

## LICENSING AND SAFETY COMMITTEE

12 APRIL 2012

### STATEMENT OF POLICY IN RESPECT OF SEXUAL ENTERTAINMENT VENUES

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#### Summary

Following a 1982 Act Hearing Panel decision to refer this matter to the committee, the report advises Members of the options available to them under the current statement of policy and consultation requirements should they wish to amend this policy.

#### 1. Budget and Policy Framework

- 1.1 The Council approved the existing statement of policy in respect of sexual entertainment venues for use on 13 January 2011. This statement of policy is used when dealing with applications for sexual entertainment venues.
- 1.2 The powers the Council has to regulate sex establishments are contained in Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982. In order to be able to use these powers the Council adopted the powers through a prescribed process. In accordance with the Constitution, Licensing matters are dealt with by the Licensing & Safety Committee or relevant sub-committee. A variation of the policy would have to be approved by Full Council following consultation.

#### 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". The purpose of this amendment was 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 we have adopted the legislation. The provisions of which came into effect on 6 April 2010.

- 2.2 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”.
- 2.3 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). An audience can consist of just one person (e.g. where the entertainment takes place in private booths).
- 2.4 Following a 1982 Act Hearing Panel that took place on 14 February 2012 Members requested that officers submit a report to the next meeting of the Licensing and Safety Committee setting out options for designating a maximum number of premises with Sexual Entertainment Licences which would be considered appropriate within historic Rochester and/or High Street Rochester.

### **3. The Current Situation**

- 3.1 Although these provisions have been adopted, there is an exemption for premises that provide sexual entertainment infrequently. These are defined as premises where there are no more than 11 events of sexual entertainment in any period of 12 months that the individual events last no more than 24 hours and there is at least a month between each event. These premises will continue to be regulated under the Licensing Act 2003.
- 3.2 Medway currently licenses one sex shop, in High Street, Chatham and two venues at the Queen Charlotte High Street Rochester and Tenshi at the Casino Rooms Blue Boar Lane Rochester.
- 3.3 The licence for both sex shops and sexual entertainment venues is only valid for one year and the applicant needs to reapply on an annual basis. In respect of the sexual entertainment venues the year will start on the 3<sup>rd</sup> appointed date of 1 April 2013.
- 3.4 The relevance of the third appointed day is that any licenses granted come into effect on that day and are valid for one year. Any premises providing sexual entertainment under the Licensing Act should cease on that day and the rule detailed under paragraph 3.1 above applies. Any premises providing sexual entertainment under the Licensing Act who has submitted an application prior to the third appointed day may continue trading until such time as the application is determined.

### **4. Effects of the legislation**

- 4.1 The amendments to Schedule 3 of the 1982 Act, in particular
- Allow local people to oppose an application for a sexual entertainment venue if they have legitimate concerns that it would

be inappropriate given the character of an area, for example, if the area was primarily a residential area. Whilst an objection cannot be made on moral or religious grounds, the grounds of objection are much wider than those that exist under the Licensing Act 2003.

- Require licences to be renewed at least annually (as opposed to Premises Licences granted under the Licensing Act 2003 which run for the life of the business) at which point local people will have the opportunity to raise representations to the local authority, including evidence of any problems with any licensed operation.
- Allow a local authority to impose a wider range of conditions than they are currently able to under the Licensing Act 2003. Different conditions can apply for sexual entertainment venues to those already in place for sex shops and sex cinemas.
- Allow a local authority to decide whether or not to set a limit on the number of sex establishments of a particular type in a locality, as well as the number of sex establishments generally taking into account any effect produced by the provisions of EU Services Directive. The limit for a particular locality may be set as nil, but is however unlikely that a local authority could set the limit as nil for the whole of its area without running the risk of that decision being challenged. The Secretary of State's guidance points out that case law indicates that a 'relevant locality' cannot be an entire local authority area or an entire town or city (case law – R v Peterborough City Council ex parte Quietlynn 85 L.G.R. 249).

## **5. Risk Management**

- 5.1 Putting in place a statement of policy in respect of sex establishments has aided transparency and consistency of approach. Any changes to the policy would need to be subject to wide consultation with stakeholders in order to be meaningful and thus needs some months to be developed.
- 5.2 The EU Services Directive (2006/123/EC) requires that no local legislation or policy should apply so as to create a barrier to service provision. In order to comply with the Directive the previous council policy of 27 November 2002, which restricted the numbers of sex establishments in Medway to two in number, was removed by full council on 13 January 2011.
- 5.3 However, paragraph 12(3)(c) of Schedule 3 to the 1982 Act does allow a local authority to refuse an application for a sex establishment licence on the grounds that the number of sex establishments or sex establishments of a particular kind exceeds the number which the authority considers is appropriate for a locality.

- 5.4 Careful consideration needs to be given to any changes in content, particularly any numerical limits being set, to ensure that they can be legitimately justified. If it is considered that a particular locality should have a limit, the geographical area will then need to be defined and the limit set. Due to the urban model of the Medway Towns, problems can arise in setting demographic areas and the setting of numbers for an area where licences have already been granted could be open to challenge.
- 5.5 The subject of setting of numerical limits and areas was looked at when drafting the existing statement and a decision taken that by not imposing areas or numbers there still remained the possibility of refusing an application on the basis of the number already in a particular area or vicinity of an application. This was a deliberate decision to give a sub-committee the discretion it needs when dealing with applications.
- 5.6 With a licence only being granted for a period of one year, the number in any area or vicinity can change. In setting a number for an area the licensing authority could be open to the expectation of an applicant that until the number is met there is reasonable expectation that the application will be granted.
- 5.7 The Secretary of State guidance states that a licensing policy can be used to indicate how many sex establishments, or sex establishments of a particular kind, they consider to be appropriate for a particular locality. It also states that it may be appropriate to reflect distinctions between the different types or the fact that the local authority may consider a location appropriate for a sex shop may be different to that of a sexual entertainment venue.
- 5.8 The guidance states that it is potentially useful to future applicants for a local authority to decide in advance of receiving any applications that certain areas are, or are not, appropriate locations for a sex establishment, but is clear that regardless of this, all applications must be considered on their individual merits.

## **6. Financial and legal implications**

- 6.1 Should a decision be taken not to change there will be no financial or legal implications.
- 6.2 Should a decision be taken to amend, there will need to be dialogue with appropriate parties to evidence the requirements followed by a substantial consultation on the issues of setting down numbers for any particular area within Medway. The consultation will need to deal with the geographical area to be affected by the number limit and also what the limit should be. Any consultation should therefore have a number of ways to define the geographical areas and do so to avoid clusters at the borders should a decision be taken more than one area.

6.3 External costs will include postage of consultation documentation and advertising. Officer time will be spent on liaising with appropriate parties for their views, preparing reports, responding to and analysing the consultation.

## **7. Options**

7.1 In respect of the sexual entertainment policy statement the options for Members to consider are listed below.

**Option 1** – To take no action and to continue to use the existing statement of policy to its full potential during the decision making process of all applications.

**Option 2** – To request that officers liaise with the police and other relevant council departments and report back to the next Licensing and Safety Committee with a proposal for consultation in line with the timetable listed below.

- L&SC with options - 12 April
- Consultation with police and other relevant council departments to formulate a proposal
- L&SC with proposals for consultation - 24 July
- 6 week consultation period from 30 July - 7 September
- L&SC week commencing 17 September
- Business Support O&S - 25 September
- Council - 18 October
- New Statement of Policy in use from 19 October 2012.

## **8. Recommendation**

8.1 The committee is asked to consider this matter and instruct officers accordingly.

### **Background papers**

Committee papers for the Licensing & Safety Committees held on 30 June 2010 and 18 November 2010.

Committee papers for Full Council held on 30 January 2011

Statement of Policy in respect of Sexual Entertainment Venues approved at Full Council on 13 January 2011

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