

LICENSING AND SAFETY COMMITTEE

20 JULY 2011

ARRANGEMENTS TO DETERMINE APPLICATIONS FOR LICENCES UNDER SCHEDULE 3 OF THE LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982

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Summary

The purpose of this report is to determine arrangements for consideration and determination of applications for sex establishments and sexual entertainment venues where there have been relevant applications received in relation to an application or where conditions have been proposed by officers but not accepted by the applicant.

1. Budget and Policy Framework

- 1.1 The powers the Council has to regulate sex establishments and Sexual Entertainment Venues are contained in Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982.
- 1.2 The Assistant Director, Housing and Corporate Services has delegated authority to grant an application for a licence for a sex establishment or sexual entertainment venue where no representations have been received and the Assistant Director is able to agree suitable conditions with the applicant. (Chapter 3 Responsibility of functions, part 4, paragraph 6.6 Licensing.)
- 1.3 The determination of an application for a licence for a sexual establishment or sexual entertainment venue is a non-executive matter and Council has altered this committee's Terms of Reference to include functions relating to licensing set out in Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 as amended by Section 27 of the Policing and Crime Act 2009. A decision on whether to establish a sub-committee is a matter for this committee.

2. Background

- 2.1 Section 27 of the Policing and Crime Act 2009 extended the provisions of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 by introducing a new category of sex establishment called “sexual entertainment venues”. A sexual entertainment venue is defined as “any premises at which relevant entertainment is provided before a live audience for financial gain of the organiser or the entertainer”. The meaning of “relevant entertainment” is any live performance or live display of nudity, which is of such a nature that it must reasonably be assumed to be provided solely, or principally for the purpose of sexually stimulating any member of an audience (whether by verbal or other means
- 2.2 The purpose of this amendment is to give Local Authorities greater control over venues, currently licensed under the Licensing Act 2003, that provide some form of sexual entertainment. In order to implement these amendments a local authority must adopt the legislation. The Council adopted these provisions on 13 January 2011 with a “1st appointed day” of 1 April 2011.
- 2.3 After adoption of the provisions, a transitional period lasting 12 months (i.e. until 1 April 2012 – the “3rd appointed day”) comes in to place. To allow time to comply with the new regime, existing operators, who, immediately before the 1st appointed day, have a 2003 Licensing Act licence and lawfully use premises as a sexual entertainment venue under that licence will be allowed to continue to provide relevant entertainment until the 3rd appointed day or the determination of any application they have submitted before that time, whichever is later.
- 2.4 Applicants have been able to submit applications from 1 April 2011, but the Council is required to consider all applications made before the 2nd appointed day (which is 1 October 2011) at the same time. Therefore no applications can be determined before 1 October 2011. Applications made after 1 October 2011 are required to be considered when they are made but only once all applications made on or before 1 October 2011 have been determined.
- 2.5 It is therefore necessary to consider the arrangements for determining applications from 1 October 2011 onwards.

3 The Current Situation

- 3.1 The Council (13 January 2011) noted that the Licensing and Safety Committee would consider options for a sub-committee to decide on applications where there have been relevant representations received in relation to an application or where conditions have been proposed by officers but not accepted by the applicant.

3.2 The Council also revoked its decision of 27 November 2002 which set a limit on the number of sex establishments licenses allowable to be a maximum of two within the Medway area.

4. Options for a sub-committee

4.1 There are three options for the Licensing and Safety Committee to consider how it wishes to proceed:

(i) The main Licensing and Safety Committee (12 Members) could meet to consider and decide on applications for sexual entertainment venues where there have been relevant representations received in relation to an application or where conditions have been proposed by officers but not accepted by the applicant;

(ii) A new and separate sub-committee could be established comprised of 3 Councillors along similar lines to a Licensing Hearing Panel established under the Licensing Act 2003. Such Panel would be established specifically to consider applications for sex establishments and sexual entertainment venues under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982. If this option were preferred the committee should determine the name of the sub-committee ("the 1982 Act Hearing Panel" is a suggestion) and the suggested terms of reference are as follows:

"To determine any applications under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 where relevant representations have been received or where conditions have been proposed by officers but not accepted by the applicant";

If this is the preferred option the Committee may wish to agree to waive the requirement for a politically balanced membership so the sub-committee can operate in the same way as the Licensing Hearing Panel. The Committee could agree to the same "pool" of Members set up for Licensing Hearing Panel meetings as long as there is no Member voting against the proposal to waive the requirements of political balance.

(iii) The current Licensing Sub-Committee (7 Members) could consider this type of application. (The sub-committee's current terms of reference are "to determine hackney carriage private hire and other licensing issues not covered by the Licensing Act 2003 nor the Gambling Act 2005."). These terms of reference would be broad enough to cover 1982 Act licensing, but given that this type of licensing is closely linked to licensing under the Licensing Act 2003, to avoid any lack of clarity, if this option were preferred officers would recommend a slight change to the terms of reference to include the following words at the end of the terms of reference: "including determination of any applications under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 where

relevant representations have been received or where conditions have been proposed by officers but not accepted by the applicant.”

- 4.2 The Licensing Hearing Panel (3 Members) cannot take on this additional work, as it is only permitted to deal with Licensing Act 2003/Gambling Act 2005 matters.

5. Risk Management

- 5.1 The arrangements for hearing contested applications under the 1982 Act need to be established prior to 1 October 2011, after which date applications received will need to be determined.

6. Financial and legal implications

- 6.1 Section 17 Crime & Disorder Act 1998 introduced the new licensing regime under Schedule 3 of the 1982 Act which gives the Council new powers to tackle issues of concern to communities around crime and anti social behaviour associated with sex establishments.
- 6.2 It is a matter for the committee to determine whether or not to establish sub-committees. The provisions in the Local Government and Housing Act 1989 relating to political balance on committees and sub-committees must be taken into account.

7. Recommendations

- 7.1 That the committee considers the options set out in paragraph 4.1 of this report and determines the arrangements to consider and decide on applications for sexual entertainment venues where there have been relevant representations received in relation to an application or where conditions have been proposed by officers but not accepted by the applicant.
- 7.2 The committee agrees the relevant terms of reference or amended terms of reference as set out in paragraph 4.1(ii) or 4.1(iii) of the report.
- 7.3 To determine the membership of a new Sub-Committee (if this option is chosen) noting the scope to waive the requirements of political balance and to use the same pool of Members in rotation as the Licensing Hearing Panel.

Background papers

Committee papers for the Licensing and Safety Committee held on 30 June 2010
Council report – 13 January 2011
Consultation papers.

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