud 1978); churches, theatres, markets, parks, taverns, stations, ports, garrisons and cemeteries have been and still are associated with commercial sex. Prostitutes operated in and around Notre Dame in medieval Paris and St Pauls in London (Geremek 1987), Covent Garden and the surrounding theatre land was a focus of venal sex in the eighteenth century (Castle 1987), the Bois de Boulogne is notorious in Paris today as are the areas around Kings Cross and Paddington Stations in London.

Is there continuity in the loci of commercial sex or do the observed patterns reflect the changing social topography of the town? How much are the 'red light' areas of today remnants of the coalescence of market-led prostitution or the outcome of regulations aimed to spatially contain a necessary but 'evil' function? To answer this it is necessary to examine the degree to which prostitution forms or formed a part of the social topography of the town.

The study of the social topography of the medieval town for example is based on the concept of the district as an organism within which groups based on affinities formed naturally and spontaneously (Geremek 1987). The concentration of ethnic groups and artisans is attested through history. As time progressed, however, these defined districts were often not able to accommodate all members and to some extent the homogeneity disappeared, although certain districts retain their earlier associations or the street name bears witness to this activity, e.g., Bread Lane and Cloth Fair in the City of London.

Does a similar continuity of function apply to the loci of commercial sex? Many of the earliest surviving records were negative determining where prostitutes could not work,
which will be discussed further below, and did not positively attribute streets to them. However when areas were designated later, or the tradition continued in a locality, the legacy of this is preserved in the street name. In Germany for example Rosenstrasse is a slang phrase for having sex with a prostitute; 'plucking the rose' in translation (Roberts 1992). In Britain, Love Lane, Maiden Lane and Cock Lane still exist. The last, in Smithfield in London represents an area designated for prostitution in the fourteenth century (Karras 1989, Riley 1868). Other more explicit names from London have either vanished or been altered: Codpiece Alley and Gropecunt Street are now known as Coppice Alley and Grape Street (Roberts 1992, Post 1977). There are similar occurrences in Paris and other French towns. The preservation of an activity in a street name not only elaborates the geographical location of an activity it also suggests its integration into the life of the town.

3.4 Mechanisms of Control
This section will deal specifically with the mechanisms of control initiated between the thirteenth and sixteenth centuries and the eighteenth and nineteenth centuries.

1.4.3 Thirteenth to Sixteenth Centuries
In her analysis of medieval prostitution Otis discerned three policies on prostitution that may occur in any given society:
1) repression, where prostitution is a punishable offence,
2) tolerance, where there is a neutral attitude of neither repression or institutionalisation,
3) institutionalisation, where public authorities take an active role in the organisation of the business of prostitution (Otis 1985:9).

The adoption of one of these approaches is influenced by changes in the social structure, cultural values and economic factors of that society. It is possible to discern an evolution in the public policies towards prostitution from the 12th to the 16th centuries. In France they follow a path from attitudes of tolerance through a policy of institutionalisation to active repression in the 16th century (ibid.). The institutionalisation of brothels in England was not the rule, although there were notable exceptions, and thus policy has moved between tolerance and repression.

To understand this evolution it is necessary to examine medieval views, and particularly those of the church, on prostitution. Prostitution was recognised by the church as a necessary evil. Sinful men, theologians held, would corrupt respectable women or turn to sodomy is they did not have the prostitute as a sexual outlet (Karras 1989). 'Remove prostitutes from human affairs and you will destroy everything with lust' (St Augustine quoted in Karras 1989:399). Although it was argued that prostitution was necessary to assuage the 'natural', if sinful, sex drive of men, this did not lead to respect for the
prostitutes (ibid. : 400). The church considered her to be one of the worst sinners. However the church’s overall position was one of acceptance of prostitution as an inevitable social fact, the condemnation of those profiting from this commerce and an encouragement for the prostitute to repent.

The first indications of a secular municipal policy concerning prostitution comes from the archives of the town of Toulouse dated to 1201;

"No public prostitute shall stay nor live in any way or for any time within the walls of the city of Toulouse or in its suburbs" (Otis 1985:17)

This negative policy towards prostitutes is found in other records such as statute number 49 from Arles dated 1240;

"We statute that no public prostitute or procurer dare stay in Arles in a street of 'good men' and if by chance they be found in such places, that anyone of that neighbourhood have the power to expel them from the neighbourhood on his own authority without punishment or contradiction of the court" (ibid.: 21).

Implicit in this particular statute is the notion that there are other streets of not so 'good men' where prostitutes and their procurers could work. Throughout the 13th century there are ambiguities in the treatment and location of prostitutes. Some would support the rights of the women such as Thomas of Cobham, learned theologian and canon of Paris who believed that:

"prostitutes should be counted amongst the wage earners. In effect, they hire out their bodies and provide labour. If they repent, they may keep the profits from prostitution for charitable purposes. But if they prostitute themselves for pleasure and hire out their bodies so that they may gain enjoyment, then this is not work, and the wage is as shameful as the act" (Geremek 1987:240).

This notion of prostitution as a trade is reiterated in subsequent legislation such as the ordinances relating to the stews on Bankside (see Karras, appendix 1). In contrast to this view there were others that held that prostitutes be treated like lepers. In a canon published at the Council of Paris in 1213 Robert of Coursson declared;

"We prohibit public prostitutes (frequent cohabitation with whom is more effective than the plague for bringing harm) from being permitted to live in the city or bourg, but rather [they] should be set apart, as is the custom with lepers. If, once warned, they do not wish to comply, they shall be struck with the sentence of excommunication" (op cit. : 23).

On a wider scale there are examples of ordinances from both France and England, relating to practices of prostitution which reflect the coexistence of two tendencies; one represents a determined struggle against prostitution, and the other a tolerance which strives to define a space for it and also to achieve maximum possible distancing from it.

An example of the former is the French ordinance of 1254 issued by Louis IX which was part of a programme of administrative and moral reform (Otis 1985). This called for the expulsion of immoral women from towns and villages and the confiscation of
their property (Geremek 1987). The implementation and results of such a policy, which was in conflict with established customs, is not known. However a second ordinance of 1256 with similar demands acknowledges, tacitly, the unenforceability of that of 1254. The latter law desired the removal of women from respectable streets and those in the middle of town, and to distance them as far as possible from churches, monasteries and cemeteries and if possible drive them outside the walls (ibid.). This trend towards displacing prostitutes to specific places where prostitution could be practised amounts to the designation of 'red light' areas and the creation 'ghettos of vice' (ibid.:213).

This practice was followed in other areas, such as Montpellier in 1285, where on the advice of a commission of citizens, a particular street in the suburbs was assigned as the official residence of the city's prostitutes and was to be known as the 'hot street' (Otis 1985:25).

In medieval England it seems not to have been the practice to designate specific areas for prostitution, with the exception of Bankside in Southwark. This area had two distinctive characteristics: it was a major liberty (and the London seat) of the Bishops of Winchester, and it was the principal brothel quarter of the metropolis. From 1266/7 at the latest, prostitutes were forbidden to dwell within the City of London (Post 1977). The areas which were assigned to them were the stews (bathhouses) of Bankside and Cock Lane in Smithfield, both just beyond the city boundary and illustrated in figure 1;

"...we do by our command forbid, on behalf of our Lord the King, and the Mayor and Aldermen of the City of London, that any such woman shall go about or lodge in the said city, or in the suburbs thereof, by night or by day; but they are to keep themselves to the places thereunto assigned, that is to say, the Stewes on the other side of the Thames, and Cockeslane; on pain of losing and forfeiting the upper garment that she shall be wearing, together with her hood, every time that any one of them shall be found doing to the contrary of this proclamation" (Letter Book H. fol 287. of records of the City of London, quoted in Riley 1868).

This creation of an official 'red light' district, in Southwark and repeated in France in the late 13th and early 14th centuries, can be seen as the logical culmination of the gradual transformation, in the public mind, of prostitution from a private concern or natural phenomenon to a social matter requiring public intervention and supervision (Otis 1985). Although the regulation of brothels and prostitutes varied across Europe some characteristics are common to all of the cases where regulation was practised; i) prostitution was forbidden except in specific listed streets or, in smaller towns, in a specific brothel.
ii) specific times were allocated during which prostitutes could work; these usually fell during daylight hours and night work was strictly forbidden.
Figure 1: Areas designated for prostitution in London, thirteenth & fourteenth centuries

(adapted from Hibbert: 1969)
iii) Prostitutes were required to wear a distinguishing mark, such as a badge, a sleeve or a hood of a different fabric or colour, or they were forbidden to wear certain clothes or jewellery.

iv) They were forbidden to attend church with or speak to respectable women.

v) On holy days and during Holy week the brothels were closed and the women had to leave.

vi) It was forbidden to beat a prostitute.

vii) Procurers were also subject to specific regulations concerning the location of their activities which had to be carried out in designated streets (Geremek 1987:214, Karras 1989:403, Otis 1985:79).

Not all municipalities had a population large enough or tolerant enough to justify a municipal brothel. The solution to this in France was the introduction of the practice of 'once a week' where prostitutes could stay no longer than one night a week in the town. Thus prostitution was regulated temporally rather than geographically, the scandal and the expense of a permanent residence were avoided while allowance was nonetheless made for a certain level of activity (ibid.:35). Not all prostitutes worked from the specified locations and thus in addition to the public brothel every big city had several houses of toleration - les étuves. Bathhouses - these were either places of prostitution or honourable bathhouses (Rossiaud 1978). In addition to these there were also independent clandestine prostitutes who worked in small numbers from a single house.

An examination of some of the specific controls reveals something of English attitudes to prostitution and brothel keeping. Most English towns explicitly prohibited prostitution, whether connected with brothels or not. However this does not mean that they seriously attempted to eradicate it. For example legislation in many towns ordered brothels outside the city walls. Coventry 1445, Leicester 1467 (Karras 1989).

Apart from Southwark, mentioned above, there was one other English town known to have an official municipal brothel and that was Sandwich in Kent. In 1475 the mayor and commons of the town entered into an exchange of land 'in order to make a common house of stews to be called the Galye' (Kent Archives Office, Sandwich Yearbook 1 (old black book) Sa/AC1, fol 217 quoted in Karras 1989). In 1494 the council decreed a house set aside for common women and set out rates which brothel keepers could charge the prostitutes for room and board (ibid.). Similar conditions applied to the stews in Southwark where women were forbidden to live in the brothel and rates were set for the rent. These examples indicate a concern that the women were not exploited financially.
The regulations governing the Southwark stews illustrated minimal concern for sexual morality. Although the church condemned prostitution and brothel keeping, this did not deter the Bishop of Winchester from sanctioning and regulating the brothels through his bailiffs (Karras 1989:423). His success in this endeavour is an assertion both of his jurisdiction over the liberty and a symbol of the power of church figures to proclaim adherence to a code of behaviour while profiting from deviation from the code.

Brothels in France were seen as a municipal service and thus in the 15th century, as for many other services provided from municipal premises the operating rights were farmed out at auction to the highest bidder once a year. This gave the bidder the right to the profit coming from the house and thus the management of commercial sex became a profitable investment for the bourgeoisie and nobility (Otis 1985).

The contradictions of the medieval approaches to the control of commercial sex is best summarised by the following quote from Geremek (1987).

"In spite of the ambiguities of medieval attitudes to prostitution, in spite of the elements of integration into the town that have been shown, in spite finally of the tolerance demonstrated in these matters by the law, this whole world inevitably inclined towards marginality. As we have progressed along the 'streets of shame', among the 'shops of sin', we have constantly come up against people whose way of life, if not their moral code, placed them outside the structures of society" (Geremek 1987:241).

During the 16th century the moral code of west European society was redefined and reinforced. partly through the suppression of prostitution. Brothels were closed; the Bankside Stews were closed in 1546 under an edict of Henry VIII; Paris brothels were closed by the regency government of Charles IX in 1561. Similar measures were taken in other European cities, Pope Pious V closed the Rome brothels in 1566 and rounded up all the prostitutes. What prompted this change of attitude? It has often been suggested that the spread of syphilis was responsible as it was known, by the second half of the 16th century to be spread through venereal contact (Orme 1987). Since that link has been made it has helped to sway public opinion against prostitution, yet the general closure of brothels in 16th century Europe seems to have had no direct relationship with the spread of the disease or views about it. Sanitary motives are not uppermost in the official pronouncements which ordered brothels to close. The major force behind their closure was the Reformation (ibid.:40).

The Reformation can be defined as 'a movement which set out to make society more godly as a whole' (ibid.), and no institution was a more obvious target for the moral...
reformers than the legalised prostitution of the cities. Luther in his *Address to the German Nobility* in 1520 stated:

"Is it not a terrible thing that we Christians should maintain public brothels, though we all vow chastity in our baptism. How do so many towns and villages manage to exist without these houses? Why should not great cities be able to do so" (quoted in Orme 1977).

From the outset Protestantism was against prostitution. As a result, the diffusion of the Protestant Reformation across Germany and other parts of Europe was usually accompanied by the closure of brothels. A similar, if stricter attitude was maintained by Calvin and also later by the Catholics of the Counter Reformation.

1.4.2. Why Regulate Prostitution?

This brief summary of the evolution and dynamics of medieval prostitution and its control has up until now only addressed the issues of the 'what' and the 'how' of regulation and not the why. To understand the implications of these regulations, particularly the spatial aspects, it is essential to ask why? - why was prostitution tolerated in the 12th and 13th centuries, institutionalised in the 14th and 15th and condemned in the 16th? What reasoning impelled the public authorities to develop a positive policy on prostitution in the late Middle Ages?

Demographic features of late medieval society have been invoked as a major reason for the institutionalisation of prostitution (Rossiaud 1978). It is not obvious that a large demand for prostitutes necessitates institutionalisation. In a situation of passive tolerance the simple law of the market is usually sufficient to assure a supply of prostitutes (Otis 1985:101). What may be at the root of the tendency towards institutionalisation is the fear of social unrest. The municipal deliberations of Albi make explicit the connection in the public mind between municipal security and strong control by the municipal authorities of the business of prostitution (*ibid.*). In addition municipal control is a good source of finance.

The classic argument for prostitution is that it is a necessary evil, preventing the degradation of society to the greater evils of homosexuality and rape (Thomas Aquinas quoted in Otis 1985). It is also necessary to protect the virtue of wives and daughters from rape by unstilted men (Rossiaud 1978) by assuring the presence of prostitutes. This argument is perpetuated throughout history by societies in which the dominant classes prize the chastity of their womenfolk (*op cit.*).

Common good is often invoked as the basis for regulating commercial sex. This can be seen in the creation of the 'red light' district of Montpellier in 1285 where concerted agreement was necessary to choose a site that would be 'the most appropriate and create
the least scandal and detriment to the town' (Otis 1985:103). The nascent sense of public order, public utility, public good demanded a policy of confinement of prostitution, and confinement could not be satisfactorily effected without a certain institutionalisation (ibid.).

Why was there a fear of prostitutes working freely? This was partly a fear of the effect this would have on honest women. The dominant medieval concept of female nature was that women were the more carnal sex and that once honest women had witnessed the material and pleasurable rewards of sin they would leave the connubial bed for the street. Thus authorised 'red light' districts were a guarantee of female virtue, not only against those who threatened but also against that which tempted (ibid.: 104).

Tied into this is a fear that independent prostitutes would undermine the control of men over female sexuality and society. If women were not the property of a particular man, a husband, their sexual behaviour must be strictly regulated by the male civil authorities (Karras 1989:425). This also explains the implied illegality of all non municipal brothels. The counterpart of regulating authorised prostitution was repressing illegal competition and reinforcing the control of female sexuality through mechanisms of the state. An adjunct to this is that the institutionalisation of prostitution predicates an increasing moral rigorism through the instruments of public order and the relegation of prostitution to one spatially defined part of town.

The prevalence of this attitude contributes to the dominant ideology concerning commercial sex up to the present day. This next section will deal briefly with the 19th century controls of prostitution in England and France as they illustrate two different approaches to the same problem.

1.4.3. Late Eighteenth to Early Twentieth Century Prostitution.

The late 18th century experienced two major events that were to affect urban development and the social organisation therein: the French Revolution of 1789 and the Industrial Revolution in Britain. Although the latter had a more immediate and direct impact on the shape and form of the city, particularly with respect to the organisation and sexual division of labour, the French Revolution and subsequent political shifts engendered a climate of regulation toward prostitution which profoundly influenced all later legislation or attempted legislation both in France and England. As a consequence it is essential to examine the regulated 'French system', as it became known, because of its contribution to the current debate on the control of the sex industry.
1.4.3.1 'The French System.'

Commercial sex under the *ancien régime* maintained the pattern that evolved in the 13th century where a coexistence of prostitutes and municipal authorities prevailed, as described above. The fear aroused in the 16th century by the threat of venereal disease and its association with prostitution found substance in an ordinance a century later (1684) ordering Parisian prostitutes to be confined to Salpetrière Hospital for examination for VD.

This regulation extended the control over prostitutes from a spatial and behavioural containment to an actual bodily control. The imposed quarantine reflected not a changing perception of prostitutes - for they had always been regarded as apart from the rest of society - but rather a changing perception of the sort of peripheral relationship they could occupy relative to society (Harsin 1985:66). This linking of toleration with an organised method of disease control was a genuinely innovative approach to handling prostitution and one which prevails to this day.

The Revolution of 1789 swept away many of the old laws, and those ordinances that were not specifically abrogated were integrated into the revised legislative structure (Corbin 1990). Prostitution *per se* was overlooked in this process and the subsequent elaborate regulatory structure covering the sex industry was entirely an administrative creation with no statute law authorising it (*op cit.*: 74). There were some attempts to rectify this situation. The first attempt in 1796 called for the integration of prostitution within the criminal justice system (Harsin 1985). However the legislators refused to act on the matter which allowed regulation to develop from police initiative. This initiative was further enhanced by the law of 1800 creating the Prefecture of Police in Paris and establishing police authority in the surveillance of houses of prostitution and of those who resided therein (*ibid.*: 83). The process of entrenchment of the system of police control had thus begun.

Initial police efforts focused on the health of prostitutes, particularly in respect of sexually transmitted diseases. The reason for this attention was part of a wider concern for the physical and moral health of the population.

"Il s'agit bien plutôt d'un phénomène qui intéresse la santé physique et morale de la population" (de Sauvigny 1977:271).

This was manifest at the same time by the institution of the *Police des Moeurs* (literally morals police) who were given responsibility for the control of prostitution.

Attempts during the Restoration (1815-1830) to challenge this lack of legal clarity regarding the regulation of prostitution met with resistance from the police who supported a system of toleration as the wisest approach, recognising the inability of the
State to stamp out debauchery. Attempts to abolish prostitution during the
Reformation had only succeeded in driving it underground away from the watchful eyes
of the police. The tested method of effective control was tolerance, by which
prostitutes were not prosecuted for prostitution itself but were held to a certain standard
of behaviour (Harsin 1985). The key to control was in the power to punish and this was
enshrined in the regulationist approach - the 'French system' (Corbin 1990).

In order to understand the rationale behind this system it is necessary to address the
perception of the prostitute in early nineteenth century society. The view that
prostitution was a necessary evil prevailed across the centuries, but had certain
refinements by the 19th century. The main concern of the time in both France and
England was with visible prostitution, as these women were seen to represent a threat to
the ruling classes as they contravened 'standards' of social behaviour and were viewed

Research conducted in the early years of the nineteenth century by Parent-Duchâtelelet
(1836) revealed the basis of this threat. He believed that prostitutes formed a
subterranean counter society, a social base representing a threat that was at the same
time moral, social, sanitary and political. It was through the body of the public
prostitute that the social order could be compromised. However prostitution was
regarded as an indispensable excremental phenomenon that protected the social body
from the disease of homosexuality and protected the virtue of 'honest' women. As such,
because it was both necessary and dangerous, prostitution must be tolerated, but closely
supervised, with a view to preventing any excess (Corbin 1990). The question of male
demand for venal sex was not addressed as it was considered a natural phenomenon,
unlike female libido which was considered non existent and therefore unnatural.

The principles of the regulationist approach can be summarised as follows;

i) it was essential to create an enclosed milieu which was invisible to all honest women
and children.

ii) the enclosed milieu must remain constantly under the supervision of the authorities,

   (ibid:9).

The construction of the carceral system was based on four enclosed spaces: the 'house',
the hospital, the prison and the refuge for repentant women. The axis of the system was
the \textit{maison de tolerance}. This would be located within a \textit{quartier reserve} (thus

* The lack of legal clarification regarding prostitution and the involvement of the municipal authorities
resulted in the creation of a number of technical terms that have no equivalent in English and are thus left
in French. Registered prostitutes were known as \textit{filles soumises} (literally submissive girls). They
worked either independently and were known as \textit{filles en carte} or in regulated and strictly controlled
brothels called \textit{maisons de tolerance} or occasionally \textit{maisons close} in which they also lived. In the
second case they were referred to as \textit{filles de maison}.

Other establishments include the \textit{maison de passe}, a low class unregistered establishment to which
women took their clients; \textit{maison de rendez-vous}, a higher class establishment where a third party
reinforcing the sense of enclosure) and would be adapted to the specific district in which it was situated. For example an establishment that would pass unnoticed in a working class district would cause a scandal in a superior residential one.

The primary purpose of setting up a closed house was for observation and experimentation. Enclose in order to observe, observe in order to know, know in order to supervise and control (Corbin 1990:16). This control appeared in regulations dated to 1817 governing the location of the maisons. These were not allowed to be near churches, colleges, certain hotels or public establishments, basically the main loci of social interaction and enclaves of the bourgeoisie;

"Il serait interdit d'en établir a proximite des églises, des colleges, de certains hotels, des etablissements publics en general" (de Sauvigny 1977:280)

It was not possible to force all prostitutes to work in the maisons de tolerance and many still worked independently (ibid.) To extend police control to these independent women several ordinances were issued restricting their actions within spatially defined zones. In 1821 the Prefect Delavau forbade prostitutes to use the Palais-Royale for business between 15th of December and the 15th of January so that 'honest' women could go about their business unaccosted (ibid.). To further reduce 'inconvenience' the ordinance of 29.04.1829 forbade prostitutes to stand on a public thoroughfare, to stroll up and down in a group or in twos or to provoke passers-by. This action was confirmed in the ordinance of 14.04.1830 which entirely forbade soliciting on a public way and instructed women who wanted to exercise their profession to go to the maisons de tolerance (deSauvigny 1977:283).

The established houses reached a maximum in the years of the July Monarchy (1830), partly as a consequence of the strict regulations of the preceding years and also as a result of the influx of predominantly male immigrants to the city who were not socially integrated and thus created a demand for commercial sex (Corbin 1990:111). This pattern changed with the process of urbanisation, the integration of newcomers and the concomitant change in and dispersal of demand. Established brothels no longer corresponded to the clientele as suburbs developed and the designated areas were neglected in favour of lodging houses and independent brothels catering for specific locales and demand (ibid.).

After the defeat of the Commune in 1871 the regulation of prostitution underwent a renewal and shift of direction which echoed the stereotypes of prostitution to be found at the time. These were attributed to: a weakening of the paternal authority of the
family; the spread of atheism and freethinking; a decline in the influence of the church; a challenge to the political authorities; the progress of liberalism, all of which were seen to make police repression more difficult (Corbin 1990:19). The prostitute thus became the embodiment and symbol of the threat of death weighing on the social body (ibid.).

The paradox of the regulationist discourse is that it dealt with a category of women apart, yet the statistics used by these legislators indicate that prostitutes were very much like most other women. The fundamental aim of the discourse however was to create a difference and thus marginalise some women to exert control over all women.

The overall pattern of control enacted during this period resulted in the dissemination rather than the concentration of vice. Where a town had no quarter reserve the opening of a maison de tolerance demanded compliance with regulations which forbade opening a brothel near a school or place of worship or close to any public building. Brothels also had to be situated at a minimum distance from one another making it impossible to set up two establishments in the same building (Corbin 1990:55).

"From the beginning of the century, transformations brought about by town planning and the decline in the number of maisons de tolerance had profoundly changed the geographic distribution of the maisons. Of course old permitted locations survived: a large number of brothels often the most sordid ones were still situated in town centres, in old buildings packed together in dark, narrow back streets. Certain districts in Paris, such as the area around the Hotel de Ville and especially around the Palais-Royal, were good examples of this relative permanence of the places of prostitution" (Corbin 1990:56).

Changes in the city centre, particularly those wrought by Haussman, caused the disappearance of some of the more notable red light districts, for example the Cite and Ile Saint-Louis had been centres of prostitution since the middles ages but were 'cleaned up' by Haussman's urban development programme. During this episode the bourgeois took over the city centre and replaced the Restoration town planning of enclosed spaces with wide boulevards and the establishment of central commercial districts (ibid. : 201). The response from prostitutes can be seen in the rise of the number of women openly soliciting on the street.

The French system can thus be seen to be a regulatory process organised and controlled by the police under the auspices of the municipal authority and supposedly reflecting the dominant ideology of the period. Opposition to this system occurred in the form of the abolitionists of which there were several discourses advocating the abolition of prostitution to the abolition of the laws regulating prostitutes. Only the latter case will be examined here and the reader is referred to the critique of these groups by Alain Corbin for a more detailed account.
1.4.3.2. Victorian England and the Abolition Movement.
The abolition movement began in England as a reaction against legislation introduced in the 1860's. In 1864 Parliament passed the first of three statutes providing for the registration and sanitary inspection of prostitutes in specific military depots in Southern England and Ireland (Walkowitz 1980a:72). The aim of this legislation was to provide a means to control the spread of venereal disease among enlisted men in garrison towns and ports. By the last act of 1869 18 garrison and dock towns were subjected to the dictates of the obliquely titled Contagious Diseases Acts.

Although the acts did not legalise prostitution the resultant regulatory system entailed close police surveillance of registered women whose residence and traffic were restricted to narrowly confined areas. Within these areas a woman could be identified as a diseased prostitute by a plain clothes member of the Police and be forced to undergo an internal examination. If found to be diseased she could be detained in hospital for three months (ibid.:76).

Prior to the passage of the Acts prostitution was for many women an ephemeral occupation. This impermanence permitted the integration of the women within their communities and resulted in a geographical dispersal of brothels and other meeting places. Although specific streets were associated with prostitution, such as Drury Lane and the Haymarket in London (Rousseau & Porter 1987) and Water Lane in York (Finnegan 1979) there was not the concentration experienced in France. However the categorisation and registration of women under the Contagious Diseases (CD) Acts constituted a 'professionalisation' of prostitution.

To understand the implications of this legislation and subsequent moves to abolish it is necessary to examine the wider context. In this respect the regulations concerning prostitution can be seen as part of a wider approach to the control of sexuality which assumed major symbolic importance as a target of social intervention and organisation during the nineteenth century (Weeks 1989). Of equal importance is that this period coincides with that of British industrialisation and urbanisation and thus any examination of the various aspects of the regulation of sexuality must be conducted within the framework of industrial capitalism. No simple causative relationship between industrialisation and the organisation of sexuality is suggested.

The Victorian Age is a synonym for a harsh and repressive sexual Puritanism that coexisted with moral hypocrisy in the form of a flourishing pornography and prostitution. It was during the nineteenth century that debate about sexuality exploded and became a major social and political issue (ibid.:19). A major part of this process
was a taxonomic and labelling zeal which attempted to classify scientifically characteristics and causes of forms of sexual variety. For example, many words designating sexual traits such as nymphomania, autoeroticism, homosexuality and pornography only came into existence and use during the latter part of the century (Weeks 1989). A result of this was the subtle transformation of meaning given to sexual activity, and the making sexual what had hitherto seemed acceptable (Wilson 1983).

Within this system of classification were separate layers of attitudes and beliefs. Most prevalent of which was the double standard which imposed chastity on the female while allowing a large degree of sexual freedom for the male. The perpetuation of the double standard can be seen in the construction of the family as the basic unit of society (op cit.). The function of the family was to secure the maintenance of the existing social order economically, ideologically and sexually and this was achieved through the definition of female sexuality.

Important in this respect were the provisions for inheritance of family property. With the aristocracy primogeniture was the norm and thus sexual waywardness did not endanger the integrity of succession of estates. However the middle classes, enriched by wealth from industrialisation, maintained a system of partible inheritance which demanded a more severe morality which imposed higher standards on the women than men. An adulterous wife might be a means of imposing a fraudulent claim on the family.

The ideological division of women into two classes; the virtuous and the fallen was well established by the mid-nineteenth century. As Weeks (1989) states, 'It is inescapably true that the familial ideology was accompanied by, and often relied upon, a vast underbelly of prostitution, which fed on the double standard and an authoritarian moral code.'

The regulation of sexual behaviour also became a way of policing the population at large, and during this period the State accepted responsibility for many areas of sexual unorthodoxies, both in terms of enforcement and organisation: the Obscene Publications Act 1857, Criminal Law Amendment Act 1885 which criminalised prostitution and homosexuality, Indecent Displays Act 1889. These laws form the basis of the law today regarding prostitution and pornography.

During the 1850s prostitution was the main focus of debate and moral reforming. Up to this time prostitution had been tolerated. the passing of the CD Acts, however, provided the means to regulate it through the guise of a medical concern over the spread of
syphilis. These Acts were unfair in that they took for granted the double standard and consequently sought to control working class women while ignoring the major source for spreading the disease - men (Walkowitz 1983). Concern with the blatant class and sex discrimination of the Acts engendered the growth of the abolition movement which strove to remove the public stigmatisation of prostitutes. The movement was also part of a social purity campaign which equated moral purity with a stable society (Weeks 1989).

The Abolitionist movement gained momentum in France in the 1870's and was directed against the French System. By 1882 the excuses offered by the police and doctors (at first respect for religion and morality and protection of public peace, then a guarantee of public health) were exposed one by one as the maintenance of a system of which the essential aims were profit, police intelligence, and the pleasure of exercising arbitrary power (Corbin 1990).

In England in 1883 the Contagious Diseases Acts were repealed, the control of commercial sex continued under a different guise which formed the basis of current legislation. This was found in the Criminal Law Amendment Act 1885 which sought to suppress brothels and also raised the age of consent for girls from 13 to 16. The repeal of the CD Acts accentuated rather than diminished the tendency to differentiate between respectable and disrespectful behaviour as police and judicial measures combined with the efforts of moral reformers. The result of the nineteenth century social purity legislation was the emergence of a much clearer subculture of prostitution which has more pronounced spatial ramification.

In France the carceral procedures set up in the first part of the century slowly began to break down although the legislative silence on prostitution remained. Legislation enacted in 1885 focused on pimps and procurers and keepers of unregistered brothels establishing the framework for the current approach to prostitution. Registered brothels remained a part of French society until the Marthe Richard law of 1946 forbade them.

It is evident that commercial sex has, through the centuries, been subject to controls imposing spatial operational constraints. From the regulations of the Middle Ages banishing women outside the town walls or within designated areas to the stringent controls of the 'French System' prostitution has evolved a complex relationship with church and secular authorities encompassing tolerance, repression and institutionalisation. That this relationship has manifested itself in specific spatial forms is testimony to the specificity of prostitution and its interaction with the social, political, economic and moral discourses of the time. The enduring theme has been the enclosure of prostitutes, either physically or metaphorically, to 'protect' society.
It is not possible to examine the regulation of the late 20th century sex industry without attempting to understand both the historical development of control and the rationale behind it. The spatial organisation of commercial sex in 19th century France and England is a result of attempts to define and control sexuality, particularly female sexuality, through the maintenance of the double standard. The continuity of this standard and concomitant categorisation of sexual behaviour is revealed in the legislative framework of the sex industry that is in force today. The following chapter will present the diverse strands of law that constitute this framework and locate within it the place of planning law.
Chapter 2. Legislation of the Sex Industry.

Chapter 1 outlined the approaches taken to the regulation of commercial sex in urban centres in West European history, culminating with the situation at law in the 19th century. To understand the role of planning in the regulation of commercial sex in England today it is necessary to recognise the importance of this antecedent legislation for the law as it stands today. Much of the legal precedent established by cases of the 19th century regarding morality and public order is still extant and utilised in court.

The aim of this chapter is to establish the legal position of the land use planning system as part of the framework of laws regulating commercial sex in England and Wales. To achieve this it is necessary briefly to outline this framework to clarify the various levels of responsibility and control. In addition, description will also be made of the law in other European countries, notably France and the Netherlands, to highlight alternative approaches and the structure within which they operate.

The laws regulating commercial sex have focused on behavioural control to reduce the visibility of the protagonists and avoid public nuisance. The measures adopted to achieve this derive in the main from the field of public law where the state is involved and the public has a direct interest in the result (Eddey 1987). This includes criminal law and constitutional and administrative law. In addition, elements of private law are utilised such as the law of tort for disagreements over nuisance and contract. This complex relationship of the varied statutory instruments and other legal mechanisms reflects both the diverse nature of the sex industry itself as well as the theoretical basis for what constitutes ‘normal’ behaviour and in what manner deviations should be treated.

As outlined above in Chapter 1 the prostitute is the figure most commonly identified with the sex industry. closely followed by the pimp. The client, the generator of this demand, is rarely considered and this is the situation at law. Given the strong identification of the prostitute as the 'problem' it is a useful point at which to commence. It should be noted that the focus of the study is female prostitution, not male.

2.1 On-Street Prostitution

It is not an offence to be a prostitute in England, but many behaviours and activities associated with it are illegal. What however is a prostitute? The term currently employed at law is 'common prostitute'. and although there is no complete legal definition of this term the superior courts have twice considered the subject (Sion 1977). In R v De Munck [1918] a common prostitute was deemed to include a woman
who offers herself for purposes amounting to common lewdness in return for payment; there need not be an act of ordinary sexual intercourse. In R v Webb [1964] prostitution is not confined to cases where a woman offers her body for lewdness in a passive way but includes cases where she offers her body as a participant in physical acts of indecency for the sexual gratification of men.

Although there has been no direct attempt to criminalise women for being prostitutes, indirectly legislation has endeavoured to make the practice of it difficult. What is illegal are the activities of those who promote prostitution, encourage women to become prostitutes or exploit prostitution for their own financial gain (Criminal Law Review Ctte 1982).

It is an indictable offence for a person to procure a woman to become a prostitute or to become an inmate of or frequent a brothel for the purposes of prostitution. This was initially enacted at s.2 of the Criminal Law Amendment Act 1885 and was later consolidated in s.22(1) of the Sexual Offences Act 1956. It is also an indictable offence to cause or encourage prostitution of a defective or a girl under 16 (Sexual Offences Act 1956 s 23 (1)).

The control, direction or influence of a prostitute's movement, which indicate aiding, abetting or compelling her prostitution, for the purposes of gain, is also an indictable offence (Sexual Offences Act 1956 ss. 31, 37(1), (2)). Equally it is an offence for a man knowingly to live wholly or in part on the earnings of prostitution (ibid. s.30 (1)). This implies that a man who is paid by a prostitute for goods and services supplied to her which he would not supply but for the fact she is a prostitute commits this offence. Shaw v DPP [1962] was a case in point where Shaw was convicted of accepting payment from prostitutes to publish adverts of their readiness to prostitute themselves. The same situation would apply where a prostitute placed an advert in a newsagents window, thus reducing ways to attract clients without street walking. To counter this many women place advertisements in telephone boxes close to their workplace (St Clair 92). This has not gone unchallenged: the police have prosecuted people who place the cards in the boxes and British Telecom have cut the lines advertised (St Clair 1992).

Where there is cause to suspect that a house, or part of a house is used by a woman for the purposes of prostitution, and that a man residing in or frequenting the house is living wholly or in part on her earning a warrant may be issued authorising a constable to enter and search the house and to arrest the man (Sexual Offences Act 1956 s.42).

In addition to controls governing the management of prostitutes, legislation has also been passed dictating the location and form of their behaviour. These have their
foundation in the 19th century Vagrancy Act 1824\(^3\) and later under the Town Police Clauses Act 1847 s28 where it became an offence for every 'common prostitute' to loiter and importune passengers for the purpose of prostitution. This was consolidated in the 1959 Street Offences Act where it is now an offence for a 'common prostitute' to loiter or solicit in a street\(^4\) or public place\(^5\) for the purposes of prostitution (s.1). A constable may arrest without a warrant anyone found in a street or public place suspected, with reasonable cause, to be committing such an offence (s.(3)). To be charged with the offence of loitering or soliciting, a woman must have been cautioned twice by a constable. This is an extra-statutory procedure and the woman may apply to a magistrates court to expunge records of caution if she was incorrectly cautioned (ibid. s.2).

In 1985 a new law was introduced which for the first time involved the client. The Sexual Offences Act 1985 s.1 states that it is an offence for a man to solicit a woman for the purposes of prostitution, from a motor vehicle while it is in a street or public place, or in a street or public place while in the immediate vicinity of a motor vehicle that he has just got out of or off. The solicitation has to be persistent or of such a manner or in such circumstances as to be likely to cause annoyance to the woman solicited or nuisance to other persons in the neighbourhood (ss.1, 2 (1)).

2.2. Off-Street Prostitution.

The above accounts relate only to on-street prostitution which is the most visible and also most likely to cause concern because of its public nature. However, there is also a body of law that relates to off-street prostitution, that is, that which takes place in a specific property.

The chief legal control over the practice of prostitution concerns the use of brothels and other premises for the purposes of habitual prostitution. There is no statutory definition of 'brothel' but the term has a definite meaning at common law. It has been, and still is, an offence at common law to keep a brothel, for which the offender is punishable at the discretion of the court (Sion 1977:122). By the Criminal Amendment Act 1885 s 13,

\(^3\) Vagrancy Act 1824: 'every common prostitute wandering in the public streets or public highways, or in any place of public resort, and behaving in a riotous or indecent manner shall be deemed an idle and disorderly person... and it shall be lawful for any Justice of the Peace to commit such offender to a house of correction' Vagrancy Act 1824.

\(^4\) 'street' includes any bridge, road, lane, footway, subway, square, court, alley or passage, whether a thoroughfare or not, which is for the time being open to the public: & the doorways and entrances of premises abutting on a street and any ground adjoining and open to a street, are treated as forming part of the street (Street Offences Act 1959 s.1(4)). Conduct amounting to soliciting by prostitutes on a balcony or at a window overlooking the street is 'soliciting in the street'. Smith v Hughes [1960].

\(^5\) 'Public place' is not defined in the Street Offences Act 1959 but must presumably be construed ejusdem generis with the extended definition of 'street' (Halsbury's Laws 1979 para 1071 footnote 4). In R v Wellard [1884] Grove J said 'A public place is one where the public go, no matter whether they have a right to go or not.'
re-enacted in the Sexual Offences Act 1956 ss. 33-36, it is a summary offence for a person not only to keep or manage, or assist in the management of a brothel, but also to let premises in whole or in part knowing that they are to be used as a brothel, or for an occupier to permit them to be so used.

At common law a brothel is the same as a bawdy house. A bawdy house is a house or room or set of rooms in any house kept for the purposes of prostitution. In R v Holland, Lincolnshire [1882] Lopes J described a brothel as a place that permits people of the opposite sexes to come there and have illicit sexual intercourse. Therefore before a premises can be said to be a brothel, people of both sexes, in the plural must go there (Lord Parker, Gorman v Standen [1963]). Premises frequented by men for intercourse with only one woman is not a brothel (Singleton v Ellison [1895]) whether the woman is a tenant or not (Caldwell v Leech [1913]). Where two women use the premises for prostitution the fact that one is the tenant does not prevent the premises being a brothel (Gorman v Standen [1963]). It is not necessary that the women using the premises are known to be prostitutes or that payments are made to them (Winter v Woolfe [1931]), but evidence that the women are prostitutes is admissible on the question whether premises are brothel (R v Korie [1966]). It is not necessary to prove that 'normal sexual intercourse' has taken place (Kelly v Purvis [1982])6.

It is not necessary that the use of the premises should have caused a nuisance to neighbours (R v Holland, Lincolnshire [1882]) or that indecency or disorderly conduct should be apparent from outside. Where premises are used by more than one prostitute for her trade, the question whether the premises or part of the premises is a brothel is a question of fact in each case to be deduced from the whole: the mere fact that individual rooms were let under separate tenancies for exclusive occupation by one woman does not of itself preclude the whole or part of a house from being a brothel (Donovan v Gavin [1965]).

In addition to these constraints relating directly to brothels there are other laws restricting prostitutes' actions in specific premises, particularly places of refreshment. In this instance it is the landlord or tenant who commits a summary offence by knowingly permitting common prostitutes to assemble at or continue in any house, room or other place of public resort kept by them for the sale or consumption of refreshments of any kind. These laws can be found at s.44 Metropolitan Police Act 1839, s.35 Town Police Clauses Act ss.14,15 Licensing Act 1872 and more recently at s.9(1) Late Night Refreshment Houses Act 1969 where it is an offence for the licensee to permit prostitutes on the premises. Under 1964 Licensing Act s.175 (amended by the

6 Ackner LJ in Kelly v Purvis [1982] 'it is not essential that there be evidence that normal sexual intercourse is provided in the premises. It is sufficient to prove that more that one woman offers herself as a participant in physical acts of indecency for the sexual gratification of men' p671.
Criminal Law Act 1977, Sch 6 and the Criminal Justice Act 1982 s.46) it is an offence for the holder of a justices' licence knowingly to allow their premises to be the habitual resort or meeting place by reputed prostitutes, whether the object is or is not prostitution (Rickman and Draycott 1991). It has been established through case law that prostitutes have the same rights to refreshment as other people; however it becomes an offence if prostitutes habitually make use of the same premises and remain longer than necessary for reasonable refreshment (ibid. para 6-480 footnote 6).

2.3 Sex Establishments (not involving prostitution)

Although prostitution and its organisation constitute its core, the sex industry takes many diverse and often undetectable forms and thus has proved difficult for state agencies to control. Other more obvious manifestations such as sex shops, massage parlours and sex cinemas have evolved a more public face since the 1960s in response to changing attitudes and demands. To service their demand it is necessary for these establishments to operate openly within the general commercial milieu where they are likely to come into contact with the planning system.

The system of controls that are currently in place regarding sex establishments derive from a series of interrelated events that took place from the 1950s onwards. During the 1960s, with the advent of the permissive society, there were some radical changes in social attitudes towards sex and questions of morality. A revolution in sexual consciousness took place and there was much greater sexual candour. Traditional morality was called into question. Long held values and their translation into positive law were challenged and there was a relaxation of controls in a number of ways. Theatre censorship, for example, was abolished, homosexual activity in private between consenting male adults of 21 years was legalised and abortions could lawfully be conducted under certain conditions. A less strict attitude towards material dealing with sexual matters also prevailed following the passage of the Obscene Publications Act 1959 and the degree of sexual explicitness in films, theatrical productions and reading material increased (Manchester 1986:90).

Increased sexual awareness coupled with the relaxation in sexual mores evoked considerable interest in, and a willingness to purchase, all manner of sexually oriented material. There was no shortage of those willing to satisfy and stimulate consumer demand for this type of product and thus the commercial exploitation of sex began in earnest. Shops specialising in the sale of a wide variety of sexual products opened up in increasing numbers in Soho, London and elsewhere and there was a considerable increase in the number of outlets for sex magazines as more and more newsagents began stocking them (ibid.).

This explosion in the sex industry at the beginning of the 1970s meant that for the first time pornography began to impinge upon the public consciousness which in turn engendered demands for greater regulation. However the sale of pornography in sex shops and elsewhere was a subject on which people had widely differing opinions and on which genuine public debate existed.
Given this lack of consensus, the government was faced with the choice of doing nothing and allowing market forces to prevail or introducing legal controls. To do the latter, through reinforcing criminal controls over pornography, could have been construed as an attempt to enforce morality through law, which government was not keen to do. The steps that were eventually taken are outlined below with an account of the various measures that were already available.

2.3.1. Controls of the 1970s.

In the 1970s the main mechanisms of control were centred on the Town and Country Planning Act 1971 and the Obscene Publications Act 1959, as well as some 19th century legislative provisions relating to indecent displays, principally s.4 of the Vagrancy Act 1824, s 54 (12) of the Metropolitan Police Act 1839 (and its counterpart in the provinces s.28 of the Town Police Clauses Act 1847) and the Indecent Advertisements Act 1889. However control under these latter acts was limited as public display was restricted to displays in or visible from places such as highways, footpaths and thoroughfares. Control did not extend to material visible from the inside such as magazines on a shelf (Manchester 1986).

Under the Obscene Publications Act 1959 it is an offence to publish an obscene article whether for gain or not. If such an article is perceived to be obscene the police have powers of seizure over that material. Thus in terms of the presentation of sex related material e.g. sex aids or magazines, the law determined some measure of control. It did not prevent the premises exhibiting this material from operating.

The controls imposed on these premises, such as they were, came from planning legislation. Whether or not planning permission was required depended upon whether development had taken place on the land in question. In the 1971 Town and Country Planning Act development was defined by section 22 (1) as; the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change of use of any buildings or other land. Since sex establishments had invariably been set up in existing shop or leisure premises the question of the need or otherwise for planning permission depended on whether there had been a material change of use in land. Important in this context was the Town and Country Planning (Use Classes) Order 1972. Class 1 of the Order specifies use of a shop, i.e., a building used for the purpose of carrying on of any retail trade or retail

7 A person publishes an article who (1) distributes, sells, lets on hire, gives or lends it, or who offers it for sale, or for letting on hire (s.1 (3) (a)); or (2) in the case of an article containing or embodying matter to be looked at or a record, shows, plays or projects it (s. 1 (3) (b)). (2) does not apply to anything done in the course of a cinematograph exhibition within the meaning of the Cinematographic Act 1952 (s. 9 (1)).

8 An article is deemed obscene if its effects or the effects of one of its items is, if taken as a whole, such as to tend to deprave and corrupt (s.1 (1)).
business wherein the primary purpose is the selling of goods. Thus, subject to certain exceptions specified in the class, where a building is used (legitimately) for one type of shop, change of use to any other type of shop does not constitute development and thus planning permission is not required (Manchester 1986:56).

This meant that when sex shops replaced existing shops they did so free from control and provided they confined themselves primarily to selling goods they could not be subject to enforcement action. Where a breach of control occurred, enforcement proceedings were the only course of action available and because of the lengthy process involved it often proved an ineffective measure. This is dealt with in more detail in the following chapter.

Pornographic cinemas and strip shows required a public entertainment licence (music and dancing) as well as planning permission. However, in London, licensing was controlled by the Greater London Council under s.52 of the London Government Act 1963 and planning was a borough concern, thus leading to a division of responsibilities.

2.3.2. The Licensing of Sex Shops and Cinemas.

As sex shops expanded rapidly in London and began to move into the provinces in the late 70s the lack of effective control over their establishment became a public issue and the early 1980s saw legislation to address this problem.

In 1981 the Indecent Displays (Control) Act came into force. The aim of the Act, is to make fresh provision with respect to the public display of indecent matter and to this end a number of existing statutes dealing with indecent public display were repealed (Manchester 1982). The result was that indecent material within premises was now covered by legislation and failure to comply with the regulations meant that material could be seized and offenders arrested.

This measure did not however resolve the question of the proliferation of premises and after intense public pressure a licensing system was introduced with the 1982 Local Government (Miscellaneous Provisions) Act. This only covered sex shops and sex cinemas as it was felt that to consider sex encounter premises might involve licensing 'brothels' (Manchester 1986:96). The Criminal Law Review Committee was at that time examining the law relating to prostitution and the Government did not want to preempt their report (ibid.).

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9 Exceptions: (i) a shop for the sale of hot food; (ii) tripe shop; (iii) a shop for the sale of pet animals or birds; (iv) a cats-meat shop; (v) a shop for the sale of motor vehicles.
Under s.2 of the Act a local authority could resolve that Schedule 3 of the Act apply to their area and in doing so would publish notice to that effect. Schedule 3 defined the meaning of sex establishments and requirements for licences, refusals and conditions.

A sex establishment means a 'sex cinema' or a 'sex shop' (Sch 3 s.2). The former is defined as any premises, vehicle, vessel or stall used to a significant degree for the exhibition of moving pictures, by whatever means produced, which are concerned primarily with the portrayal of, or primarily deal with or relate to, or are intended to stimulate or encourage, sexual activity or acts of force or restraint which are associated with sexual activity, or are concerned with the portrayal of, or relate to genital organs, or urinary or excretory functions (Sch 3 s.3(1)(a)(b)). It does not include a dwelling house to which the public are not admitted, nor premises licensed under the Cinematographic Act 1952 (s3 (2)).

A sex shop means any premises, vehicle, vessel or stall used for a business which consists to a significant degree of selling, hiring, exchanging, lending, displaying or demonstrating sex articles or other things intended to stimulate or encourage sexual activity or acts of force or restraint which are associated with sexual activity (Sch 3 s.4 (1) (a) (b)).

In this context a sex article is anything made for use in connection with or for the purpose of stimulating or encouraging sexual activity or acts of force or restraint associated with sexual activity (Sch 3 s.4 (3)).

In adopting the provisions of the Act a local authority could determine the number of sex establishments appropriate for a locality of which nil may be an appropriate number (Sch 3 s.12 (3) (c), (4)). In practice this applied to sex shops only. Also in granting or renewing a licence it was necessary to have regard to the character of the locality; the use to which any premises in the vicinity are put and the layout, character or condition of the premises (Sch 3 s.12 (3) (d)). Exactly where such shops should be located was by no means certain as no guidance on the question of suitable locations was issued in association with the legislation. Evidently they were not to be in well heeled suburban areas, although perhaps less desirable districts might be expected to have them (Manchester 1986:97). In addition to these locational criteria the character of the applicant was also taken into consideration as persons with a conviction under this or associated acts, such as Sexual Offences or Obscene Publications Acts, were not considered suitable.

A local authority also had the right to impose standard conditions on licences regulating the hours of opening and closing; displays or advertisements on or in them; the
visibility of the interior to passers-by and any change from a sex cinema to a sex shop or a sex shop to a sex cinema. They could also levy an annual fee for the costs of the licence, which in the London Borough of Westminster stands at £16,830 in September 1992. In essence then, the Act did give the power to ban sex shops, although by the rather indirect and circuitous route of deeming nil to be the appropriate number of sex establishments in a locality.

Although the 1982 Local Government Act makes provisions for sex cinemas these were effectively excluded from the licensing system by a Private Member's Bill passing through Parliament at the same time as the Local Government Bill. This Cinematograph (Amendment) Bill sought to bring sex cinemas within the scope of the licensing control exercised by local authorities for cinemas generally. Thus sex cinemas were regulated by the Cinematograph (Amendment) Act 1982 and sex shops by the Local Government (Miscellaneous Provisions) Act 1982, a somewhat inconsistent measure as both are part of the sex industry and sex cinemas have more in common with that industry than with ordinary cinema. This system also meant that local authorities, when considering appropriate numbers of sex shops for a locality could not take into account the number of sex cinemas and further, that in London licensing would be dealt with by the London boroughs and sex cinemas would fall under the remit of the GLC. Sex encounter establishments remained a grey area, unregulated by these provisions.

2.3.3 The Current position on Licensing Sex Establishments in London.
With the abolition of the GLC by the Local Government Act 1985 the powers for licensing public entertainment passed to the boroughs (Sch. 8 s.1). In the following year s.4 of the Greater London Council (General Provisions) Act 1986 amended Schedule 3 of the Local Government (Misc. Provisions) Act 1982 by clarifying and widening the meanings of sex establishments to include those establishments that had been indeterminate before. There was thus an additional term, sex encounter establishment which covered premises at which performances, services or entertainment are provided which involve the sexual stimulation of individuals through verbal or physical means (s.4 (b)).

This new category covered peep shows, topless bars, nude encounter bars, paint-your-own-model and photographic studios which had escaped control in previous legislation. This Act also gave the police or authorised officers the power to seize and remove any apparatus or equipment or other things found on the premises and used in conjunction with the services available (s.4 (h)). This is rather all inclusive and has been enforced to the extent of removing central heating systems and carpets (Guth, interview).
This 'relocation' of licensing and regulatory powers to the boroughs enabled an effective approach to enforcement. It also meant that when a local authority was considering the appropriate number of sex establishments in their area all forms of establishment could now be included. However what has happened in practice is that in gaining a public entertainment licence the licensee may apply for a waiver which allows artistic acts (i.e. striptease) without the need for a sex entertainment licence thus increasing the potential number of sex establishments in an area (Guth, pers com).

Two other forms of activities associated with the sex industry have been omitted thus far. These include 'near beer bars' and massage parlours which will be described briefly below to complete the legislative framework for the sex industry.

Near-beer bars are establishments that exploit the customer through misrepresentation of the services they offer (Guth, interview). These places, sometimes called hostess bars, often charge a minimal entrance fee (ca £2.00) to view an advertised live sex show. The refreshments sold on the premises are alcohol free, although they are advertised as cocktails and beer, and usually retail at between £15 and £60 per drink (ibid.). No live sex is exhibited although a verbal description of what would have occurred is delivered along with an explanation that they cannot show live sex because the local council will not allow it (Mason 1991).

This organisation precludes the need for a justices licence, a sex encounter establishment licence or a music and dancing licence. In addition, unless the premises operates after 11.00pm (in which case they need a Night Cafe Licence) they can open between 5.00am and 11.00pm, requiring no licence and need only to satisfy the requirements of the Factories and Shops Act. That these establishments can continue to defraud and take pecuniary advantage of customers is partly a result of a clientele unwilling to complain and partly a disparate body of legislation governing sex-related land uses. However it has been proposed to introduce new legislation to licence all premises that are not subject to licensing laws (i.e. those that so not sell alcohol) and have a hostess in attendance (Mason 1991).

Although massage parlours are often viewed synonymously with the sex industry, particularly after the 1959 Street Offences Act which through the prohibition of soliciting on the street encouraged the development of sex-related massage parlours, they are in fact a bona fide land use and have been subject to regulation in London since the 1920 London County Council (General Powers) Act. Today massage parlours require licences under s.6 (1) of the London Local Authorities Act 1991 and are covered under Class D1 Non residential institutions of the Town and Country Planning Use Classes Order 1987. The special treatment licence covers any premises used or
represented as being used for the reception or treatment of persons requiring massage, 
manicure, acupuncture, tattooing, cosmetic piercing, chiropody, light, electric or other 
special treatment of a like kind of vapour, sauna or other baths (London Local 
Authority Act 1991 s.4). In granting a licence the local authority has the power to apply 
terms, conditions and restrictions relating to, for example, public order, qualifications of 
persons giving treatment and opening hours (s.6 (2) (3)).

These measures go some way to reducing the use of premises for prostitution, although 
it is not difficult to obtain a massage certificate and therefore premises that operate 
discreetly often continue undetected. Where such illicit operations are detected the 
licence may be revoked and the operator subject to criminal proceedings. The use class 
still remains with the property.

2.4. Discussion and Conclusion
This chapter in attempting to define the position of Town and Country Planning within 
the legislative framework of the sex industry, has illustrated that,

"the law is scattered amongst so many statutes, these so often overlap with 
each other and with the various common law offences and powers which still 
exist in this field that it is a complicated task even to piece together a 
statement of what the law is, let alone attempt to wrestle with or resolve the 
inconsistencies and anomalies to which it gives rise." (Williams Ctte 1979 para 2.29)

It appears that the planning system is one element of many that contribute to the 
regulation of commercial sex. However what is evident from the account given in this 
chapter is that the law, while not making radical alterations, does have the potential and 
capacity to change and in this context planning has an important role to play.

The Criminal Law Review Ctte (CLRC) considered the law relating to prostitution in 
two reports (1984, 1985) following the publication of a working paper on the subject in 
1982. A major theme throughout these documents is that prostitution is not going 
away, prostitutes need to meet their clients and will continue to do so on the street, even 
if they are continually moved around by the police, and that perhaps an alternative is 
called for (CLRC 1984:3). Alternatives that were examined were the legalisation of 
brothels and the designation of specific areas within towns for commercial sex (as 
suggested for Southampton and illustrated in CLR, but subsequently denied by 
Southampton) (CLRC 1982). Neither of these measures met with the approval of the 
committee as it was believed that the practice of prostitution is an undesirable activity, 
harmful to those involved and to society at large; it should not be facilitated even in 
special areas (ibid.:43). It is not the nature of prostitution that it can be made 
acceptable to society generally by being regulated (op cit.).

48
The issue has been addressed more recently by the Mothers' Union, a Christian Women's Organisation who are consulted by the Government on certain social issues. In response to suggestions that a bill on the subject was to go before Parliament, the Committee for Social Concern put the question of legalising brothels to a sample of their members (interview). The response was negative although it was suggested that prostitutes be allowed to work in pairs from licensed premises to give them greater security (Guardian 7/7/92). The administration of these premises was not elaborated upon and illustrates that the question of law reform regarding prostitution still rests with the principle rather than the method of change.

With regard to the control of sex establishments, the suggestion that a specific use class be created was proposed by the Soho Society as a part of their campaign to increase controls over these premises (Manchester 1986: 63). This was rejected because of the perceived weakness of the planning enforcement system (ibid.). As the provisions for enforcement have recently been strengthened this question of the viability of the creation of a specific use class for sex establishments will be reconsidered below.

Given that the law is not static and review is taking place it is not unreasonable to examine the approaches of other European countries. France is an obvious choice, as it is the home of the regulated system, however as chapter 1 illustrated, following the law of 13/04/1946 this situation changed and all the maisons close were abolished, but not the maisons de rendez-vous (Bracconier 1991, Vouin 1988). The state registration of all prostitutes, ostensibly to monitor health and VD, remained in place until 1960.

The basis of French prostitution law can be found at articles 334 and 335 of the Penal Code concerning procuring (proxénétisme), the management of prostitution and providing premises for these activities. At article R.26-8 and R.38-10 of the same code the offences of soliciting (le racolage actif) and loitering (le racolage passive) are covered (ibid.). The overall controls are similar to English law, in that prostitution itself is not an offence but the various activities associated with it are. In this respect the Penal Code is slightly more specific in its terminology than English law. One interesting feature is that Municipal regulations, similar to those described in chapter 1, concerning the circulation and practice of prostitution in an area are still possible and legal to implement (op cit.: 516).10 Thereby giving the collective the ability to decide locally how to manage prostitution.

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10 "il ressort d'un arrêt de la Cour de cassation que des règlements municipaux concernant la circulation et le stationnement des prostituées sont encore possible et licites s'ils ne prononcent que des interdictions limitées dans le temps et l'espace et sanctionnes par l'application eventuelle de l'article R.26-15" (Vouin 1988:516)
In contrast the Dutch have recently removed article 205b of the Penal Code, which stated that an individual is at liberty to do what they want with their body but cannot exploit other people's bodies (Oostdam, interview). Therefore one could be a prostitute but could not run a brothel. However, even before the change in national law, brothels existed in the major cities and were usually covered by local legislation. In Amsterdam, in order to control the sex industry the council circumvented national law and created a specific land use category; 'other firms' which only applied to window brothels (Boo, interview), and incorporated them into the local plan.

The new Dutch legislation involves the licensing of brothels and registration of prostitutes (Guardian 5/6/92). Attempts to zone street walkers in Utrecht have failed because of the perceived public nuisance involved and the not-in-my-backyard syndrome (Hurde interview). The issues of licensing brothels and registering prostitutes will be discussed further in the context of how sex trade workers envisage their future working conditions.

With regard to other sex establishments both the Netherlands and France treat sex shops as a retail use that does not require a licence and can, in theory, open anywhere (Ducastel interview, Oostdam, interview). In Amsterdam, however, there are controls regulating building facades and advertisements thereon so that the premises fit in with their environment. In Paris the owner of a property has to give their consent for a specific use and therefore may refuse a sex use (op cit.).

Strip shows and live peep shows in France require a licence from the Ministry of Culture under article 1 of the ordinance No. 45-2339 of 13/10/1945.11 No fee is payable for this licence but the Ministry will no longer issue one unless the applicant has an authorisation from the Prefet. The Prefet in Paris, however, is no longer issuing authorisations and the number of peep shows there remains at 18. The distinction of live peep show was made because Paris has a large number of video peep shows which are treated as commercial uses, like sex shops, and do not require a licence (Ducastel, interview). The controls over massage parlours in France are again similar to England in that unless they are officially licensed and exhibit diplomas etc. they are strictly forbidden (ibid.).

To conclude, it can be said that the legal controls extending to the sex industry in England are diverse both in their basis in law and their implementation and enforcement. The division between criminal and civil law has established a hierarchy of responsibility amongst state agencies in which the contribution of the planning

11 Art 1-6 : spectacles forains, exhibitions de chant et de danse dans les lieux publics et tous specialces de curiosités ou de varietés. Peep shows are included as spectacles de curiosites.
system has been largely subsumed by the licensing and police authorities. Although
the planning system has an important role to play in determining the use to which land
is put, its position within the legal framework of the sex industry has undermined its
effectiveness in pursuing this function.

Examination of the practices of some other European cities illustrates that the position
of the planning system in this arena is not unique to England. While the variations that
exist may be as much a function of attitudes to commercial sex as to the organisation of
land use planning there is a recognition in both France and the Netherlands that the
location of commercial sex within a district is to some degree the responsibility of that
locality. The mechanisms for implementing those decisions may vary, the outcome is
however the same: the spatial regulation of commercial sex. Is this applicable to
England? The following chapter will examine the range of options open to the planning
system in this respect drawing on specific examples of planning policy and practice.
The aim of this is to establish, within planning law and guidance, the role that the
system has and how effective it has been in monitoring the use and development of land
for sex industry purposes.
Chapter 3. The Planning System and the Sex Industry.

Planning is about change; understanding change, promoting it and controlling it (Lyddon 1987:179). It can be said to include all activities of the state which are aimed at influencing and directing the development of land and buildings (Brindley et al 1988:2). More specifically it has been suggested (Thornley 1990:45) that planning exhibits three main features which are:

i) the protection of the environment,
ii) fostering of a vital economy.
iii) protecting community interests

These features have been legitimised in the Town and Country Planning Acts from 1947 to 1990. The statutory planning system requires the production of development plans which are intended to be indicative rather than prescriptive, although in practice up-to-date plans are highly influential. This situation has been further enhanced by s.26 of the 1991 Planning and Compensation Act which introduced a presumption in favour of development proposals which are in accordance with a current plan (PPG1 para 25).

Modern legislation in public law proceeds generally by conferring discretionary power on decision makers. In considering whether to grant or refuse planning permission for the development of land a local planning authority has discretion, and policy guides the way discretion is exercised. A policy is never a binding rule, it is not a rule of law to be applied equally in every case; that would destroy the idea of discretion. However every policy has some objective which it is intended to fulfil through the workings of the land use planning system.

Policies that make up the development plan must be written within the context of national and regional policies of central government, some of which have a loose statutory basis, most of which do not. These latter indicators of government policy position come in the form of circulars and planning policy guidance notes (PPG), the latter first introduced in 1988. The Secretary of State also has reserve powers to call in plans and modify them, and is responsible for the appointment of Inspectors at planning appeals and for the final decision in major appeal cases.

These powers emphasise the potential for the manipulation of the planning system at the local level in the interest of central political motives and is illustrated more clearly in the preponderance of circulars and guidance notes issued since 1979. The situation must be viewed, however, in the context of the ascension of the Thatcher government on a platform of radical change geared to challenging the 'post war consensus' and in particular the ingrained values underpinning the welfare state.
A key characteristic of the Thatcherite ideology was the reformulation and reorientation of the role of the state. As planning is largely carried out under the aegis of the state it was apparent that a reorientation of planning would be an integral part of the reforms. The consequence of this has been an attempted reform with the primary aim of aiding the market by creating what were seen as the right conditions for economic growth and encouraging employment (Thornley 1990).

With regard to social issues the Thatcher government was a strong advocate of a return to 'traditional family values', i.e. the values eschewed in Victorian Britain that saw the family as the means to securing an ideal of social order through social, economic and sexual norms. An integral component of this 'value' system is the double standard, female chastity and male sexual freedom, which is satisfied to some degree by the sex industry.

The challenge to the values of the Welfare State within the context of the 'traditional' family has had implications for a wide cross section of the population, especially women, particularly those with children. The unequal access to resources experienced by some women has in some cases created a climate where employment in the sex industry is the only viable opportunity (Independent 09.09.91). This is not to say that all poor women become sex trade workers, nor that all sex trade workers are poor women but to highlight the inequality in resource distribution that generates the situation where prostitution becomes an option.

How does this situation sit with the ideals of Thatcherism? From the point of view of the simple free market liberalism, there is nothing wrong with prostitution. The prostitute is a free agent who sells her or his services on the market at the going price (Green 1989). Why should the exchange of sexual services for money be more unsavoury than other exchanges of fee for service? If the principles of exchange are the same in all cases should we not expect to see sexual services taking their place in the high street with other uses under the free market ideology? This has not happened and as the previous chapter illustrated the sex industry is hemmed in by restrictions reflecting the expression of an archaic and irrational taboo. Given this situation is the sex industry even considered in planning terms?

This chapter aims to address this question from the perspective of government guidance and strategic policy and examine how the planning system operates with respect to the demand for commercial sex land.
3.1. Sex and Planning : is there a connection?
With the exception of articles by Brand and Williams 1985, Manchester 1986, Samuels 1980 and Wilkinson 1980 the sex industry has not been considered in the literature in planning terms. The concept of specific establishments for the provision of sexual services (not including intercourse) was defined with the passing of the 1982 Local Government (Misc Provisions) Act for sex shops and sex cinemas and was further clarified for London in the 1986 GLC (General Powers) Act which brought into the definition uses that had catered to the demands of the industry but had evaded regulation, such as peep shows and strip shows (Chapter 2 assesses this legislation in more detail).

These Acts were ostensibly for the purposes of licensing yet they established an identity for a group of activities hitherto viewed separately. This new identity did not however find expression in planning terms. The body of land uses associated with the industry continued, and continues today, to be regarded in terms of the general use of the land they occupy, such as shops (Class A1), dwelling houses (C3), non-residential institutions (D1) and assembly and leisure uses (D2), within the 1987 Use Classes Order.

The apparent disparity can perhaps be explained on two levels. On one level the control of prostitution is a Home Office affair, conducted through the Police and unless there is a change in the law regarding prostitution it is unlikely that the Department of the Environment will consider its manifestations in land use terms (Massingham, interview).

The second level reflects the history of the 'fight' against the sex trade in the 1970s. The visible presence of sex-related land uses was negligible when the 1972 UCO was passed and they were therefore unlikely to have been considered separately. The disquiet created by the proliferation of uses, particularly in Soho, led to demands for immediate action, either in the form of increased planning controls or the introduction of a licensing system. As explained in chapter 3 the latter prevailed.

The inference that can be drawn from this is that although both central and local government recognised sex-related activities, neither distinguished the sex industry as an identifiable use of land in planning terms. However these activities have a tendency to concentrate in specific loci creating associations of sex-related activities with particular areas, for example Kings Cross and Soho are synonymous in many people's minds with commercial sex. While the legal restrictions applied to the sex industry remain in place these associations will continue to be self-perpetuating. A recent article
on Kings Cross (Guardian 17/10/1992) illustrated this point with the following comment:

"Operation Welwyn was just one of a series of police purges.... for a month or so the streets achieved an unusual sense of normality as the pimps and dealers moved on....but the Cross is where they want to be because that is where the punters expect them to be" (Warde 1992:8).

The current location of sex-related land uses in England can be attributed to a combination of the interacting factors of historical association, state intervention and market forces. The question is how much of this intervention can be ascribed to planning action?

In attempting to determine how local planning authorities approach this issue the Department of the Environment, Association of Metropolitan Authorities, Association of London Authorities and the Association of District Authorities were contacted for advice. At present no guidance, circulars or other advice have been issued from any of the organisations. However analogies were made with other uses particularly amusement arcades (Thomas, AMA, interview). It is worth examining this use in some detail as similar concerns have been expressed over location, advertising and opening hours for both sex-related uses and arcades (see Brand & Williams 1985, Williams 1983, Manchester 1986).

Amusement arcades are the only recreational activity not to fall within the reformed assembly and leisure class (D2), and are considered *sui generis* (Howe 1989). A development control policy note was published on amusement centres in 1969 (DCPN 11 1969). This note is useful in that many of the concerns now surrounding sex-related uses have been considered in this note with respect to amusement arcades, for example, the relationship between licensing and planning and the question of location.

The Gaming Acts, as the policy note says.

"do not stipulate the matters which may be taken into account on an application but authorities can for example, take account of the social effects of a proposal, the number of amusement places in the area already, and questions of public order. Planning permission on the other hand may be refused or given subject to conditions only for proper planning reasons" (para. 2).

The note then elaborates on these planning reasons which include effects on amenity and the character of the surroundings, and on road safety and traffic flow. These comments reveal an approach not dissimilar to that later expounded in the 1980s over control of sex establishments. A significant difference is exposed however over the question of location. At no time during the passage of the 1982 Local Government (misc provs) Bill was any serious consideration given to the question of where it might
be appropriate to have sex establishments nor does the Act purport to lay down any template for controlling location and numbers (Manchester 1986:209).

The Act goes no further than laying down broad national principles, providing for the refusal of a licence if the location of the shop is inappropriate having regard to the character of the locality or the use to which other premises in the vicinity of the shop are put, or if the establishments in the locality equal or exceed that which is appropriate. No limits are prescribed within which sex shops might be situated and in what numbers (ibid.). Under the scheme local authorities have an almost unfettered discretion to determine what is the relevant locality, what is its character and whether or not sex shops are appropriate there. This discretion has created confusion among sex establishment operators who have no idea where they may locate premises and the situation has remained vague even in the higher courts. In R. v Birmingham City Council ex parte Quietlynn [1985] the Master of the Rolls stated, 'common sense dictated that the relevant character [of a locality] was that of the surroundings, but not necessarily the immediate surroundings of the premises' (Guardian 20/07/1985).

In contrast, DCPN 11 states:

'amusement centres are not acceptable near residential property; nor are they good neighbours for schools, churches, hospitals or hotels. They are out of place in Conservation Areas or other places of architectural or historic character, except perhaps where these cover a really wide area' (para. 4).

Why this should be the case is not elaborated upon, although one suspects a lingering 'moral' disapproval of the possible corrupting influence on the young, a moral disapproval which apparently no longer applies to pubs or betting shops, former dens of iniquity. In planning terms the former is now included in the widely drawn food and drink class (A3), and the latter within the financial and professional services class (A2) (Wilkinson 1980, Home 1989). These concerns have resurfaced in the context of sex establishments and are addressed more fully in chapter 4.

The absence of published guidance does not imply that the subject has not been or is not now considered a planning issue by the Department of the Environment nor does it imply that the planning system is not equipped to deal with sex related land uses. Discussions with the Department suggested that the complex hierarchy of controls currently in place regarding the sex industry make inter-departmental negotiations and policy formulation an inherently difficult task (Massingham, interview). It was also implied that while impetus for change need not come from the Home Office it must generate the legislative changes necessary before any action will be taken by the DoE (ibid.)
It was felt that by the DoE that the current planning framework could address the land use issues generated by the sex industry through a variety of means. At the level of policy formulation there is no reason for an authority not to recognise sex uses in a plan, except perhaps the weight of adverse public opinion it would generate. Guidance in both PPG1 and PPG12 (regarding crime prevention and economic and social considerations respectively) provides a potential forum for the consideration and discussion of the ramifications of the sex industry particularly paragraphs 5.48 and 5.51 of PPG12:

"...But, in preparing detailed plans too, authorities will wish to consider the relationship of planning policies and proposals to social needs and problems, including their likely impact on different groups in the population." para 5.48

"Some authorities may also have other wider social considerations in mind in taking a view about how they hope to see the social pattern in their communities develop... The underlying approach must be to limit the plan content to social considerations that are relevant to land use policies" para 5.51.

Given this structure, do planning authorities give consideration, in policy terms, to the presence of commercial sex and its participants: the location of the activity, the socio-economic conditions that have resulted in employment in this field and how planning action may be taken to address the issue? To examine these questions at the strategic level an example will be presented from London.

3.2. Strategic Planning and the Sex Industry: London.

Strategic guidance for London, prior to the adoption of the UDPs, comes from the Greater London Development Plan 1976 (GDLP). The essential purpose of the Plan was to create a physical environment and a social and economic framework which would conserve and improve the standards of life in London (GLDP s.2.1). Within this framework the aims were to meet the needs of Londoners for jobs, homes, transport, recreation, a decent environment and education. The Plan was revised in 1984 in which steps were taken towards identifying areas of society where needs are great but have in the past been largely unrecognised by the planning system - women, the elderly, ethnic minorities and people with disabilities (Camden 1986). Due to the abolition of the GLC the revisions were not adopted. There is no specific reference to the sex trade, although chapter 6 of the 1984 Plan on 'Equality in London' recognises the disadvantages that women face and which by inference can be seen as contributory factors to the circumstances of female sex trade workers.

"Women, forming 52% of London's population, are not a minority group but are in a position of considerable disadvantage relative to men. This stems from unequal distribution of wealth, poor access to resources and opportunities, caring responsibilities and limited mobility. As a group, women have been harder hit by the recession and restructuring of London's economy and by government policies leading to cuts in public sector services. Women have had
little power in the process of private development, and public planning policies have not resulted in the redistribution of resources to benefit women. Women in London live in a city designed by men for men and have had little opportunity to influence or shape the urban environment. Planning policies, in regulating the use of land in the public interest and recognising that women form the majority of this public, can go a long way towards changing this." (GDLP 1984:87).

In recognition of the inequality of the planning system with respect to women the GLC also published a document on this subject entitled 'Changing Places: positive action on women and planning'. This emphasised that policies and design based on restrictive assumptions about the role of women can reinforce in spatial terms women's position of disadvantage relative to men. It illustrated the non-neutrality of the built environment and how this reflects and reinforces the inequalities in the social and economic structure of society. Positive action in planning terms was advocated to challenge this position often identifying target groups, such as elderly women or lesbians. Again neither the sex trade nor its workers were identified as a neglected group. However the impact of environmental improvements on women's safety produced the following statement;

"All schemes which alter the physical structure of the environment should be considered as to their effects on women's safety. For example traffic management schemes can reduce kerb crawling but can also force prostitutes into other less well established and more dangerous areas" (GLC 1986 : Safety from Violence:5)

Within the framework of the GLC approach to planning in London there was the potential to address the land use, economic and social issues raised by the sex industry. That it was not addressed is perhaps indicative of a confusion on how to think about the sex industry in the context of the Council's policies to empower women. To actively formulate policies with regard to the sex industry could be construed as being in conflict with established policies. The demise of the Council has resulted in the dispersion of strategic policy formulation between the 32 boroughs with increasing doubt that the opportunity for a planning overview of the sex industry in London will be a viable proposition.
Chapter 4: Local Planning and the Sex Industry: Sex Establishments.

The main function of strategic plans is to state in broad terms the general policies and proposals of strategic importance for the development and use of land in the area, providing the framework for the more detailed policies and proposals in local plans (PPG12 para 5.12). How then have planning authorities in the preparation and implementation of the local plan considered the sex industry?


To assess the level of published policies a sample of adopted local plans from London were examined. These were from Boroughs that experience sex-related activities, including Camden, Islington, Lambeth and Westminster. The only policy that explicitly mentioned an activity that could be construed as sex-related was Westminster policy 7.45(v) for miscellaneous entertainment uses,

"Within the Central Activities Zone permission for amusement arcades and other miscellaneous uses such as sauna/massage establishments will not be granted where the proposed development would have an adverse effect on the amenity of adjoining uses, or on the character and functioning of the area, or where it would be contrary to other policies contained in the Plan." (Westminster Local Plan 1982).

The absence of specific policies, while not unexpected, was mildly surprising given the prominence of this industry in the boroughs concerned. In an attempt to establish the basis of this situation letters were written to the Heads of the Planning Departments outlining the types of questions that would be addressed in the research. The initial aim was to determine the position of planning departments, in London and other Metropolitan areas, regarding the location and uses of land for sex-related purposes. The survey aimed at elucidating council policies, resolutions or other statements on the subject to analyse the operative framework within local authorities.

The responses received from the four London boroughs that were contacted and subsequent follow-up interviews indicated primarily that the sex industry was not considered a major planning issue and that responsibility for its regulation fell to Environmental Health departments. This highlighted an immediate drawback with the intended research methodology. There was no single individual or department who would be able to respond adequately, thus engendering duplication. To establish whether this situation was repeated in other metropolitan areas Birmingham and Bradford City Councils were contacted. The results were the same. The planning departments had no policies, formal or informal or guidelines and saw the sex industry as being the responsibility of Environmental Health.
Continued pursuit of this methodology would have been unlikely to yield useful information and thus the strategy was changed to examine the organisational approach to the management of the sex industry by local authorities in London. The problem of whom to direct enquiries still remained and rather than sending formal structured questionnaires to the planning department of each borough, in addition to those responsible for licensing, a telephone survey of planning policy and development control sections and licensing departments was conducted. The aim of this was to establish if the sex industry was considered a planning issue and if so how it was treated in policy formulation and development control. The decision to consult licensing sections arose out of a personal concern that the locational criteria for granting a licence were neglected in deference to criteria concerning the character of the applicant which are less controversial to implement. The form and content of the survey are laid out in appendix 1. Follow-up interviews were conducted where appropriate on the basis of the responses to the survey.

4.2. Survey Results.
In general the results were not encouraging. In some cases it proved consistently difficult to reach some planning departments and thus not all boroughs are represented. Where responses were elicited the content was not always helpful. The most informative data came from licensing sections, who (once tracked down in Environmental Health. Trading Standards or Consumer Affairs) provided useful responses.

The results have been summarised in Table 1 and Figure 2. Of the 25 planning departments that responded only Westminster considered sex-related uses in planning terms and even then it was not thought of as a specific policy issue (Dawson, interview). 68% of development control respondents viewed sex establishments only in terms of retail uses and would treat them as such. Three respondents thought their council would wish to locate sex shops away from primary retail frontages. Apart from that it was not considered a planning issue, with widespread ignorance as to what even constituted a sex establishment.

However what was interesting was the view that, while planners would have to treat each application on its own merits and in planning terms, that is as a retail use for a sex shop, elected
Table 1: Planning and Licensing of Sex Establishments in London:
Survey Results

<table>
<thead>
<tr>
<th>London Borough</th>
<th>Is the sex industry a planning issue?</th>
<th>Existing policy?</th>
<th>Location of sex uses?</th>
<th>DC stance</th>
<th>No. of licensed sex ests.</th>
<th>Deemed no.?</th>
<th>Fee. £</th>
</tr>
</thead>
<tbody>
<tr>
<td>Barnet</td>
<td>no</td>
<td>no</td>
<td>-</td>
<td>-</td>
<td>0</td>
<td>?</td>
<td>?</td>
</tr>
<tr>
<td>Barking &amp; Dagen.</td>
<td>no</td>
<td>no</td>
<td>-</td>
<td>-</td>
<td>0</td>
<td>NS</td>
<td>5625</td>
</tr>
<tr>
<td>Bexley</td>
<td>no</td>
<td>no</td>
<td>retail</td>
<td>0</td>
<td>NS</td>
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<td>0</td>
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<td>?</td>
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<td>1</td>
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<td>1399</td>
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<tr>
<td>Westmst</td>
<td>yes</td>
<td>yes*</td>
<td>CAZ</td>
<td>-</td>
<td>6</td>
<td>11</td>
<td>16830</td>
</tr>
</tbody>
</table>

Key: SR : location in secondary retail frontage
NS : number not specified, treat each application on its own merits.
? : respondent did not know the information required, or claimed it did not exist
NC :not considered
retail : treat use as retail and locate in retail frontages.
CAZ : Central Activities Zone
* : policy relates to miscellaneous entertainments uses and mentions saunas and massage parlours (see s4.1)

members would perhaps take a different view. For example in Harrow, 'if we were to consider it members would be outraged'; Barking and Dagenham, 'members would take a very high view'; Bromley, '[an application] would probably be opposed on any ground going'. More revealing is the comment from a DC officer in Richmond claiming 'there's no sex in Richmond' which perhaps explains the absence of known sex trade activities.
Figure 2: The location and number of licensed sex shops and areas of prostitution, London 1991

Source: Metropolitan Police.
The information received from licensing personnel was more consistent. However the following caveat must be considered. Although the amended definition of a sex establishment (by the 1986 GLC (General Provisions) Act) covered peep shows, striptease bars, sex shops, sex cinemas etc. (see chapter 2) and thereby allowed a local authority to consider all such uses in deeming an appropriate number, the majority of respondents referred only to sex shops. This is in part because the 1982 Act made provision for these uses and sex cinemas only. In addition it is possible to apply for a waiver on a public entertainment's licence to allow acts that would normally require a sex establishment licence (Guth, pers comm). Therefore, although the number of licensed sex establishments in Westminster stands at 6 (see Table 1 above) there are 36 other sex related operations in Soho alone, see figure 3 for their location; 14 near beer bars, 16 adult bookshops and 6 peep shows that either have no licence requirements at present (near-beer bars) or are covered under other regulations (ibid). This rather defeats the object of the 1982 licensing provisions and illustrates the potential weaknesses of reactive legislation.

Excluding Westminster there are 8 other licensed sex establishments in London. This figure was obtained from the Metropolitan Police Obscene Publications Branch and differs from the results of the survey by one. The stray licensed sex establishment is located in Camden. Within the boroughs consulted only 8 have adopted the provisions of the 1982 Act and passed a resolution specifying the number of sex establishments deemed appropriate. Of these 5 have deemed nil to be the appropriate number.

The 1982 Act gives no guidance as to how the fee is to be assessed but, broadly speaking there are two different views about the basis on which licence fees should be fixed (Manchester 1986). One is that, as licences are required in the interests of the public, the public should bear almost the whole cost of the licensing system, the fees being nominal. Where licences are issued by the local authority this has meant that ratepayers meet the costs. The other view is that, as licences confer benefits on the licensees at cost to the licensing issuing body, the licensees should make a contribution commensurate with the cost of providing the system. This can explain some of the variation in fees set by the London boroughs, as illustrated in Table 1, particularly in Westminster which operates a self-financing licensing system. It does not explain the high fee set by Lambeth of £17,209 which has a nil policy. This could be set as a deterrent. At Hammersmith and Fulham, although no fee has been set, the respondent answered that 'it [the fee] would be so extortionate to make people not want to apply'. This also seem to be the approach in Merton where, although each application would be treated on its merits the licence fee is set at £12,849 compared to the average licence fee, eg. for special treatment licenses, of £189 (LB Merton, interview).
4.3. Discussion of the results.
Before discussing the results it is perhaps useful to comment on the methodology employed. The difficulty of identifying a person or persons who had a responsibility for or knowledge of this issue meant that the telephone survey proved a useful mechanism in that endeavour. Also, since part of the exercise was to establish wherein lay responsibility, this method proved very effective in establishing in most cases that there is no specific body responsible.

Although direct verbal communication is useful in allowing the researcher to exploit the potential of a situation it does have its drawbacks. Respondents in some licensing sections, for example, became very defensive when asked about sex establishment licensing, having no proof of the integrity of the researcher. The response from planning departments ranged from prurient amusement to outright hostility. However the majority of planners spoken to were very helpful. The fact that the survey did not provide a wealth of policies on the location and use of land for sex related purposes is probably more a reflection of the incoherent approach to this subject generally than a weakness of the planning system.

Two points of interest emerge from this survey, both of which concern a negative attitude toward the sex industry. One is the use of high licence fees to deter would be applicants and the second is the ambivalent stance of local authorities in approaching this issue ranging from punitive fee scales, nil as the deemed number and a battery of planning policies on protecting amenity, environment and shopping uses. For example, 68% of planning personnel claimed that their authorities would treat a sex shop as a retail use under 1987 UCO, followed by the caveat that moral issues could not be taken into account. They proceeded to state that such a use would not be desirable in their area.

With regard to other sex industry uses, massage parlours generated most interest, although many were legitimate uses which were not seen as a planning issue. The question of a planning approach to street prostitution drew a negative response. Where action had been taken in this area it was seen as a police matter aided by Highways departments.

It appeared from the survey that while no specific policies were in place regarding the sex industry there was a prevalent negative 'attitude' in development control towards its presence. In order to gain some insight into how this 'attitude' pervades decision making a selection of planning enforcement decisions and appeals concerning sex-related land uses were analysed.
Licensed sex establishments, - sex shops, music and dancing.

Premises used for sex-related purposes but not licensed.

Where more than one activity is indicated on a plot this implies different floors are being used.

Source: Licensing Section, Westminster City Council.

Figure 3: Location and nature of sex-related activities (excluding prostitution) in Soho, London, 1991.
The availability of information has inevitably focused the research on Westminster which has attempted to limit the numbers of sex establishments in Soho since their proliferation of the late 1970s and 1980s.

4.4. Enforcement: planning’s prophylaxis?
Breaches of planning control can be met with an extensive and flexible range of discretionary enforcement powers. The 1991 Planning and Compensation Act introduces new provisions to strengthen and improve the present powers of enforcement and stop notices, in addition to new measures such as the planning contravention notice and breach of condition notice. These provisions are based on the recommendations of the Carnwath Report (1989), which examined the mechanisms and implementation of planning enforcement.

Much of the sex related activity in Soho in the 1970s was in the form of sex shops and sex cinemas that began operation in premises with appropriate permissions. The local planning authority was therefore restricted in the action it could take as no development had occurred. However during this period many sex shops began to install coin-operated booths for the viewing of films prior to purchase. Investigation of these expansions established that 'development'12 had taken place and enforcement action was pursued. This was also the course of action taken when sex related uses commenced on premises without appropriate permission (Guth, interview).

The actions that have been analysed all refer to the period 1981-1984 when sex related activities and opposition to them was most pronounced and which resulted in the passing of the licensing legislation.

Thirty three Secretary of State for the Environment decision letters on appeals against enforcement action on sex related land uses were analysed. Of the 33 appeals 30 were from Westminster: 27 Soho, 2 Paddington, 1 Victoria; of the remaining 3 appeals 2 were from Islington and 1 Camden. Seven cases that were subsequently pursued to the higher courts were also followed.

Table 2 summarises the alleged developments that initiated enforcement action and Figure 4 locates the appeal premises in Westminster, in addition other premises that were subject to enforcement action during the same period are also identified. The reasons given for the actions are all legitimate planning reasons. 20 of the notices referred to the use

121990 Town & Country Planning Act, s.55; development is defined as building, engineering, mining or other operations in, on, over or under land, or the making of any material change of use of any buildings or other land.
Table 2: Summary of the Enforcement Appeals.

<table>
<thead>
<tr>
<th>Address</th>
<th>Alleged development</th>
</tr>
</thead>
<tbody>
<tr>
<td>LB Islington</td>
<td></td>
</tr>
<tr>
<td>283 City Road, EC1</td>
<td>material change of use (MCU) to a private members club.</td>
</tr>
<tr>
<td>57 Newington Green Road, N5.</td>
<td>MCU to private cinema club</td>
</tr>
<tr>
<td>LB Camden</td>
<td></td>
</tr>
<tr>
<td>29 Camden High St.</td>
<td>MCU to private cinema club</td>
</tr>
<tr>
<td>LB Westminster</td>
<td></td>
</tr>
<tr>
<td>45 Old Compton St. W1</td>
<td>beginning of use - viewing films in coin operated booths in retail use.</td>
</tr>
<tr>
<td>35 Old Compton St. W1</td>
<td>as above</td>
</tr>
<tr>
<td>26 Brewer St. W1</td>
<td>as above</td>
</tr>
<tr>
<td>159-163 Charing Cross Rd. WC2.</td>
<td>as above</td>
</tr>
<tr>
<td>6 Brewer St. W1</td>
<td>beginning of use of ground floor to cinema foyer.</td>
</tr>
<tr>
<td>1 Tisbury Crt. W1</td>
<td>MCU (grd fl) to shop, beginning of use of basement as cinema.</td>
</tr>
<tr>
<td>69 Berwick St. W1</td>
<td>MCU (basement) to cinema, (grd fl) mixed use as retail and film viewing in coin op. booths.</td>
</tr>
<tr>
<td>4 Lisle St. W1</td>
<td>MCU (basement) to cinema.</td>
</tr>
<tr>
<td>4 Peter St. W1</td>
<td>MCU (basement) to cinema.</td>
</tr>
<tr>
<td>40 Old Compton St. W1</td>
<td>beginning of use (grd fl) in retail use of viewing films in coin-op. booths.</td>
</tr>
<tr>
<td>8-10 Brewer St &amp; 1-4</td>
<td>beginning of use (8-10 Brewer St) - 1-4 Walkers Crt. W1</td>
</tr>
<tr>
<td>Walkers Crt</td>
<td>2nd fl changing room, Grd fl, coin-op revue bar;</td>
</tr>
<tr>
<td>81 Wardour St. W1</td>
<td>beginning of use as live peep show.</td>
</tr>
<tr>
<td>83-85 Wardour St. W1</td>
<td>MCU (basement) to cinema, refusal of planning permission for use.</td>
</tr>
<tr>
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<td>MCU (basement) to cinema.</td>
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### Table 2 cont.

<table>
<thead>
<tr>
<th>Address</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>79 Berwick St. W1</td>
<td>MCU (grd fl) shop with films in coin-op booths, (basement) to cinema.</td>
</tr>
<tr>
<td>157a Wardour St. W1</td>
<td>MCU to nude encounter parlour.</td>
</tr>
<tr>
<td>48 Dean St. W1</td>
<td>Beginning of use in retail use of cinema.</td>
</tr>
<tr>
<td>10 Walkers Crt. W1</td>
<td>beginning of use in retail use of viewing films in coin-op booths.</td>
</tr>
<tr>
<td>22 Gt. Windmill St. W1</td>
<td>as above.</td>
</tr>
<tr>
<td>32 Old Compton St. W1</td>
<td>use of first fl as cinema club</td>
</tr>
<tr>
<td>26 Wardour St. W1</td>
<td>MCU (basement) viewing films.</td>
</tr>
<tr>
<td>5 Walkers Crt. W1</td>
<td>use of first fl and part grd fl as cinema.</td>
</tr>
<tr>
<td>9 Greek St. W1</td>
<td>beginning of use (grd fl) in retail of viewing films in coin-op booths,</td>
</tr>
<tr>
<td></td>
<td>(basement) as a cinema.</td>
</tr>
<tr>
<td>12 Brewer St. W1</td>
<td>as above.</td>
</tr>
<tr>
<td>10 Little Newport St. W1</td>
<td>MCU (basement) to cinema.</td>
</tr>
<tr>
<td>34 Greek St. W1</td>
<td>beginning of use (grd fl) in retail use of viewing films in coin-op booths.</td>
</tr>
<tr>
<td>39 Frith St. W1</td>
<td>as above.</td>
</tr>
<tr>
<td>16 Lisle St. W1</td>
<td>as above</td>
</tr>
<tr>
<td>187 Victoria St. SW1</td>
<td>beginning of use of retail use for viewing of films in coin-op booths.</td>
</tr>
<tr>
<td>151 Praed St. W2</td>
<td>beginning of use of basement for viewing of films in coin-op booths,</td>
</tr>
<tr>
<td></td>
<td>beginning of use of grd fl as mixed retail and live peep show,</td>
</tr>
<tr>
<td></td>
<td>installation of a shop front.</td>
</tr>
<tr>
<td>105 Praed St. W2</td>
<td>beginning of use of first fl as cinema club, grd fl shop with film booths.</td>
</tr>
</tbody>
</table>

The nature of the activities undertaken was not elaborated upon by the planning authority except in three cases, one being 1 Tisbury Crt where the allegation implied the use by listing certain goods which were being sold and describing them as pornographic. On appeal the notice was reworded, although it was still dismissed. Two other notices use the expression 'live peep show'.
Fig. 4: Location of premises subject to enforcement action, Soho, London 1981–1984.

Source: Westminster City Council / DoE
Although the nature of the activities or the goods sold was not directly referred to in the enforcement notice this aspect seemed to gain importance in the reports of the Inspectors and, by implication, the Secretary of State who did not query them in making a decision. These and other issues will now be addressed.

The justification for the enforcement notices was that development had taken place, and in the majority of cases this involved a material change of use of premises from retail to mixed use through the installation of coin operated booths. In this context the showing of films in coin-operated booths is not incidental to the primary use of the premises (i.e. retail) because of;

i) the area of the shop used for this practice
ii) the fact that a charge is levied
iii) the contribution of this income to the gross turnover.

In one of the earlier appeals (187 Victoria St) the Inspector agreed that viewing films in booths was ancillary to the primary use of the building. The SSE did not stand by this decision and stated that the showing of films was a separate use which required planning permission. This view was upheld on appeal to the High Court.

Subsequent action in Soho used this case as a basis for stating that viewing films was a separate use and not incidental to the primary use. This was contested by Lydcare for properties at 35 Old Compton St, 26 Brewer St and 159-163 Charing Cross Road. The basis of the appeal and subsequent decision rested on the interpretation of the term retail in the UCO. This went to the Court of Appeal and used the decision of Hussain v SSE (1971) where it was stated that in deciding whether a use was ordinarily incidental to the keeping and running of a retail shop one had to inquire whether it was ordinarily incidental to the retail trade generally; that in doing so one had not to consider the requirements of particular localities, areas and customers but to look at the shop as an activity as a whole. The appeal was dismissed.

In evaluating the planning merits of the notices the Inspectors were not wont to grant planning permission to these mixed uses as it would constitute a loss of retail floor space which was contrary to the Westminster policy of retaining shopping uses. Policy 9.18 of Westminster Local Plan 1982.

"Permission will not normally be granted for change of use from retail shop to other uses where this would involve a loss of existing or potential local shopping or where the retail character and function of the shopping street would be adversely affected"
The reason given for the refusal of mixed uses was that although the areas within the appeal premises were usually small (ca. 15-30% of total area),

"if repeated at other retail establishments in the street it would radically alter its character"

This established a precedent which contradicts the provisions to treat each case on its merits.

A reason stated in every case cited was that the unlawful use would be injurious to the amenity of the area and thus could not be given planning permission. To validate this Westminster referred to the shopping policy stated above and to policies 7.37 (iii) and 7.45 (v) regarding the location of entertainment.

7.37(iii) Planning permission for entertainment facilities will not normally be granted where such development involves the loss of local shops or services; where traffic problems are exacerbated; where the amenity of residents would be appreciably injured or where a proposal is incompatible with the existing special character and function of the area.

7.45(v) Within the Central Activities Zone permission for amusement arcades and other miscellaneous uses such as sauna/massage establishments will not be granted where the proposed development would have an adverse effect on the amenity of adjoining uses, or on the character and functioning of the area, or where it would be contrary to other policies contained in the Plan.

These three policies, along with other provisions aimed at preserving the traditional character of Soho are frequently cited as refusal of planning permission for sex related uses where development has taken place.

However what emerges from the analysis is that when considering the planning merits of each appeal the nature of the activities and goods that are sold on these premises is suddenly material. In many of the cases the Inspector stated that 'the issues upon which the decisions on these appeals will largely hinge are whether the effect of the use enforced against upon the character of the locality or upon the amenities of persons living, working, or visiting therein would be unacceptable in planning terms' (81 Wardour St).

They then go on to describe the 'effect' of this use on the locality, for example:

32 Old Compton St:

"This particular stretch of Old Compton St which lies between Frith St and Greek St is to some extent a microcosm of Soho.... In this setting the appeal premises strike an obtrusive and alien note"
83-85 Wardour St;

"The aggressive character of the visual impact this produces is, in my opinion, detrimental to its surroundings and an affront to many who have occasion to pass by"

5 Walkers Crt;

"Walkers Crt is... so crowded as to merit the description thronged with pedestrians. This impression is accentuated by the narrow width of the Court which means that passers-by have to do so within a very few feet of the numerous sex-related businesses lining both sides of the major proportion of the street's length. I accept that to traverse this Court can be an unpleasant, embarrassing and even intimidating experience for a reasonable and tolerant person"

81 Wardour St:

"...the atmosphere in the vicinity of the appeal premises and its neighbours is intimidating and offensive. This is accentuated by aggressive, brash advertising, open touting, and the presence of persons standing around in the proximity of the premises"

5 Walkers Crt:

"The unauthorised use of the first floor for the purposes of a sex cinema adds its quota to the overwhelming preponderance of sex establishments in this short street, and by doing so furthers the damage being done to the amenities of the locality"

Plates 2 and 3 illustrate the area of Walkers Court and Tisbury Court to put into context the Inspectors' observations.

The inference of these statements and others is that the use of land for sex related purposes is disapproved of. There is an implicit assumption that such uses will be detrimental without an explanation as to how or why these activities would harm an area. In 187 Victoria Street the Inspector, while stating a particular matter regarding a sex shop was not relevant to the appeal, made the following comment '.however repugnant the nature of a sex shop might be'. Although a personal opinion it gives the impression that the Inspector does not have an open mind in dealing with the case before him.
Walkers Court, Soho.

Tisbury Coury, Soho.

Plate 2.

Plate 3.
In another case, Laws and Others v. Florinplace Ltd and Another (1981), Mr Justice Vinelott in discussing an application for an interim injunction to restrain the use of premises in Westminster as a sex centre and cinema club stated,

"... it is impossible to say that there is not a triable issue whether the existence of a business of this kind, conducted in the way in which it was initially conducted, so that the nature of the business is evident to residents of, and visitors to, Longmore Street, is not a nuisance independently of any risk of attracting undesirable and potentially dangerous customers, and of any risk that the shop may in future prove a plague spot which will be a source of infection in the neighbourhood"

In using these arguments there seems to be an unspoken understanding of the traditional character of Soho, which does not include the use with which it has been so long associated. This selectivity also ignores the fact that the 'traditional' restaurants and pubs may to some degree benefit from the location of commercial sex.

In the proof of evidence for the appeal against an enforcement notice at 16 Lisle Street, Soho, the character of the area was defined. This was described as the sum of the qualities that make up the individuality of the area; the means by which the area is recognised as different from others: an amalgam of the area's most distinctive features (s.3.02). More explicitly.

"Soho possesses many features which contribute to its special character and which merit retention if irreparable damage to the area is to be avoided. These features include the cosmopolitan nature of its 2500 inhabitants... its concentration of small businesses....its restaurants of distinction, street markets... the film industry's presence is substantial....the music industry is also well entrenched. The entertainment industry also contributes significantly to the character and function of the area. The entertainment facilities include premises which operate in connection with what has become known as the 'sex industry'. Soho has been associated with such uses since the 1930s and with prostitution for centuries. It is part of the Soho scene and is generally accepted as being one of the features which gives the area its unique character and interest" (ss. 3.02-3.03) (my italics).

Plate 4 provides a photographic representation of some of the attributes that define Soho's character.

Although sex-related uses contributed to the character of Soho it was apparently felt that there was a limit to what would be tolerated. When these uses began to dominate, both visually and commercially, concern was expressed based to some extent on moral grounds. The council, unable to take action on moral grounds, turned to the impact of the uses on the character and amenity of Soho.

"Whilst some of the public concern is obviously based on moral judgement about the nature of the uses, the type of material it purveys and the type of clientele it attracts, most of the concern is about the impact of these activities upon the character and amenities of Soho and this constitutes a material planning consideration." (ibid.)
Plate 4: Representations of the character of Soho.
There seems a rather fine line between the two arguments, as it is surely the very nature of the businesses and the clientele they attract that will determine the impact on the amenity? It also seem implicit that the impact will be negative.

The language used by the Inspectors in defining what is and is not appropriate for a Conservation Area such as Soho reveals the inherent bias against sex-related uses.

"The use is a disgrace to the Conservation Area where the object is to enhance the quality of the environment......it is not right that the residents and their children should have to suffer the ill effects of this establishment" 83-85 Wardour St.

"...it seems to me that this tawdry establishment is of a kind likely to deter many who would otherwise be attracted to this interesting street in a Conservation Area, and to its traditional businesses, which are still in a majority" 16 Lisle St.

This is plainly a value judgement on what constitutes a Conservation Area, the decisions are I feel emotive, subjective and exhibit a creeping moralism which does not allow full consideration of the nature of the area as it is reality.

During the early years of the 1980s, when these enforcement notices were served, it was stated by the then Secretary of State for the Environment, Michael Heseltine that it was not the function of the planning system to decide which retail needs the market should cater for (Hansard HC col 210 5/2/81). This seems not to have been applied to the retail use of land in connection with the sale of sexually oriented goods, as the example of 22 Windmill Street illustrates. A shop for the sale of sexually oriented materials was refused planning permission because of its proximity to a school, implying that shops in general would not be suitable on this site. However it was then stated that should the SSE decide that a shop use per se was in fact suitable for the site conditions should be imposed to prevent the display, storage or selling of sex related articles, thereby implying a determination on the forms of retail use that would be allowed.

The analysis of enforcement action taken by the three London planning authorities in the early 1980s reveals inconsistencies in the utilisation of planning mechanisms in respect of land used for sex-related purposes. The overall impression that is gained from the decisions discussed is a negative one: sex-related uses are not appropriate, seemingly for any area, and where present degrade the environment.

The arguments forwarded to combat these uses relate to loss of shopping facilities and amenity. With respect to the shopping question it is interesting that this argument has succeeded when tested on appeal, given that research has revealed a lack of knowledge about the precise impact of non-retail uses on the commercial viability of shopping
centres, and that local authority policies towards non-retail uses have largely been unsuccessful at appeals (Kirby and Holf 1986:29).

Amenity is a basic concept in planning, yet it has never been defined. This lack of definition has allowed spurious arguments, based more on fear and 'outrage' than realistic analysis of the areas in question, to succeed where in other cases, i.e. non sex-related, they may have failed.

It has been stated (quoted in Brand and Williams 1985) that moral or ethical objections are not appropriate matters for consideration under planning legislation where the proposed use is perfectly legal if duly licensed. However the line of argument used by the planning authorities when considering sex related uses, conveniently summarised as 'detrimental to the amenities of the area' are often difficult to differentiate from moral considerations.

4.5. Planning and Sex Establishments beyond London: an example from Paris.

The apparent negative image attributed to the sex industry is not exclusive to England and the following example is intended to illustrate how similar objections are levelled at sex-related land uses in Paris and how, again, planning is mobilised to deal with them.


The legislation concerning the sex industry in France was outlined above in chapter 2. Sex shops and peep shows do not exist as separate categories of use. The former are outlets which are registered as bookshops or lingerie shops (librairies, lingeries) and the latter are included with all live shows (spectacles vivant) (Meyrueix, interview).

Figure 5 indicates the location and nature of commercial sex interests in Paris in 1991. The prevalence of prostitution in the 1st, 2nd, 8th, 9th and 10th arrondissements is testimony to the historical associations of these quartiers with prostitution. The main concentrations of sex shops and peep shows can be found in the rue Saint Denis (1st and 2nd arrondissements) and the rue de la Gaîté (14th arrondissement), both indicated on figure 5. The latter street is used as an example which reveals elements similar to those found in Soho.

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13 The term studio refers to two methods of prostitution. The first involves prostitutes who solicit on the street and take clients to a studio nearby. The second refers to prostitutes who remain in a studio and receive clients on the premises. These may have established contact through the Minitel system (a computerised information system operating through the telephone network) or by answering advertisements similar to those illustrated above in chapter 2, plate 2.

Prostitution in peripheral areas, e.g. Bois de Boulogne, is on-street, often associated with transvestite prostitution and drugs and associated with kerb crawling problems.
Figure 5: Distribution of commercial sex in Paris, 1990

(amended Braconnier 1991)
4.5.2. Rue de la Gaîté, Paris.

The rue de la Gaîté is located within the quartier de Montparnasse in the 14th arrondissement of the Ville de Paris (see figure 5). It has been in existence since the 17th century when it provided the link between the gate at Montparnasse and the village of Clamart (Cazaux 1991). The street owes its name to the number of theatres, dance halls and cabarets that were found there (Assouad 1991). Some still remain today, as plate 5 illustrates. However as this composition also shows sex-related uses are also present and constitute 14 out of 50 shops, cafes and other enterprises (France Soir 25/03/91).

The sex establishments first arrived in the 1970s but started to proliferate in the 1980s. This growth was attributed to the redevelopment of Montparnasse; the shopping complex, road schemes and new station, which adversely affected the small shopkeepers in the rue de la Gaîté. The proximity to the railway station was also seen as a decisive factor in the growth of sex shops and peep shows (Nemarq 1991a).

According to the Mayor of Paris a direct effect of this expansion was the physical and economic degradation of the street and a decline in the traditional activities, exacerbated by the new clientele attracted to the area.

"Peu à peu, la dégradation de la voie a entraîné un dépérissement de ses activités traditionelles. De nombreux 'sex-shops' se sont installés, attirant une clientèle nouvelle. L'entretien des immeubles à été progressivement délaissé" (Mairie de Paris 1991).

To combat this perceived decline a local association of residents, traders and theatre people was formed. This group exerted pressure on the mayor of Paris to take action against the sex shops. In response a chargé de mission, Danielle Meyrueix, was appointed specifically to address economic, social and environmental issues in the rue de la Gaîté (op cit.).

The objective of her approach appeared to be the removal by any means of the sex establishments. It was these uses that were deemed to have the denigrating effect on the whole street environment reducing the value of the properties and the ability to attract 'desirable' people (Meyrueix. interview). Success in this area would enable the encouragement of mixed use developments of social housing, workshops, commercial and leisure facilities (Mairie de Paris 1991). In addition the cultural heritage and architectural quality could be protected and conserved for the future.
Plate 5: Representations of the rue de la Gaîté, Paris.
In pursuit of these aims the following measures were implemented. The physical nature and fabric of the street was initially addressed and involved resurfacing the road, cleaning up graffiti, improving lighting and street cleaning (op cit., Cazaux 1991). Following this focus shifted to the offending premises. However as the authorities are forbidden by an ordinance of 1945 to intervene in the practice of commercial transactions (Nemarq 1991a) the options open to them were limited. The result was a two-pronged attack aimed at convincing land owners not to renew leases or agree to new ones for sex-related purposes and to reduce the visibility of extant premises (France Soir 25/03/1991). This was achieved through the enforcement of legislation concerning illuminated signs and window displays (plate 5 indicates the results of these measures). In addition the Ministry of Culture, who licence peep shows were prevailed upon to tighten control.

Involvement of the private sector was seen as a prerequisite to the successful improvement of the street (Meyrueix. interview). Rather than imposing a zone d'aménagement concerté (ZAC), two alternatives were adopted to try to remove sex-related uses and encourage private interests to upgrade the street. The first was a déclaration d'utilité publique (DUP), which is similar to a compulsory purchase order and allows the state, local collective, public establishment or a société d'économie mixte (SEM) to expropriate a property (Danan & Pernelle 1990). This, like a CPO, is a long process which is only utilised as a last resort. The other method was the application of a droit de préemption urbain renforcé (DPUR) which allows the City to buy properties which are offered for sale independently or through negotiations with the owner (Assouad 1991, Meyrueix. interview).

The outcome of these actions has been a significant change in the environment of the street, the closure of 6 sex establishments and the 'toning down' of the frontages of the remainder. This has allowed the chargé de mission to focus on the redevelopment of cultural activities formerly associated with the street, 'il faut absolument en faire à nouveau une rue culturelle' (Le Quotidien de Paris 26/02/91).

This example illustrates quite clearly the similarities between London and Paris in attitude and approach to the sex industry. The subject incites municipal erethism in both countries encouraging emotive and subjective language alluding to degradation, impropriety and ensuing evisceration of the locality. A panoply of mechanisms are mobilised to 'clean up' the areas. The question that arises from this is what is 'wrong' with commercial sex and why is there not a place for it in our cities? This issue is addressed in chapter 6.
Chapter 5. Prostitution and Local Planning.

Prostitution has rarely been associated with planning in the planning literature, and where it has (Samuels 1981) the approach taken was focused on the use of planning mechanisms to eliminate prostitution from premises. In practice, the London boroughs surveyed reiterated that prostitution was not a planning issue. However an examination of the practice of prostitution reveals that the planning system has an influential role in controlling land used for prostitution. This control affects two different areas. The first concerns premises used for prostitution and the second concerns on street prostitution and the use of traffic management schemes.

5.1 Premises used for prostitution.

While it is not illegal for a woman to work alone from premises for the purposes of prostitution no provision has been made to classify a use of land for this purpose. Therefore how are these premises to be considered in planning terms? They cannot be described as brothels as that would be illegal and thus not a recognised use of land. They are also unlikely to be considered within another use class as that suggests a recognised accepted use. This situation implies that in planning terms there is no facility for a prostitute to lawfully exercise her trade, and where it is conducted development will be deemed to have occurred.

A possible exception to this is where prostitution is ancillary to the primary use of land. For example, if a woman worked from home as a prostitute this may be considered a function ancillary to the primary residential use. But what happens if a woman rents a property to conduct her business alone? Under the current UCO prostitution could fall within a number of classes, e.g. financial and professional services (A2), assembly and leisure uses (D2) or non-residential institutions (D1), however it does not do so because the use is not recognised. How then do local planning authorities deal with this question?

In addition to the location of sex establishments in Soho, premises used for prostitution are also present. These are situated in buildings, the lawful use of which may have been residential, offices or retail (Dawson, pers comm). In deciding whether to take enforcement action the local planning authority would look to the lawful use of the premises and decide if they wanted a return to that use (ibid.). To this date no planning action has been taken against prostitutes working alone. In considering how to define premises used for prostitution, if action were to be instigated, it was felt that a sui generis determination was the most likely (ibid.).

83
In contrast to this apparent tolerance both Birmingham and Southampton City Councils have used planning enforcement to curtail the use of land for prostitution. In Birmingham planning measures were enacted as a final attempt to stop the prostitution in the Balsall Heath area of the City (MacKinnon 1990). Enforcement notices were served against the use of dwellings for 'business' purposes.

In Southampton planning policy and enforcement action has been utilised in conjunction with traffic management schemes to curtail both on and off street prostitution in the Derby Road area of Southampton (Independent on Sunday 19/04/1992). The object of the Newton and Nicholstown Areas environmental and planning strategy is to set out the means to maintain and improve the amenities, quality of life and environment within the area, where some of the problems arise from the use of residential premises for the purposes of prostitution.

The aim is to use planning powers, particularly enforcement and stop notices where breaches of planning control have occurred including any unlawful change of use where residential premises are used for prostitution. Appendix 2 illustrates the strategy. In justifying this strategy Southampton Council claimed that prostitution is a commercial activity undesirable in residential areas (Morrison, interview). It was also stated that the council was not aiming at the prostitutes, nor taking a moral or religious stance but was acting because the concentration of prostitution, consequent intense traffic flows and deterioration of property was affecting both property values and environmental amenity (ibid.). When asked where it would be appropriate for prostitution to operate the response indicated that the council did not have a view unless the activity affected someone else.

5.2 Traffic management schemes and street prostitution.

Street prostitution is the most visible form of this element of the sex industry and thus most likely to be the point of conflict. In dealing with the issue the police draw upon the 1959 Street Offences Act and the 1985 Sexual Offences Act to achieve the removal of prostitutes and their clients from an area. These mechanisms have enabled police to target those areas where women are known to solicit in an effort to 'clean them up'. In London these areas are located at Kings Cross, Stamford Hill/Amhurst Park, Streatham, Tooting and Earls Court and are indicated in figure 2 above (Met. Police, pers comm). In achieving their aim the police have had assistance from local authorities in the form of traffic management schemes, which have been implemented in Kings Cross and Streatham often under the guise of 'environmental' improvements. This approach hinders the circulation of vehicles through road closures and one way streets thus inhibiting prospective clients from approaching prostitutes by car.
Until the 1990 Town and Country Act local planning authorities were not required to include policies in respect of the management of traffic (PPG 12, para. 3.4). However as part of strategies for environmental improvements traffic management schemes have often been advocated, the improvement plan for the Finsbury Park area being one such example. Part of the demand for improvements here resulted from the nuisance created by kerb crawlers seeking prostitutes (Moyse, interview). Similar measures were adopted for Kings Cross in 1982 and provide a good illustration of the mechanisms involved in instigating change.

Argyle Square, immediately to the south of Kings Cross station, is notorious for street prostitution and was the subject of a traffic management scheme proposed in 1980 to reduce the nuisance created by these activities (Camden 1980). The proposal was rejected by the Planning and Communications Committee on the grounds of potential problems of access, displacement of prostitution, inappropriate use of traffic regulations and anticipated low levels of enforcement (ibid.). It was also felt that the police rather than the local authority were the appropriate authority to deal with the problem (Camden 1982).

However the efforts of a local tenants' association (Birkenhead Street T.A) forced the authority to carry out a traffic survey to establish the level of the problem. Camden council had no intention at the time of taking the issue further than the survey (ibid.) However the results indicating unusual traffic flows (ie. flows were greatest around midnight but less than 200/hr) which increased with each survey (June 1980, May & Nov. 1981), encouraged a reappraisal of the situation on the grounds that, "The increase in traffic has significantly worsened environmental conditions in this residential area. Night time noise levels are now unacceptably high. The possibility of applying traffic management to reduce what has become an environmental problem has thus been reconsidered and discussed" (Camden 1982 para. 3.0).

Consultations and surveys were conducted and the resultant scheme implemented in 1983. During the consultation period a spokesperson for the English Collective of Prostitutes (ECP), an organisation based in Kings Cross which acts on behalf of prostitutes, commented that the solutions proposed represented a very short-sighted improvement to the situation (ibid.). This insight is borne out ten years later by the increased levels of prostitution and drug dealing prevalent in the area (Warde 1992).

The method described above is not restricted to England as a recent event in Paris reveals. The Bois de Boulogne, indicated in figure 5, is notorious for prostitution and in particular that provided by transvestites. Towards the end of 1991 the Prefect of Police
announced plans to close up to 8km of secondary roads in the east part of the Bois between sunset and sunrise (Oberlé 1992). This action, affecting several hundred prostitutes, was intended to contribute to the city's policy to fight against the transmission of HIV, prostitutes being a target 'infected' group (Lombard et al. 1991). Closing roads does not eliminate the demand for commercial sex it merely displaces it. This fact was recognised by the members of the police who deal with prostitution on the streets of Paris,

'IL ne faut pas se faire d'illusions. On va au mieux déplacer le problème mais non l'éradiquer' (quoted in Oberlé 1992).

The success of traffic schemes alone in dealing with prostitution is doubtful. The rationale for such schemes is founded on sound principles; traffic flow and noise levels, but their adoption appears to be more a method by local councillors to placate aggrieved local residents. The problem with this is that it does not address the issues surrounding prostitution or the effects of the schemes which inevitably displace prostitutes and their clients to other areas. This raises the issue of concentration versus dispersal of prostitution and in whose interests such mechanisms are proposed. It has been suggested that the Paris police prefer prostitution to be limited to specific sectors rather than widely dispersed because it allows them greater control (Lombard et al. 1991). The impression is that the Metropolitan Police feel the same way.

In contrast to the aforementioned approaches Birmingham City Council is currently considering a multi-agency strategy for dealing with the question of street prostitution (Birmingham City Council 1992). This approach identifies problem areas, particularly as they are perceived by residents and emphasises the nuisance issue which surrounds the operation of prostitution. In this context the City Council sees itself having an important role as it has a far greater range of powers at its disposal to deal with the various issues than do the police (ibid.). At the top of this list of powers is planning law.

The strategy is introduced because the original brief was to explore ways and means of deterring kerb crawling and street prostitution by way of environmental design. As stated above this usually involves road closures and traffic controls. However in the Balsall Heath area of Birmingham, where prostitution is most concentrated, traffic measures alone were not favoured by residents and traders and were seen as ineffective. Therefore the removal of street prostitution from residential areas and consideration of the issues directly connected with it required a more complex approach based on multi-agency initiatives. The proposed recommendations are covered below in chapter 4 as they provide a good example of the role that planning authorities could have in this area.
The issue here is that, although the aim is the removal of prostitutes from Balsall Heath, the use of traffic schemes is acknowledged as being ineffective, unpopular and creating displacement. Therefore rather than press ahead regardless, as Camden did in Argyle Square even though displacement was recognised as a potential outcome, the Council has attempted to address the wider issues of why women enter prostitution. In addition the demand side of prostitution is considered, although it is recognised that not much is known of this. As the report states (Birmingham City Council 1992),

"The notion that prostitution will always be with us may appear to be realistic, but there is no reason to believe that measures to alleviate demand might not be effective."

The fact that the measures outlined above invariably have an impact on the women who work as prostitutes, particularly in respect of increasing the dangers to which they are exposed, does not appear to be important, with the exception of the Birmingham approach. As one of the very few public services with any statutory obligation for public consultation town planning would appear in theory to provide a forum for the views of prostitutes affected by 'environmental improvement' strategies. In practice this does not seem to happen. This lack of discussion with the sex trade has been attributed to its marginal nature and lack of a representative body with whom to consult (Dawson, interview). There is some truth in the observation, but given the stigma attached to the trade and the belief that sex trade workers have nothing to contribute to planners (ibid.) it is not surprising that representation has been limited.

The stigma of prostitution has meant that many women prefer anonymity to the vilification that comes with identification as a sex trade worker, a necessary prerequisite in voicing opposition. This is most clearly expressed in the words of a sex trade worker.

"Some of us have had very brutal experiences in the last year sitting at community meetings of irate citizens who want the prostitutes off their streets. We've sat not with veils [a reference to the fact she is veiled at the meeting where this comment was made] but as ourselves, not being able to say a word." (Bell 1987:89).

Where organisations exist that represent the interests of prostitutes, such as the ECP identified above, they are rarely consulted about development proposals that may affect prostitutes livelihoods (Adams, interview). An example of this is the development proposals for Kings Cross where there has been much debate regarding the redevelopment and particularly of involving and incorporating the needs of the local community. Throughout this process the ECP claim not to have been consulted once (ibid.). Unless some form of dialogue is initiated between planners and the sex industry, particularly prostitutes, the use of reactive measures will continue to resolve the problems of one part of the community at the expense of another.
5.3. Conclusions: Commercial Sex and the Public Interest.

The fundamental purpose of the town and country planning system is the regulation of the development and use of land in the public interest (PPG1 para 2). Who or what is this public and why does it appear that the development and use of land for commercial sex is not in their interest?

This is not an easy question to answer. Public interest has not been defined, although at paragraph 39 of PPG1 it states that 'the planning system does not exist to protect the private interests of one person against the activities of another, although private interests may coincide with the public interest in some cases'.

Seeking clarification of this point from the DoE I was informed that 'the public interest is a nebulous thing' (Massingham, interview), which broadly concerns that which is in the interests of the community as a whole, as opposed to the people who are likely to be affected by a particular proposal (ibid.). The basic question is not whether owners or occupiers of neighbouring properties would experience financial or other loss from a particular development, but whether the proposal would unacceptably affect amenities and the existing use of land and buildings which ought to be protected in the public interest (PPG1 para 40). The question that arises is who makes the decision of what is in the public interest and on what basis. Unfortunately it appears that a largely male and white profession has made major assumptions about 'the public' based more often than not on a white nuclear family norm (GLC 1986). The recent case of the Vice Chancellor of Manchester University is indicative of this, where it was decided that it would 'not be in the public interest' to prosecute him for charges of kerb crawling.

The argument that a particular use is detrimental to the amenity and environment of a locale, and thus not in the public interest, has frequently been utilised in action against undesirable activities such as amusement arcades and sex shops (Brand and Williams 1985, Wilkinson 1980). What however is amenity and how is it measured? Amenity, like the public interest is another key concept in British planning and a phrase frequently used although never defined. The legislation merely states that if it appears to a local planning authority that it is expedient in the interests of amenity it may take certain action (Cullingworth 1988:196). As illustrated in the Westminster appeals it is a phrase widely employed in refusing planning permissions, indeed the phrase 'injurious to the interests of amenity' has become part of the stock-in-trade jargon of the planning world (ibid.). It is perhaps a concept that is easier to recognise than define but it is obviously susceptible to subjective decision making as seen in Soho.
The amenity argument is a catch all for controlling unpleasant land uses whereby 'aesthetic control is effectively used as a social filter' (Punter quoted in Cullingworth 1988:209). The consistent application of this policy argument to sex related land uses of all types appears to me to represent a misuse of the discretionary powers accredited to local authorities and is based more on a preconceived notion of impropriety associated with these uses than solid planning grounds.

This is not to deny that planning issues exist. For example neon advertising panels in an area devoid of such signs can be intrusive and would require control. Plates 6 and 7 illustrate the effects of such advertising at night on part of the Pigalle area of Paris where advertising of this nature is not otherwise abundant. However the 'traditional' uses in Soho, London, are such that neon advertising is part of the character of the area as plate 8 illustrates, which suggests that the comments made by the Inspector in the appeal decisions may have had more to do with the content of the signs than their presence.

In the case of sex establishments in England the window displays are controlled under the Indecent Displays (Control) Act 1981 and so the street frontage is often a blank facade as plate 9 illustrates. The upper half of this plate features licensed premises, the lower half unlicensed where although facades are blank advertising in more prominent. The objections levelled against these uses seem to be based on the material on sale or available within the premises, the clientele it attracts and the impact of this combination of products and people on the locality. This point has been amply illustrated by the comments made by the Inspectors at enforcement appeals in Soho. The validity of this argument in planning terms is dubious as objections concerned with matters of morality or public order are not for consideration under planning legislation (Planning Inspector quoted in Brand and Williams 1985).

Given that crime prevention has been considered to be within the remit of town planning (Circular 1/84, PPG1) the approach to street prostitution has more validity, as both soliciting and loitering and kerb crawling are criminal offences. However in practice the measures taken are often in reaction to resident fears and objections and not a balanced approach to the 'public interest'.

The problem in dealing with the issues outlined above is that some of the arguments most frequently used against sex related land uses are based on concepts which have never been defined, that is, public interest and amenity. Therefore in reading the facts presented in defence of planning action it is not possible to say with impunity that reasonable planning arguments have not been put forward.

Plate 7: Impact of neon signs, Pigalle, Paris.
Plate 8: Night in Soho: bright lights of the city.
Plate 9: Sex establishment facades, Soho.
The justification for the action may sometimes reveal spurious arguments based on the moral implications of the use of land and which may indicate the basis of the objection but this may not be sufficient grounds to undermine the action. As a planning officer from Westminster said, 'Quite clearly I don’t think anyone would ignore the moral argument, it’s just that you can’t put it as a planning argument,' (Dawson, interview).

At present the English land use planning system has no effective response to the use of land for commercial sex purposes. The position frequently adopted is reactive and negative, concerned more with protecting a moral ideal and avoiding political controversy than in utilising the mechanisms available to formulate a positive stance.
Chapter 6. Sex, Morality and Regulation.

A substantive, rather than an explicitly theorised, approach has been adopted so far to examine the role of the planning system in the regulation of commercial sex. This has focused on extant rules and their implementation. The law, however, is not just a long list of established rules, but a body of rules together with a wider conception of justice they embody (Simmonds 1986). Little insight has thus far been offered into the formulation of these rules and the conception of justice, i.e. the principles that direct law making.

Many societies have standards of conduct fixed by reference to a moral code: these are moral standards - standards by which certain things are regarded as being right to do and others wrong. These notions of rightness and wrongness may stem from principles expressed in, or inherent in, a society's dominant religion or may be secular in nature (Riddall 1991:165). In the latter case the code may be attributable to an accepted body of opinion, a form of social instinct or philosophy as to what warrants praise and what condemnation (ibid.). Even then the principle behind the belief may owe its origins to a religious precept.

It is not the intention to delve into a philosophical reflection of morality and justice with regard to sex but to indicate the relevance of this discourse for an evaluation of any future role for the planning system. The rationale of this statement is that the formulation of the law is founded on a system of beliefs about behaviour based on a morality. This morality applies as much to sexual conduct as to other forms of behaviour. Therefore to evaluate the regulations it is necessary to try to understand the beliefs on which they are founded. The aim of this chapter is threefold:
1) to present a range of proposals to modify the current law,
2) to examine how these propositions reflect constructions of sexuality,
3) to examine the implications of these proposals for the planning system.

6.1. Proposals for Change.
Although the sex industry has been referred to as a single entity, the differences in the approach of the law necessitates a division into prostitution and pornography.

6.1.1. Prostitution.
The work of Otis (1985) on medieval prostitution, examined in chapter 1, discerns three possible approaches to prostitution in any given society; repression, tolerance or institutionalisation. At present in both England and France the law on prostitution could be viewed as one of tolerance in not making prostitution illegal. However, as illustrated in chapter 2 the system of controls surrounding commercial sex are
repressive. An explanation for this may be found by reference to the 1949 UN Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others which compels contracting parties to make all forms of exploitation of prostitution a criminal offence\(^1\) (UN 1989).

The main focus of debate on prostitution today centres on two of the three elements outlined above: toleration and institutionalisation. Prohibition is no longer seen as a viable proposition as experience has shown it to be ineffective (Skolnick & Dombrink 1978) and difficult to implement (CLRC 1982). Toleration and institutionalisation have also been described as abolition and legalisation. Advocates for both these approaches can be found from within the sex industry and also from government and its agencies.

Abolition does not refer to the abolition of prostitution \textit{per se} but refers to the abolition of the laws surrounding prostitution. It involves: an acceptance of prostitution; the condemnation and repression of pimping and its organisation; the abolition of administrative and police laws, for example registers of prostitutes and obligatory health checks which are discriminatory; preventative methods to help women not to enter prostitution and, where they have to, provide means to assist with their departure (ECP 1984, 1987, Mouvement du Nid 1990). The question of street prostitution has not been fully resolved by the various parties of this camp. The English Collective of Prostitutes (ECP) state that 'prostitute women should be able to work anywhere, including the streets, as long as no nuisance is caused (1987:5). In contrast the Mouvement du Nid, a French organisation similar to the ECP, address this question in terms of the prohibition of street prostitution (\textit{op cit.} : 6).

The more moderate ideals embodied in the legalisation camp have been considered by sex workers and state agencies alike (see Pheterson 1989, Delacoste & Alexander 1988, Bell 1987, St Clair 1992, Mother's Union 1992, Travis 1992). Legalisation has also been referred to as decriminalisation where the intention is to revoke the criminal offences in prostitution which result from individual choice (Pheterson 1989). Note the similarities with the abolition movement in this respect (see Quispel 1977, Alexander 1988a). Decriminalisation could involve no new legislation which leaves prostitution to operate subject to the civil, business and professional codes that exist to cover all premises (\textit{ibid.}). Revocation of criminal law and the subsequent creation of a legal activity (legalisation) also implies the application of some other form of state regulation such as licensing or taxation (St Clair 1992). This is because although prostitution usually involves consenting sex between adults it also implies consenting payment. It provides a commercial as well as sexual service and could thus be treated through the

\(^1\)France ratified the Convention in 1960. Before that time the country still operated a system towards prostitution that could be defined as exploitative, e.g. maisons de rendezvous, registration system for prostitutes.
regulations governing other commercial activities. The requirement to pay tax and national insurance is not disputed; the concern among sex trade workers is that because the service is sexual the regulations will be punitive and they will continue to be discriminated against despite being legal (Pateman 1988, Truong 1990, Yondorf 1979). The crux of this argument is embodied in the construction of sexuality in western society and its translation into the rules governing behaviour.

The main stumbling block to legalisation in England has been the problem of identifying a satisfactory policy alternative. The public is unclear, and policy analysts disagree about the expected outcomes and desirability of different legal prostitution policies (Yondorf 1979). Should prostitution be zoned, taxed or licensed? Should street walking be allowed? If prostitution is legalised, will there be an increase in crimes associated with it? Will sexually transmitted diseases increase or will legalisation be a means to control their spread? Should pimping be allowed (e.g., a prostitute could employ a 'business manager')? If houses of prostitution are allowed, how should they be organised?

While it is understandable that policy makers would be wary of using foreign experiences as the basis for formulation of domestic policies, in respect of prostitution it is both valid and essential. Valid, in that important lessons can be drawn from attempts in other countries to zone, licence, tax and certify, or allow only certain kinds of prostitution. Essential because the prohibitive environment of prostitution in England, despite reviews (CLRC 1982, 1984, 1985) has provided little understanding and no experience of the implications of legalisation.

The current situations in Germany and Holland are of interest as they provide examples of possible mechanisms of legalisation. Federal law in Germany allows each city to regulate the practice of prostitution by local ordinance (Yondorf 1979:421). Some cities have a multiple zone prostitution policy, e.g., Munich has nine designated areas ('toleration zones'); in two of these areas street walkers may ply their trade at any time of the day, in the other seven, prostitutes are allowed on the streets only between 20.00 and 06.00. Soliciting off street is allowed anywhere in the city (ibid.).

Other German cities have a no zone prostitution policy which allows prostitutes to practice their trade in any part of the city. Still other cities follow a single zone policy of strictly limiting all types of prostitution to one area e.g., Hamburg's St Pauli district (ibid.).

A recent change in Dutch law (referred to in chapter 2) has resulted in the legalisation of brothels. Each municipality can devise a licensing system which specifies conditions
with regard to the number and location of the brothels, construction of the building and working conditions therein (Visser 1991). Part of the rationale for this approach is the aim of protecting the health and safety of prostitutes (UN 1989). This can be a double-edged sword if the management of prostitution is seen as fundamental to the control of sexually transmitted diseases (see Yondorf 1979, Pheterson 1988, Alexander 1988b). The notion, expounded in the nineteenth century, of prostitutes as conduits of disease (Corbin 1990) still prevails today, particularly in the context of HIV and AIDS. As de Zaluondo (1991) states in her research on sex work and AIDS,

"In both the press and the international scientific literature on AIDS the light cast upon women in prostitution has been a harsh one. Women in prostitution have been identified as a 'risk group', a 'reservoir of HIV infection', a 'bridge' from HIV intravenous drug users to 'the general population'. They have been defined epidemiologically, as vectors of HIV infection" (1991:224).

Rather than presenting prostitutes as links in broader networks of heterosexual HIV transmission, the focus has apportioned responsibility for transmission to prostitutes. This has deterred many sex workers from the idea of legalised brothels because of the implied sanitary controls and perceived loss of individual rights (Pheterson 1989, Alexander 1988b, ECP 1987, St Clair 1992). The fear is that legalised brothels will reduce the women's freedom to decide their hours and working conditions; it would involve mandatory medical tests for women (note: not for the clients) which could in turn increase clients' demands for unprotected sex (Wiedel 1992). This somewhat defeats the object of disease control and has been recorded among prostitutes working in Germany where weekly internal examinations and monthly blood tests are the norm for registered prostitutes working in the EROS centres (Pheterson 1989). It is also feared that those women who either don't want to, or who cannot, work in the legalised brothels will be forced to work outside the system and be subject to more punitive measures than at present (ECP, interview).

The association of prostitution with HIV transmission is reminiscent of nineteenth century concerns over syphilis. The measures taken to combat disease in that instance resulted in the passing of the Contagious Diseases Acts which prohibited the movement and activities of many women and made them subject to discrimination. Their subsequent incarceration and stigmatisation did not prevent the transmission of syphilis, as the legalisation of brothels is unlikely to prevent transmission of HIV today. What is needed to address the issues of sexually transmitted diseases is not the further stigmatisation of prostitutes but a combined multi-agency endeavour that focuses on the education of all sectors of society in the practice of safe sex.

To start to reconcile the issues of legalisation and abolition it is essential to determine the views of sex trade workers themselves. As providers of sexual services they can offer a clear insight to the workings of the industry and will be better informed to make
judgements about future demand and practice. Despite some differences, outlined above, there is a consensus on the need to repeal the laws criminalising prostitution and allow it to be regulated according to standard business codes (International Committee for Prostitutes' Rights (ICPR) 1985, St Clair 1992, ECP 1987). Laws that imply systematic zoning of prostitution should be repealed and prostitutes should have the freedom to choose their place of work and residence and to provide services under conditions determined by themselves (ICPR 1985; the World Charter for Prostitutes Rights is illustrated in appendix 3 and outlines the system prostitutes aligned to the organisation demand). Whether these premises are licensed remains a controversial subject among sex trade workers with parties both for (St Clair 1992) and against it (ECP, interview). To achieve an equitable solution requires dialogue between, in the first instance government and sex trade workers. It also requires much more, including an understanding of the institution of prostitution, its relation to sexuality and how these influence the construct of law.

6.1.2. Pornography.

The question of licensing premises for sexual purposes establishes a nexus between prostitution and pornography. Licensing merges the traditional social task of character assessment with procedural formalities of legal governance. It is intimately related to social purpose, express or implied and can be either friendly or hostile (Skolnick & Dombrink 1978). Whoever licences, the process is potentially exclusionary and the question is what criteria come to be employed other than loose, vague and general ones like 'good character' (ibid.). In England at present, these questions do not appear to have been addressed to prostitution, although it appears that the Home Office, DoE and other Departments are currently considering these points (Massingham, interview). With regard to pornography chapter 2 has illustrated the panoply of controls exercised in this context, licensing predominant among them.

Pornography is not a given entity in the world but the construct of particular discourse (Kappeler 1986). It is notorious that there exists no clear cut definition of pornography; instead different discussions identify different characteristic elements as their basis for discussion of the phenomenon.

The opposition to pornography has almost unanimously argued its case in terms of an assumption that pornography is a special case of sexuality (ibid.). The traditional conservative emphasis is on 'obscenity': the 'immoral' or 'dirty' quality of the sex portrayed. The other view is the liberal one, that however much there is dislike for some elements of pornography the reluctance to demand restrictions arises from objections to censorship. These differences of opinion rest on a common theoretical base that relies on a view of sexuality as 'natural', as an instinctual drive. Conservatives
feel it is essential for the instinct to be controlled; liberals believe in its free expression (Wilson 1983:136).

Although there are bitter disagreements between feminists on the issue of pornography (see Rodrigerson & Wilson 1991, Willis 1983, A.Dworkin 1981, Corcoran 1989) all claim to share a perspective that differs radically from above. They do not see sexual drive as biological, dictating male and female behaviour, but see sexual behaviour, like other kinds of behaviour, as socially shaped and determined by cultural forces rather than biological ones (Wilson 1983). Some feminist argument (see A.Dworkin 1981) has shifted the focus onto the violent quality of the sex portrayed. This is encapsulated in their phrase 'Pornography is the theory, rape is the practice'. However to lump pornography with rape is dangerously simplistic. Rape is a violent physical assault. Pornography can be a psychic assault, both in its content and public intrusions on our attention, but for women, as for men, it can also be a source of erotic pleasure (Willis 1983:464).

The focus of current debate, therefore, has focused on the questions of censorship and the implications of this for individual and collective rights (see Rodrigerson & Wilson 1991 for a case against censorship: R.Dworkin 1981 on "is there a right to pornography?"). The issues of the availability or prohibition of pornography were the subject of a report by the Williams Committee on Obscenity and Film Censorship (1979). This Committee made several recommendations for the prohibition of certain forms of pornography (e.g., live sex shows involving actual copulation or fellatio, films involving coercion) and restrictions on other materials including rules about offensive displays and the limitation of the sale of pornography to special shops (R.Dworkin 1981:178). These recommendations now form the basis of the controls exerted over the sale and display of pornography in England.

The justification for these measures was that to allow the proscribed and restricted material to be freely available would be harmful to the public. This raises many questions not least of which is how is harm defined? In addition, it is the decision to restrict access and availability to certain types of pornography that has generated the arguments outlined above.

There is a general tendency to believe that social and environmental conditions can be changed if the law is changed (Kidder 1989) For example, the efforts to introduce licensing law for sex shops in Soho were executed with the express purpose of reincarnating the 'traditional' character of the area (see chapter 4). Another example is the belief that the visible manifestations of prostitution will disappear if brothels are
legalised. Implicit in this view is the idea that where legislation takes place the law will be used to enforce a certain morality. In relation to sexual matters the question of the enforcement of 'morality' has been especially significant. In the restrictions that have been placed on such matters as licensing sex shops and prostitution, the law has intervened in order to enforce a morality, or at any rate restrict what is regarded as immorality (Riddall 1991).

This raises the point of what is morality and what is its relation to the law? This was touched upon at the beginning of the chapter where morality was defined as a body of principles that guide the conduct of an individual and may be subscribed to by a group. That these principles also guide the decision making process in which laws are formulated is inevitable (Lee 1986). The question that is important to this thesis is Should the Law enforce morality? If there is affirmation of this there are wider societal implications involved.

The field of jurisprudence, and the issue of law and morality, is extensive. The options proposed above in respect of prostitution and pornography could be seen to represent codes of behaviour contrary to accepted norms i.e. the sale of sex is illegal. It is illegal not because it involves the 'harm' experienced in murder, rape or theft but because it is not 'good' or 'right', it is immoral and the law has been used to enforce that belief. Therefore to understand the ramifications of these options it is necessary to try to understand how the law operates in respect of morality.

The standard approach to the issue of whether the law should enforce morality is to say something like:

"Law is laid down for a great number of people of which the great majority have no high standard of morality, therefore it does not forbid all the vices which upright men (sic) can keep away but only those grave ones which the average man can avoid and chiefly those which do harm to others and have to be stopped if human society is to be maintained, such as murder, theft and so forth" (Thomas Aquinas quoted in Lee 1986:9).

Laws against violence, theft and deception are inevitable in any society because as Hart states, 'all human beings are mutually vulnerable, roughly equal in their capacity to harm or help each other, of limited altruism and living in a world of limited resources.' (Hart 1976).

The determining factor in the formulation of law is the notion of harm, particularly harm to others. This was recognised by Aquinas and formed the underlying principle of John Stuart Mills' essay On Liberty (1978). But what is harm? It obviously has physical manifestations as in murder, rape and theft but can it be applied to mental, moral, emotional or spiritual harm? If the principle is extended to the latter group it
becomes too weak to be of any use in political theory since any kind of conduct likely
to be made criminal will offend somebody (R. Dworkin 1981). What then of the laws
against prostitution and pornography, which are often based on notions of mental, moral
and emotional harm? What is the 'harm' involved in these actions where participation is
voluntary and made as a result of individual decision?

In respect of prostitution, the Wolfenden Committee reporting on Homosexuality and
Prostitution (1957) stated,

"...the importance which society and the law ought to give to individual freedom
of choice and action in matters of private morality. Unless a deliberate attempt
is made by society, acting through the agency of the law, to equate the sphere of
crime with that of sin, there must remain a realm of private morality which is, in
brief and crude terms not the law's business.... It is not, in our view, the
function of the law to intervene in the private lives of citizens" (quoted in Lees
1986:26).^15

It appears however that with regard to the public element of prostitution the Committee
equated the sphere of crime with that of sin for, as a result of the recommendations
made in this report, soliciting and loitering became criminal offences.

In making their recommendations the Williams Committee justified the proposals to
prohibit and restrict certain forms of pornography on the grounds of the harm to others
principle (op cit.). The actual nature of the harm was not addressed, but what was
implicit in the report, as in the actions of Wolfenden, was that sexual activities belong
in the private sphere and to venture into public constitutes a 'harm'. This is expressed in
the Williams report in justification of state intervention. 'The basic point that
pornography involves by its nature some violation of lines between public and private is
compounded when the pornography not only exists for private consumption, but is
publicly displayed' (1979:96-7). Implicit in this statement is that the public display of
pornography threatens to break down the culturally important distinction between
public and private activity, by bringing into public consciousness an activity that, in
western society, is clearly private, i.e. sex, thereby harming the sensibilities of those
who find it offensive (R. Dworkin 1981).

The 'harm' that arises from publicly available commercial sex is not physical harm; no
studies have shown any consistent link between exposure to pornography and sex
offences (Wilson 1983:153), but the 'harm' caused by the knowledge that prostitution

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^15 Following the publication of the Wolfenden report a debate on the enforcement of morality by the law
began, usually referred to as the Hart-Devlin debate after its main protagonists. Lord Devlin's argument
is that a society's morals are part and parcel of that society. Its moral standards are the standards of
conduct which the reasonable man (sic) approves. The law should enforce morals in those circumstances
in which this is necessary for the preservation of society (Riddall 1991). Hart's thesis is that we have a
right to be protected against shock or offence to feelings by some public display. But we have no right to
be protected from distress caused by knowing that certain things are done in private (ibid.)
and pornography are available. It is the availability of these services that is deemed 'immoral', and thus the laws that prohibit them can be seen to enforce that morality.

The suggestions to legalise brothels and censor pornography embody much of this perspective in that the object would be first to remove the most visible element of prostitution and pornography and secondly to control what remains. However to hide these activities away through restrictions and licensing does not change attitudes but contributes to the belief that it is not simple pornography but sex itself that is something shameful, to be hidden from view.

There is no definitive answer to the question whether the law should enforce morality. What needs to be emphasised is that while the immorality of an act should be a relevant factor in deciding whether to make it illegal it should never be the decisive factor, since the appropriateness of a moral sanction does not entail the appropriateness of a legal sanction (Samek quoted in Riddall 1991:185). There are also practical disadvantages to laws that have as their object the suppression of matters that are considered immoral. Many of these acts are victimless and it is thus difficult and expensive to enforce the law. Also citizens who commit acts they find in no way immoral are arbitrarily degraded when the law makes the acts concerned illegal (Riddall 1991). Importantly in this discussion, the administration of laws against what the state has made illegal on moral grounds results in less well-defined segments of society (e.g., sex trade workers) being discriminated against. The question whether the law should enforce morality could be rephrased to, which morality should the law enforce or which morality should society reflect and encourage (Lee 1986:76) given that within a nation state there may well be a plurality of moralities.

6.3. A Question of Sexuality.

Remaining with the question of morality: J.L. Mackie (1977) defines it as,

"A morality in the broad sense could be a general, all inclusive theory of conduct: the morality to which someone subscribed would be whatever body of principles he (sic) allowed ultimately to guide or determine his choice of action."

One of the fundamental issues in this discussion of morality, and particularly sexual morality and the formulation of the law, relates to the different 'bodies of principles' that guide decision making. That differences exist is evident from the suggested proposals for prostitution and pornography, basically toleration, concealment or repression. What needs to be addressed here is the basis on which these different principles are founded. To achieve this it is necessary to review the construct of sexuality.
The work of Truong (1990) and Weeks (1989) provide excellent summaries of the trends of thought on sexuality. Truong notes four separate trends of thought:

The first is the empiricist trend which sees sexuality as a biological urge. This can be divided into two elements, the first of which is the biosocial view which identifies patterns of sexual behaviour as natural outcomes of the sexual urges, which are stronger and more expressive in the male. In this context promiscuity, prostitution and rape are products of biology not history and are a social imperative to accommodate the overpowering male sex drive (ibid.: 17). A sociobiological perspective of sexuality legitimises the oppression and exploitation of women.

The second part of the empiricist view is the sociocultural perspective offered by Durkheim. This attributes sexual behaviour and institutions to the product of the interaction between the sexual urge and specific sociocultural systems. Within this theory commercial sex is seen as functional to society in that it accommodates the deviant desire that cannot express itself in marriage. It does not however address the legal, social and political inequalities inherent in such an argument.

The second trend incorporates the anti-empiricist approach of Lévi-Strauss (1969). This views sexuality as an expression of cultural meanings and symbols surrounding biological sex and sexual practices. This results in the social construction of gender, through which the concepts of binary opposition (e.g., life/death, public/private) and reciprocity and exchange operate. This process identifies three realms of sexual expression: the abstract, the intermediate and the empirical. The first is based on symbols and language which structure the religion, law and popularised social norms of the intermediate realm. These provide the structure for the empirical realm where the observed sexual practices and institutions are merely an expression of the abstract and intermediate definition of sexuality and the power relations embodied in it. This structuralist approach clearly defines sexuality as an expression of male social power but maintains a dualistic position that treats males and females as separate, opposite, categories, so that men are seen as the actors and women the acted upon.

The third trend involves an historical approach to sexual relations as defined by Engels (1978). This emphasises the role of economic relations in shaping sexual norms and relations. Rather than reduce male dominance to patriarchal ideology it emphasises the transformation of such ideology and its role in sustaining particular economic systems through history. The discussion of sexuality is focused on its symbols and assumptions in relation to socio-economic conditions. It examines the formations of the sexual division of labour and its effects on women's social and economic position in historically specified periods.
The fourth trend is also historical but adopts an anti-essentialist notion of sexuality and brings the debate beyond male-female relationships. The emphasis here is on the existence of a multiplicity of 'discourses' on sex (Foucault 1980), their diverse social and historical origins and the equally diverse methods of regulation and control which are entailed. Sexuality is understood as an aggregation of social relations (male-female, state-civil, class) which are historically specific. The dominant 'discourse' is related to a regime of power which regulates its practices and to forms of behaviour within which individuals recognise themselves as sexual subjects. Discourses on sex create diverse sexual categories which include those related to fertility as well as those related to eroticism.

The historical approach to sexuality re-examines the old question concerning the forces that shape sexual norms and behaviour from the angle of the history of ideas about sex and its relationship to social history. As such it invites us to relate ideas about sex, regulations and practices to wider social change, in terms of their function as well as political implications.

A point of conflict in debate on the legalisation of prostitution is what the state, by legalising brothels, be enforcing and condoning a morality that is based on the concept of women as subordinate to men? More explicitly, by licensing and controlling commercial sex but prohibiting any public manifestation of it, would the state not be perpetuating the 'double standard', where chastity for women is the norm, but free sexual licence is permitted to men because of their 'natural' stronger sex drive? And what of the women who satiate that sexual urge?

The double standard of morality relies on the separation between the public and the private spheres. The way in which men and women are differently located within private life and the public world is very complex, but underlying a complicated reality is the belief that women's natures are such that they are properly subject to men and their proper place is in the private domestic sphere (Pateman 1987:105). This arises from the belief that men and women have different biological faculties that engender male right to the public and hence political domain and which locates women as carers, restricted to the private and non-political sphere of the home (Pateman 1988:3, Truong 1990:16).

Inherent in this classification is the notion that the decency and morality embodied in the home confronts the danger and pollution of the public sphere; the joys and 'naturalness' of the home are countered by the 'corruption' and the artificiality of the streets; badly lit, unhygienic, domains of vice (Weeks 1989).
The separation of the private domestic life of women from the public world of men has been constitutive of patriarchal liberalism from its origins, and since the mid 19th century the economically dependent wife has been presented as the ideal for all respectable classes of society (Pateman 1987:18). This arrangement has been defined as the marriage contract and forms one part of the equation of patriarchal control. The obverse to this situation can be found in the dramatic public example of the demand by men that women's bodies are for sale as commodities in the capitalist market (Pateman 1988:17).

To pursue the implications of any changes in legislation for the planning system it is necessary to draw in all these diverse threads to try to put into perspective the various issues raised. In a democratic society it is the will and the sentiments of the dominant classes that define harm and set limits to tolerance based on an understanding of what is good and bad, right and wrong. The basis for these decisions may originate in religious or secular precepts and may be of some antiquity. The danger is that this will inevitably result in what Mill called 'the tyranny of the majority' (1978:10). Majorities are notorious for their tendency to see harms to society in the sorts of conduct which could be regarded as harmless deviance or socially valuable innovation (ibid.). As long as the majority decides what is harmful to society, the strains between democracy and liberty will be resolved as the expense of liberty.

This chapter has focused primarily on the options for change in the law regarding commercial sex and tried to establish the basis on which such laws are formulated through reference to morality and sexuality. It is recognised that the question of the economic position of commercial sex has not been addressed, which could be of relevance to local planning authorities in the formulation and implementation of policies. Lack of space and the belief that the issues of prostitution and pornography are located within the construct of sexuality which defines women's access to resources has determined this omission. I do not deny however the importance of this, and other issues, to the debate and can only promote it as an area for further research.

Although the law has not changed, and therefore what follows is hypothetical, it is my belief, based on discussions with government representatives and media reports (e.g. Travis 1992) that a change in the English law regarding prostitution is not inconceivable. Therefore it is essential, in my opinion, that the planning system, as an instrument of the state, should address the ramifications of legislative change for the development and use of land for sex-related purposes.
6.4.1. Brothels.
The transition of prostitution from an illegal to legal economy will be freighted with all the anxieties and hypocrisies of society's attitude to sex (Kalven, quoted in Hawkins & Zimring) and will thus require a long period of slow implementation. Some elements of the planning system, under which this newly defined use would fall, may thwart this ideal. For example, the requirement to publicise all planning applications may diminish the ability to be discrete and create public attention out of proportion to the occasion. Other elements however, may facilitate a smoother transition. The mechanisms for enabling public participation can be positively utilised to identify and reach target groups within the sex trade. The adoption of the 'outreach' approaches employed in community based planning is one such example.

It has been assumed that the legalisation of brothels (that is, the use of premises by more than one prostitute) will create a recognised use of land for the sale of sexual services. How will this be administered? An immediate concern is the classification of this use. Would it be subsumed by an existing class, perhaps A2 Financial and Professional services, where a brothel could be considered as a service that it is appropriate to supply in a shopping area? or perhaps D1 or D2 non-residential institutions? or perhaps it would be appropriate to define a new use class for sex establishments including sex shops, peep shows, brothels etc.?

None of these proposals gained much favour with the DoE or local government officers interviewed (Massingham, Dawson, Guth), although they were not dismissed completely. Before any such measures are discussed it is essential for a definition of a brothel or house of prostitution to be agreed. At present it is legal for a prostitute to work alone from a premises. If she works from a fixed address how is that property classified? In Soho, for example, prostitutes work from various premises in the area, that may have a lawful use as residential, office or shop. Although they have a right to work as a prostitute they have no clearly defined premise from which to operate. In planning terms, unless the previous use is something that the council wants to reinstate and thereby issue an enforcement notice, they basically ignore them (Dawson, pers comm.).

The attribution of brothels to an existing use class or the creation of a new one generated concern over a perceived potential weakening of control by London planning authorities. The fear that inclusion in A2 would transform current High Streets competition of building societies and estate agents to one awash with brothels under permitted development was evident. This fear extended to the creation of a new class as it was envisaged that an unknown number of previously illegal uses would now become legal and could operate freely in the locality. In addition to this the creation of
a new class could include certain uses that hadn't been considered but that fell into the new class. A local authority would rather keep control locally than be confronted, as a result of an act of Parliament, with lots of uses of that type (Dawson, interview). The view that sex establishments only affect major cities and therefore it is not necessary to create a whole new class to deal with what is a localised problem (Massingham, interview) fails to recognise that the licensing laws for sex shops have enabled local authorities to effectively ban them and more importantly that prostitution, because of the prohibitive laws associated with it has evolved into a well organised discreet operation the magnitude of which is unknown.

The solution may be to make brothels a *sui generis* use, which seems to be the position of the DoE (ibid.). It is then up to the operators to find suitable sites or premises for the planning authority to grant or refuse planning permission as necessary. For if the law were to state that a use is legal there should be no extra hurdles for it to go through, other than to say it is an acceptable use of a site. There are lots of uses that are legal that people don't like such as sports stadia, because of crowds, noise and perceived violence. A concern with this is that it would still be subject to the same moral querulousness exhibited against amusement arcades by elected members. To be pragmatic, whatever form a brothel will take it is going to offend somebody and the object will be to treat any complaint in proper planning terms and not as morality disguised as planning.

There is a further point on the question of legalisation of brothels that reflects on planning. This involves the issue of licensing. Licensed premises also require planning permission which goes with the land. Whereas licenses are personal permissions to an individual to carry out specific activities. Both permissions can carry conditions on the exercise of the permitted acting. The fear of many sex trade workers is that licensing brothels will impose punitive conditions based on the belief that the implicit sexual nature or prostitution precludes self regulation. The application of proscriptive laws such as deemed numbers, conditions of opening, punitive licence fees, advertising etc. could be seen politically to be dealing with the 'problem'. However in practice all this would achieve would be the displacement of activities 'underground', the potential exploitation of sex workers, and increased public expenditure on policing. Once a start is made down the regulatory path it is not difficult to imagine the arrival of draconian sets of rules and conditions heralded in the 'public interest'.

The designation of brothels as *sui generis* would satisfy the requirements of prostitutes to choose their place of work and to be treated like other business uses where the size of

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16 I thank David Massingham for this observation.
the operation, traffic, noise and amenity considerations are taken into account, avoiding the 'morality' question.
6.4.2. On Street Prostitution.
Integral to the question of change in law regarding prostitution, but not necessarily going as far as the legalisation of brothels, is the concept of ‘toleration’ zones. This involves defining an area where prostitution is not illegal and imposing certain condition on the hours women can work and how they may solicit. Prostitution anywhere outside the zone is prohibited. This approach is not dissimilar to the accounts described in chapter 1 and implemented in medieval France. More recently they have been adopted in many German cities (see above) and also in some Dutch cities, notable Utrecht (Hurde, interview, Birmingham City Council 1992). This measure is currently being considered by Birmingham City Council as a part of their strategy dealing with prostitution.

The most crucial issue is one of location, where would this toleration zone be? many prostitutes fear that because of a reluctance by councillors to permit the siting of the zones in residential areas they would be assigned to industrial areas where there would be limited protection for the women, and inappropriate accommodation. In addition the concentration of prostitution into a designated ‘red light’ area may be easier for the police to control but may also be seen to infringe the rights of both the prostitute and the client, by restricting their freedom of movement.

Moreover, in planning terms the designation of a toleration zone that concentrates prostitution would not be suitable for a residential area, for the reason that the problems would be similarly created by the concentration of any other commercial activity. In addition such a designation would be difficult to achieve as it is unlikely that many councillors would want their area so assigned and create an area of potential blight.

6.4.3. Sex Establishments.
The current situation regarding sex establishments is imbued with inconsistencies and moral judgements which discriminate against the sex industry on the basis of perceived impropriety. The formulation of the licensing regulations allowed an effective ban on sex shops by deeming nil to be chosen as the appropriate number for a locality. Where they were allowed conditions were applied regarding advertisements and displays establishing an appearance that perpetuated the association of sex with dirt and smut.

In terms of recommendations for the future, the possibility of creating a new use class for sex establishments should be reviewed. This class would take into its domain both land use and licensing concerns of the sex industry. This only refers to the licensing regulations for sex shops which were pushed through in the 1982 Local Government (miscellaneous provisions) Act in response to public action without due consideration of the burgeoning sex industry. Other licence requirements such as music and dancing
or a justices licence would remain in place. The question of where sex establishments, including brothels, ought to be situated is a difficult and contentious issue. It appears to be generally accepted that these establishments are not appropriately situated in residential areas (Manchester 1986), although small discreet premises for prostitution have operated undetected in such locales (Lowman 1992).

If sex establishments are not to be situated in or near residential areas then the choice has realistically to be between commercial and industrial areas. The problems associated with locating prostitution in industrial 'red light' areas has already been highlighted and this also applies to sex establishments. This leaves commercial areas as the most realistic choice. If establishments are located in these areas should other restrictions be imposed, such as appropriate proximity to other users such as churches or schools? This is a difficult issue to resolve as it confronts the underlying moral basis of decision making. I feel that to start imposing prescriptive measures establishes a precedent for further restrictions which conceal rather than confront the question of commercial sex. In determining locational criteria the question of concentration versus dispersion of sex uses is raised. Concentration involves a similar approach to toleration zones that would group all sex-related activities into one designated area. This may secure an objective of containment but it also increases policing problems as it intensifies crimes associated with prostitution and pornography (ibid.) Imposing restrictions on the proximity of sex uses to each other prevents the concentration of a single use and its concomitant disadvantages. However the imposition of such an approach implies planning control: based on a 'moral' judgement of the effect of sex-related uses on a locality. This is a difficult issue, and while the ideal would be to allow sex establishments to operate within the same system as other uses some form of compromise is likely.

Any change in legislation regarding prostitution or pornography will create consternation. This is because the subject matter of sex is integral to each individual. And as long as women's bodies are on sale as commodities in the capitalist market, the terms of the original contract between men and women cannot be forgotten; the law of the male sex-right over women is publicly affirmed and men gain public acknowledgement as women's sexual masters - that encapsulates what is wrong with prostitution (Pateman 1988:208).

However the identification of this situation does not predicate a negation of the rights of sex workers. Disclaimers such as 'prostitution is the oldest profession' or 'prostitution cannot be eliminated' confuse description of the history and functions of an institution with an explanation of how and why individuals are constrained to enter, stay in, or
leave it. Exploring these latter set of questions is the key to developing intervention plans (de Zalduondo 1991:234).
Conclusion.

Choices about the control of commercial sex, about the legitimacy of establishments specialising in provision of sexual services and about permissible locations for such land uses have now become more important as prostitution and pornography have moved onto the political stage. In the past such matters did not require any serious consideration by the public in general. Few people were affected by the pornography trade, which was conducted on a much smaller scale than at present and was for the most part confined to specific areas. It was left to the criminal law to exercise some degree of control and pornography remained essentially a matter of concern to a limited few (Manchester 1986).

Historically prostitution has engendered more specific controls which have been directed at the containment of prostitution within specified buildings or locations. The forms of regulation that have been employed since the Middle Ages in England and France involve repression, toleration and institutionalisation. The implementation of each mechanism reflecting the social attitudes to sex, and commercial sex in particular, at that time. The control of prostitution in twentieth century England reflects, in many ways, the puritan ideology of the Victorian era, which formulated the basis to current law. Prostitution is not illegal, yet many of the activities that permit its practice are criminal offences. This has pushed prostitutes and prostitution into an existence on the margins of the law. The criminalisation of prostitution has created the need for 'red light' areas, as prostitutes cannot legally make contact with prospective clients any other way. Even these, i.e. soliciting and kerb crawling, are illegal activities. Premises used for prostitution have remained an unknown entity as their existence constitutes a criminal offence, and thus their presence has not usually encroached on the public consciousness.

As the tolerance of the 1960s gave way in the 1970s to a growing unease at the rapid spread of sex establishments, so pornography became a public issue and moved into the political arena. The growth in awareness of pornography and the apparent lack of effective control over its retailing stimulated debate which has subsequently extended to include prostitution.

It is within the context of the growth of the use of premises for sex-related activities that the planning system entered the furore. Although brothels have been in existence for centuries, the illegality of the activity meant that it rarely entered the planning realm. Sex shops, cinemas, peep show and other premises were, however, another matter as they fell, in land use terms, into the categories of shop and entertainment uses and thus came under planning control. In effect this control was limited as premises with permission for shop usage could change the nature of the shop to one selling sexual
materials within the parameters of permitted development. Criminal measures were the only controls available and these concerned the obscenity of the material on display. As obscenity has only been vaguely defined this did not constitute very effective control.

Where breaches of planning control occurred the local planning authority had the power to initiate enforcement action against the unlawful use. Although this was a protracted and costly exercise it permitted a defence against the proliferation of sex establishments in the late 1970s. However an examination of the details of some of these actions and subsequent appeals reveals that the planning grounds given in justification for the actions were somewhat tenuous and based on undefined concepts such as amenity. Further investigation of the arguments promoted by the planning inspectors indicated an underlying disapproval with the use of the land for sex-related purposes. Although it has been established in the High Court that morality is not a material planning consideration, in the cases examined an implicit moral stance was evident which was couched in planning terms such as 'detrimental to the amenity' and 'not in keeping with the traditional character of the area'. Given that the majority of the cases reviewed referred to premises in Soho, which has long been associated with commercial sex, the arguments were somewhat spurious.

It was against this background that the licensing scheme, with its alternative approach of administrative control was introduced. Although the scheme enables control to be exercised over those who operate sex shops by giving local authorities the power to refuse licenses to unsuitable applicants, its main object is to control the location and number of such establishments. The scheme is not, however, the product of any conscious or rational deliberation of the available methods of controlling location and numbers (Manchester 1986:208). Rather it represents simply part of the backlash that occurred in the early 1980s against the growth of sex establishments. Although aiming to control the location and number of sex establishments the scheme does not address itself to the fundamental question of where they might be located and with what degree of concentration. As a result local authorities have an almost unfettered discretion to determine where and how such uses may be located. This has often resulted in a negative determination with local authorities evading the question of commercial sex uses in their area.

Local planning authorities have become involved in the regulation of prostitution in two ways. Although a single prostitute may legally exercise her profession, in land use terms there is no classified use of land that permits this. Should she work from home, the question of the prostitution being ancillary to the primary residential use is a matter of fact and degree, the determination of which is discretionary and thus susceptible to
'moral' influence. If prostitution is conducted from non-residential premises the use is unlawful and thus open to enforcement action. Where other controls have failed to control premises used for prostitution planning enforcement has succeeded, as illustrated in the examples from Birmingham and Southampton.

The adoption and implementation of traffic management schemes has provided another input from planning in the regulation of prostitution. Where on street prostitution has been seen to blight an area, such as Argyle Square, Kings Cross, traffic schemes have been imposed to eliminate the nuisance. All these measures have achieved is a displacement of prostitution to other areas.

The role of the planning system has been one of perpetuating and reinforcing the negative attitude toward commercial sex. Why does this attitude exist? This is a complex issue which involves questions of morality and sexuality and how these pervade the decision making process.

Morality defines a code of conduct or set of principles that guide behaviour. Within patriarchal society the 'double standard' is a fundamental construct that conditions modes of behaviour and contributes to this negative attitude. The belief that male sexual drive is naturally dominant conflates with the ideas that divide women into the 'virtuous' and the 'fallen', producing the dichotomy that pervades debate on the sex industry. In other words does the acceptance of legal prostitution pornography consolidate the double standard or does it give women the right to sell sexual services in the market place free from constraint?

The problem with the debates on how to deal with prostitution is they define prostitution as a problem for women. The demand side of the equation is rarely addressed. Addressing how and why both sides of this equation operate is an essential prerequisite to challenging the structure and formulation of the law.

The usefulness of preventative and corrective measures seems distant. These measures are often advocated along the lines of improving women's social and economic conditions in general, or of changing the prevailing 'discourses' on sexuality and prostitution as they are expressed in the media, religion and parliamentary bills. However, they do not seem to bear a direct effect on the lives of prostitutes in the near future. Their realisation depends on a wider political process of which prostitutes do not form a part, at least until they have access to better welfare and are able to exercise their rights to organise and articulate their views (Truong 1990).
Current debate has focused on the question of legalising prostitution and permitting the use of land for brothels. The implications for planning will need to be addressed fully to prevent a recurrence of the inconsistencies inherent in the licensing scheme. At the level of planning law the extant structure could accommodate the introduction of a new use without major changes. This would entail the designation of premises for prostitution as a *sui generis* use and leave the questions of number and location to the market.

An alternative to this radical approach, and one which would placate those elements concerned with a potential proliferation of brothels, would involve the designation of a new class for all sex establishments and/or the imposition of conditions restricting their location to specific areas.

What needs to be achieved is local level decision making on these questions and not the imposition of dictates from central government. However the sensitivity of the subject of commercial sex is such that guidance from central government may be necessary, both in establishing the context in which planning operates with respect to the sex industry and if conditions are to be imposed, the basis on which they may be applied.

A full evaluation of these proposals and their ramifications in terms of the local economy needs more space than is available here. However before any changes are wrought it is essential that dialogue between the sex industry and planning officers is initiated. This will enable the articulation of the views of a section of society that has long remained hidden. In this respect the mechanisms within the planning system to facilitate public participation are an obvious starting point. It would be naive to assume that sex trade workers will come forward in vast numbers to express their views. The stigma attached to commercial sex has a long history and is unlikely to disappear rapidly, therefore planners must go out to sex trade workers to elicit their views.

The planning system has the capacity both to absorb changes in the law on prostitution that have land use implications and to initiate a positive response to these changes. It is unlikely that planning will be operating in isolation in this endeavour and thus a multi-agency approach to the future regulation of commercial sex is essential to establish a coherent basis in which the needs of sex trade workers are recognised and met.
APPENDIX 1

Survey Questions
TELEPHONE SURVEY

Questions

After explaining my research I asked the following questions:

Policy
1) Is the Sex Industry a planning issue in the borough?
2) If yes, are there any policies, formal or informal, in the plan regarding the location or use of land for sex related purposes, including street prostitution. What is the form and wording of these policies?
3) Would the London Borough consider inserting policies regarding this land use.

Development Control
1) What is their approach to applications for sex industry uses

Licensing
1) Are there any licensed sex establishments in the borough? How many?
2) Has the council passed any resolutions adopting the provisions of Schedule 3 of 1982 Local Government (Miscellaneous Provisions) Act
3) What is the deemed number of sex establishments permitted in any defined locality.
4) What is the license fee.
Appendix 2.

Newtown and Nicholstown Areas Environmental and Planning Strategy. Southampton City Council.
ENVIRONMENTAL AND PLANNING STRATEGY

NEWTOWN & NICHOLSTOWN AREAS

SOUTHAMPTON

Adopted 10th. November 1986
ENVIRONMENTAL AND PLANNING STRATEGY
NEWTOWN AND NICHOLSTOWN AREAS

1. This Strategy relates to the area bounded by the Railway Line; Mount Pleasant Road, Onslow Road and Brintons Road in the Inner City Area of Southampton. The area of application of the Strategy may be revised or extended by resolution of the Economic Development Committee. The Strategy Area is shown on the annexed plan.

2. The Council recognises that the Strategy Area requires special treatment and the object of the Strategy is to set out the means whereby the character of the area; the amenities of residents; the quality of life and the environment generally within the Area might be maintained and improved, and to ensure that residential accommodation is used for residential purposes.

3. The status of this Strategy is that of a policy adopted by the Council to serve as a guide for all Committees in carrying out their functions.

4. Some, but not all, of the problems with which this Strategy deals arise from the use of residential premises within the Area for the purposes of prostitution. In adopting this Strategy the Council acknowledges that prostitution is not in itself unlawful and affirms that the Strategy is not adopted on moral or religious grounds but to achieve the objects set out in paragraph No. 2 above.

5. The Council commits itself to use all of its lawful powers to achieve the objects of the Strategy.

6. In particular to achieve the objects of the Strategy, the following specific action will be taken.

   (a) Where there has been a breach of planning control within the area of any kind (including any unlawful change of use where residential premises are used for prostitution) and where it is considered expedient to do so an Enforcement Notice will be served under the provisions of Section 87 of the Town and Country Planning Act 1971 requiring that such a breach of planning control should be remedied. Legal proceedings will be instituted where an Enforcement Notice has been served and not complied with. Such proceedings could include the seeking of a High Court injunction as well as or in substitution for prosecution in the Magistrates Court.
(b) Where any breach of planning control constitutes a change of use begun less than twelve months previously and where it is considered expedient to do so, a Stop Notice will be served under the provisions of Section 90 of the Town and Country Planning Act 1971. Legal proceedings will be instituted where a Stop Notice has been served and not complied with. Such proceedings could include the seeking of a High Court Injunction as well as or in substitution for prosecution in the Magistrates Court.

(c) Where a breach of the Town and Country Planning (Control of Advertisements) Regulations 1984 takes place a Discontinuance Notice will be served in accordance with Regulation 16 of such Regulations. Legal Proceedings will be instituted in the event that a Discontinuance Notice served is not complied with or in the case of any other breach of the Control of Advertisement Regulations, Such proceedings could include the seeking of a High Court Injunction as well as or in substitution for prosecution in the Magistrates Court.

(d) Housing Acts, Public Health Acts and other environmental control powers will continue to be used to their fullest extent.

(e) Where the Council owns land in the area any breaches of covenant will be enforced wherever it is considered expedient with the Council acting in its capacity as land owner.

7. Recent action approved by the Council under the Road Traffic Regulation Act will be monitored and if further improvements are found to be necessary action will be taken as appropriate.

8. Staff will be engaged as necessary to enable this strategy to be carried out.

9 Reports will continue to be made to the appropriate Committee's of the Council as hitherto where necessary. A progress report will be made to every meeting of the Economic Development (Inner City) Sub-Committee and there will be a complete review of this Strategy at the end of about twelve months from the appointment of the staff necessary.
Appendix 3.

World Charter for Prostitutes Rights.
WORLD CHARTER FOR PROSTITUTES' RIGHTS
International Committee for Prostitutes' Rights
Amsterdam, February 1985

LAWS
Decriminalize all aspects of adult prostitution resulting from individual decision.
Decriminalize prostitution and regulate third parties according to standard business codes. It must be noted that existing standard business codes allow abuse of prostitutes. Therefore, special clauses must be included to prevent the abuse and stigmatization of prostitutes (self-employed and others).
Enforce criminal laws against fraud, coercion, violence, child sexual abuse, child labor, rape and racism everywhere and across national boundaries, whether or not in the context of prostitution.
Eradicate laws that can be interpreted to deny freedom of association or freedom to travel to prostitutes within and between countries. Prostitutes have rights to a private life.

HUMAN RIGHTS
Guarantee prostitutes all human rights and civil liberties, including the freedom of speech, travel, immigration, work, marriage and motherhood and the right to unemployment insurance, health insurance and housing.
Grant asylum to anyone denied human rights on the basis of a "crime of status," be it prostitution or homosexuality.

WORKING CONDITIONS
There should be no law which implies systematic zoning of prostitution. Prostitutes should have the freedom to choose their place of work and residence. It is essential that prostitutes can provide their services under the conditions that are absolutely determined by themselves and no one else. There should be a committee to insure the protection of the rights of prostitutes and to whom prostitutes can address their complaints. This committee must be comprised of prostitutes and other professionals, like lawyers and supporters. There should be no law discriminating against prostitutes associating and working collectively in order to acquire a high degree of personal security.

HEALTH
All women and men should be educated to have periodical health screening for sexually transmitted diseases. Since health checks have historically been used to control and stigmatize prostitutes, and since adult prostitutes are generally even more aware of sexual health care than others, mandatory checks for prostitutes are unacceptable unless they are mandatory for all sexually active people.

SERVICES
Employment, counseling, legal and housing services for runaway children should be funded in order to prevent child prostitution and to promote child well-being and opportunity.
Prostitutes must have the same social benefits as all other citizens according to the different regulations in different countries.
Shelters and services for working prostitutes and re-training programs for prostitutes wishing to leave the life should be funded.

TAXES
No special taxes should be levied on prostitutes or prostitute businesses.
Prostitutes should pay regular taxes on the same basis as other independent contractors and employers, and should receive the same benefits.

PUBLIC OPINION
Support educational programs to change social attitudes which stigmatize and discriminate against prostitutes and ex-prostitutes of any race, gender or nationality.
Develop education programs which help the public to understand that the customer plays a crucial role in the prostitution phenomenon, this role being generally ignored. The customer, like the prostitute, should not, however, be criminalized or condemned on a moral basis.
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