

Medway Council
Meeting of Licensing and Safety Committee
Wednesday, 19 September 2012
6.00pm to 6.50pm

Record of the meeting

Subject to approval as an accurate record at the next meeting of this committee

- Present:** Councillors: Baker, Carr, Colman, Etheridge, Adrian Gulvin, Hicks (Vice-Chairman in the Chair), Kemp and Shaw
- Substitutes:** Councillor Maple substitute for Councillor Harriott
- In Attendance:** Angela Drum, Head of Legal Services
Alison Poulson, Licensing and Local Land Charges Manager
Caroline Salisbury, Democratic Services Officer

385 Record of meeting

The record of the meeting held on 24 July 2012 was agreed and signed by the Chairman as correct.

386 Apologies for absence

Apologies for absence were received from Councillors Mrs Diane Chambers, Harriott and Mrs Kearney.

387 Urgent matters by reason of special circumstances

There were none.

388 Declarations of disclosable pecuniary interests

There were none.

389 Statement of policy in respect of Sexual Entertainment Venues

Discussion:

The Licensing and Local Land Charges Manager introduced the report, which set out the result of the consultation to limit the number of Sexual Entertainment Venues (SEV) in a specified area. The report set out three possible options available to the committee, although Members might have other options they wished to put forward. Officers advised that if Members wished to consider Option 3 (to make revisions in line with the response received through the consultation and carry out a further consultation on the amendments), this would reschedule approval due by Full Council on 24 January 2013.

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A plan was circulated showing the area consulted on and the area requested by the residents group that had responded to the consultation, as set out in Appendix B.

A Member stated that he hoped the committee would support Option 3 on the basis of the submission by the residents group as they took the issue seriously. The reasons the residents requested that the area was enlarged were clearly set out in Appendix B and it was important to consider the perception this type of venue gave an area. The consultation had been put forward based on an historic area with important landmarks. The additional area requested to be included in the restricted area also included a Conservation Area. Choosing Option 3 would be a sensible way forward and would only mean a slight delay in the final decision and implementation of the new policy. There were no SEV applications pending and although everyone else in Medway had the opportunity to send their views to the council, there had been no other responses, excepting that from the residents group in New Road, Chatham. This had been an area which, historically, had problems with prostitution and there had been a lot of partnership work and specific campaigns carried out there which had seen this reduced. This would be another clear message that the council took this matter seriously and was looking to assist the area further.

Another Member of the committee advised that whilst he had an enormous amount of sympathy for Members wishing to choose Option 3, he would urge the committee to agree to Option 2 (to approve and recommend the area and limit within it, as consulted on, to Full Council for decision in October 2012). He explained that his reason for this was that he had been on a previous 1982 Act Hearing Panel to consider a SEV application in Rochester and had heard the objections voiced by local residents. However, the Panel had been legally powerless to act on some of the points that had been raised and the application had been approved. This had led to Members requesting the consultation to limit the number of venues within the Historic Rochester area to demonstrate that the residents had been listened to. Any future application elsewhere in Medway would be looked at individually and the representations considered carefully at that time but there could not be a blanket approach, as this could be legally challenged. If a future application gave good grounds to extend the restricted area further, then it could be considered at that time.

Another Member also voiced their sympathy to the residents' group request, as many people had worked very hard in the New Road area in order to 'clean it up' but the report stated clearly that the council could not cover the whole of the Medway area with a limit for this type of venue. Rochester was a distinctive place and used as the main tourist area within Medway, so it was especially important to consider this area as a special case. The committee's attention was drawn to paragraph 14.7 of the proposed amended policy (Appendix A), as it set out the type of considerations the Licensing Authority could use when considering future SEV applications.

Some Members of the committee clarified that the residents who had responded to the consultation had not asked for a blanket policy across the whole of Medway

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but only the area identified on the map that had been circulated, together with their views on why the area should be extended. It would be sensible to carry out a further consultation on the new proposal and then make a decision.

Officers were asked to confirm if, by choosing Option 3, this would weaken the council's position against possible legal challenge and also, if the committee chose Option 2, that if someone wanted to open a sexual entertainment venue on New Road, Chatham there would be sufficient reasons for refusal, if it was thought necessary at the time of consideration.

The Head of Legal Services advised that Members should look at the reasons why they wished to impose a limit in a specified area. There were clear reasons why the Rochester Conservation Area had been chosen for the public consultation but that was not to say there were not other reasons for widening that area but if the council did not have the limit, it could weaken the council's argument for refusal of a future application in that area. She added that as the residents' proposal was for a much larger area, Members might want to consider whether restricting the larger area to two venues was appropriate, as there were two already located there.

The committee was also advised that when making a decision for any SEV application, Members could take into account the effect on the vicinity, including the effect on local residents and properties. Members previously had that ability but had wanted to officially set a limit within the Historic Rochester Area. The Head of Legal Services informed Members that when the council's policy was drawn up, officers had been conscious that if a limit was set, this could potentially bring a legal challenge and had therefore tried to list as many possibilities for Members to use as grounds to refuse an application, if necessary (as set out in paragraph 14.7 of the amended policy). They had worked with other Local Authorities and legal colleagues when drawing up this section of the policy.

On being put to the vote Option 3 – to make further revisions to the statement of policy in line with the recommendations received in response to the consultation and carry out further consultation on the additional amendments, was lost.

Decision:

The committee agreed to approve and recommend to Full Council the amended 'Statement of Policy in respect of Sex Establishments' (as set out in Appendix A) for approval on 18 October 2012 and the new Statement of Policy to come into effect from 19 October 2012.

390 Members' licensing code of good practice

The Head of Legal Services introduced the report advising that the Licensing Code of Practice was now out of date following Members' approval of a new general Code of Conduct. Also, there had been changes to the Licensing Act 2003 with regard to how Members could make representations on an application and therefore the Licensing Code of Conduct required updating.

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Officers apologised that the current Licensing Code of Conduct had been omitted from the agenda and checked to ensure that committee Members had received a copy prior to the meeting.

The committee asked for clarification on Section 7 – site inspections. Members had not held a site inspection with regards to a licensing application but could envisage some circumstances when this might be useful and asked how, in practice, this could take place.

The Head of Legal Services advised that although there had not been the need to hold a site inspection before, there was the possibility during a hearing, if Members were unable to understand the layout of the premises or problems encountered by residents, that the Panel might wish to adjourn in order to visit the premises (as part of the hearing). This would involve the Panel, the applicant and objectors (if the applicant agreed) but the public would not be able to attend.

With regard to Section 5.3 of the current code, a Member asked about the possible conflict of interest for Members who sat on both the Planning and Licensing Committees, as they were governed by separate legislation. Officers advised that there were no rules that Members could not sit on both committees but the issues were often similar (for example, amenity to neighbours) and officers would be concerned if a Member expressed an opinion whilst in Planning Committee at the risk of showing pre-determination or bias when considering the licensing application. If a Member sat and voted at Planning Committee but did not speak, or whilst speaking advised that they were 'expressing an opinion on planning grounds only' then this would be sufficient but Members would have to make this decision for themselves. However, the legal section would be happy to give advice to Members prior to consideration of a matter.

Decision:

The committee noted that the revised Licensing Code would be reported to Full Council on 18 October 2012.

Chairman

Date:

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