

## **CAMBRIDGE CITY COUNCIL**

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REPORT OF: Yvonne O'Donnell Environment Health Manager

TO: Licensing Committee

17/10/2016

WARDS: All

### **SEX ESTABLISHMENTS LICENSING POLICY**

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#### **1 INTRODUCTION**

- 1.1 Section 27 of the Policing and Crime Act 2009 introduced a new category of sex establishment called 'sexual entertainment venues' (SEVs) and gives local authorities the power to regulate and licence lap dancing clubs and similar venues under Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982.
- 1.2 The new powers enable these types of establishment to be licensed in the same way as sex shops, rather than as pubs and clubs and give councils greater scope and discretion as to how those venues are controlled within their areas. The new measures came into effect on 6<sup>th</sup> April 2010.
- 1.3 The new powers enable these types of establishment to be licensed in the same way as sex shops, rather than as pubs and clubs and give councils greater scope and discretion as to how those venues are controlled within their areas. The new measures came into effect on 6<sup>th</sup> April 2010.
- 1.4 Government guidance recommends as good practice for Licensing Authorities to have a Statement of Licensing Policy for Sex Establishments. On 24<sup>th</sup> October 2011 Licensing Committee approved a Sex Establishment Licensing Policy. The policy and accompanying conditions are attached to the report as Appendix A.

- 1.5 The policy statement has been kept under review and was subject to further review and consultation any time prior to October 2016.
- 1.6 The process to start the review began in May 2016 and a twelve week public consultation took place between 30<sup>th</sup> May 2016 and 21<sup>st</sup> August 2016.
- 1.7 The purpose of this report is to inform committee of the responses received as a result of the consultation exercise, thereby enabling them to consider those responses in reviewing the policy.

## 2 **RECOMMENDATIONS**

### 2.1 That the Licensing Committee:

- 2.1.1 consider the results of the public consultation exercise as summarised as Appendix B of this report.
- 2.1.2 approve the final Sex Establishment Licensing Policy attached as Appendix C to this report having taken into consideration the comments contained in paragraphs 3.5 to 3.14 of this report and Appendix B.
- 2.1.3 resolve that the policy shall have immediate effect and shall be reviewed at least every five years.

## 3. **BACKGROUND**

- 3.1 **History.** Sex shops and sex cinemas are classified as sex establishments, licensed under the Local Government (Miscellaneous Provisions) Act 1982. The regime gives the council wide discretion in determining whether to grant or refuse licences, a power to set a limit on the number of premises that may be suitable in a particular locality, greater flexibility on applying licence conditions and the ability to accept representations from a wider scope of the community. Sex shop licences are only valid for up to one year, also giving greater scope for review.
- 3.2 Following concerns surrounding the operation of lap-dancing / similar venues and recognition that the Licensing Act 2003 did not give sufficient powers of control, section 27 of the Policing and

Crime Act 2009 created a new class of licensed sex establishment, a 'sexual entertainment venue'. By treating these premises in the same way as sex shops, the new provisions give local authorities more powers to control where and how many SEVs open and operate in their areas.

3.3 Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, relating to sex shops was adopted by full council on 19<sup>th</sup> October 1989 and the adoption was advertised in the Cambridge Evening News on 27<sup>th</sup> October 1989. On 21<sup>st</sup> October 2010 the full council resolved to adopt amended provisions introduced by section 27 of the 2009 Act as it relates to the new category of SEVs with effect from 1<sup>st</sup> December 2010. The amended provisions were advertised in the Cambridge Evening News on 27<sup>th</sup> October and 3<sup>rd</sup> November 2010. Full council also delegated the licensing and regulatory functions to the Licensing Committee.

3.4 **Licensing policy.** Although local authorities are not required to produce a statement of licensing policy relating to sex establishments, they may do so if they wish, so long as it does not prevent any individual application from being considered on its own merits at the time the application is made. Policies can contain matters such as conditions, appropriate locations, limits on numbers etc. Any changes to conditions are determined by the licensing committee.

3.5 **Guidance** The Government has produced Guidance for local authorities, which are encouraged to have regard to the guidance when exercising their functions (although there is no statutory requirement to do so), in order to promote best practice and consistency across local authorities in England and Wales. Government Guidance recommends that it would be good practice for Licensing Authorities to have a statement of licensing policy for Sex Establishments. Guidance suggests that each local authority should judge each case on its individual merits.

3.6 **Terms, conditions and restrictions** can be imposed on a licence. The Provision of Services Regulations 2009 require any conditions to be necessary, non-discriminatory and proportionate. In practical terms this means that conditions must demonstrably be directed at attaining one of the public interest objectives of the Regulations (public policy, public security, public health, or the

protection of the environment) and must go no further than is necessary to achieve such objectives.

- 3.7 **Numbers and relevant locality** Schedule 3 of the 1982 Act allows the council to refuse applications on grounds related to the assessment of the “relevant locality”. It can also make an assessment as to the ‘character’ of the relevant locality and how many, if any, sex establishments or sex establishments of a particular kind, it considers are appropriate for that relevant locality. We currently have no limits on numbers for Sex Establishments, with all applications being considered on their individual merits.
- 3.8 One of the consultation responses received request that the Council imposes a numerical control on the number of sex establishments in Cambridge and expressed the view that nil is the appropriate number.
- 3.9 It is important to note that even where a “nil” policy exists, applications must still be considered and a decision made as to whether an exception should be made to the policy. It is not open to an authority to refuse or even to consider an application, which breaches its policy. The authority must always decide whether the facts of a case warrant an exception to the policy.
- 3.10 The ability to licence SEVs enables the Council to impose licence conditions for the regulation of the establishment and for the protection of performers and members of the public.
- 3.11 Numbers of premises and “relevant locality”: Schedule 3 of the 1982 Act allows the council to refuse applications on grounds related to the assessment of the “relevant locality”. It can also make an assessment as to the ‘character’ of the relevant locality and how many, if any, sex establishments or sex establishments of a particular kind, it considers are appropriate for that relevant locality.
- 3.12 There is currently one licensed sex shop in the City. No applications have been received for Sexual Entertainment Licences or for a new sex shop and cinema licence since the Policy was adopted in October 2011.

3.13 The Court of Appeal in R v Peterborough City Council ex p Quietlynn (1987) has decided that the question of what is the “relevant locality” within the meaning of the Local Government (Miscellaneous Provisions) Act is a question of fact, but cannot mean a whole town or the whole of an authority’s administrative area. The Council cannot therefore designate the whole of Cambridge as the “relevant locality” and decide that there should be no sex establishments in the whole of the City.

3.14 Under the current Policy the Licensing Sub-Committee could decide what was the relevant locality based on the facts of an individual application. At any hearing of the application, the Sub-Committee could look at the premises for which the licence was being sought and could hear submissions as to the locality and then decide the appropriate number of sex establishments in respect of the relevant locality or whether the character of the area was such that it was inappropriate to grant a licence at all. The Sub-Committee would also consider paragraphs 9.1 and 9.2 of the Policy in deciding whether to grant a licence. Paragraph 9.1 and 9.2 of the policy states:

*9.1 We have not imposed a limit on the number of premises that may be licensed in any area of the City, however, whilst deciding each application upon its own merits we will not normally licence premises that are in close proximity to:*

*9.1.1 a residential area*

*9.1.2 a school, nursery or any other premises substantially used by or for children under 16 years of age;*

*9.1.3 a park or other recreational areas used by or for children under 16 years of age;*

*a church or other place of religious worship;  
a community centre*

*9.2 In addition, we will consider public safety issues when determining whether an area is appropriate; for example, areas that attract a high percentage of female, elderly or young users or vulnerable persons may be considered to be inappropriate. Where we receive an application, which we consider to be within close proximity to those areas or premises identified in paragraph 9.1, the application will not*

*be automatically refused. Applications presenting genuinely exceptional circumstances may be granted.*

The Sub-Committee would have the flexibility to determine the relevant locality in respect of a particular application. This could be a smaller area than the ward in which the premises were situated.

3.15 The Sex Establishments Policy adopted by the Council should cohere with the other corporate visions and objectives of Cambridge City. The policy should reflect what is important for the authority in terms of its objectives, and how it sits within its wider aspirations for the area.

3.16 **Policy Review.** It is considered good practice to review the policy. It is recommended that it be reviewed every five years, in line with the Police Reform and Social Responsibility Act proposed amendment for Licensing Act 2003 policies.

#### 4. **CONSULTATIONS**

4.1 Public consultation was undertaken in accordance with Government's Code of Practice for 12 weeks between the 30<sup>th</sup> May 2016 and 21<sup>st</sup> August 2016. We consulted widely with the public, statutory authorities, including the police, businesses likely to be affected and existing and potential premises licence holders. The document was available to view on our website and appeared in the Cambridge News on 30<sup>th</sup> May 2016.

4.2 Four responses have been received in total. All comments received have been summarised in Appendix B for consideration by committee and the draft policy amended as appropriate.

#### 5. **OTHER LOCAL AUTHORITIES WITH A "NIL POLICY"**

5.1 London Borough of Hackney  
In 2011 the London Borough of Hackney introduced a "nil policy". The policy has not been reviewed since then.  
The policy became effective on 26<sup>th</sup> January 2011 appendix D or <http://hackney.gov.uk/Assets/Documents/sex-establishment-licensing-2011.pdf>

In devising the policy regard was given to the available data findings, the shared vision and plans informing Hackney's

Sustainable Community Strategy, and Local Development Framework Core Strategy with the aim of integrating the sex establishment policy so that it contributed to the vision of the borough. “As such the provision of sex establishments was considered by the Council to contradict and undermine its stated aims and to exacerbate the challenges it faced in bringing about a positive, genuinely sustainable characterful and thriving neighbourhoods which support the needs and principles of upskilling its population and closing the education gap across its communities” (para 4.11 of their policy).

The London Borough of Hackney had regard to the following borough factors which justified this safeguarding regulatory step:

The relative size of the borough taken as a whole

Population density and growth trends

Ward profiles

Borough profiles

Poor economic and health specific deprivation indices

Level of social housing and tenure

Area subjected to regeneration initiatives.

Locations of premises, which attract vulnerable groups such as GP surgeries, attract families such as parks and open spaces; attract young people such as schools, places of worship and diverse cultural communities.

The combined findings of the consultations and information mapping gave rise to significant concerns and were extensive and expensive.

“It was the Council’s view that having regard to each ward and recognising that because of the mix of uses, the character, the strategic vision and the existing locations of particular types of premises in those wards, it would be inappropriate for sex establishments to be located in its wards. The association that sex establishments have with a part of the “sex industry” and adult entertainment means that they are not suitable for location in those parts of the borough associated with commerce, family retail and entrepreneurship, nor are they appropriate for location in residential areas or areas frequented by families and children. The Council’s nil per ward policy responds to this concern.” (para 4.12)  
The work carried out by London borough of Hackney was carried out by an external consultant and was very extensive.

## 6. THE COUNCIL'S VISION

- 6.1 Cambridge City Council has a number of priorities for the City and any policy that is adopted should reflect these priorities. These priorities are laid out in a number of documents as outlined below.
- 6.2 The Council has a clear vision to lead a united city, 'One Cambridge - Fair for All', in which economic dynamism and prosperity are combined with social justice and equality. It's a vision we will share and develop, working with our citizens and partner organisations.

Our vision is for:

- A city which believes that the clearest measure of progress is the dignity and well-being of its least well-off residents, which prioritises tackling poverty and social exclusion, recognising that greater social and economic equality are the most important pre-conditions for the city's success.
- An international city which celebrates its diversity and actively tackles discrimination on gender, race, nationality, ethnic background, religion, age, disability, gender identity, and sexual orientation.
- A city in which all citizens feel that they are listened to and have the opportunity to influence public decision making, and which values, supports and responds to individual and community initiatives.
- A city where all citizens and organisations appreciate their duties as well as their rights, where people are free to enjoy themselves but also show consideration for others, and where the community works together to reduce harm and nuisance including by education and, where needed, robust enforcement of the law.
- A city where 'town' and 'gown' combine, and where mutual understanding and partnerships are developed through joint working, community initiatives and volunteering.
- A city which strives to ensure that all local households can secure a suitable, affordable local home, close to jobs and neighbourhood facilities.
- A city which draws inspiration from its unique qualities and environment and its iconic historic centre, and retains its sense of place across the city through positive planning, generous urban

open spaces and well-designed buildings, and by providing quality council services.

- An entrepreneurial city with a thriving local economy, in which businesses are assisted to build on their global and national pre-eminence in learning, discovery and production, and develop a full range of local employment and skills development, while also recognising and delivering on their social responsibilities.
- A city where getting around is primarily by public transport, bike and on foot.
- A city that takes robust action to tackle the local and global threat of Climate Change, both internally and in partnership with local organisations and residents, and to minimise its environmental impact by cutting carbon, waste and pollution.

## **7.0 SUMMARY**

7.1 Cambridge City Council has a vision and the strategies in place for implementing that vision. A sexual entertainments venues policy must sit within the wider aspirations for the area and fit in with that vision.

7.2 There is currently no factual evidence available about the composition or nature of all the relevant factors that may need to be taken into account locally. However an indication has been given earlier in this report of what other local authorities have considered to be relevant for their areas. There is currently no clear and researched evidence to support the view that it would be in the best interests of those living and working in the city to adopt a “nil policy” in respect of the number of licensed sexual entertainment venues.

7.3 Members need to decide whether to fund further research into the potential option of adopting a nil policy for localities across Cambridge, or to adopt the policy as submitted and consider each application on its merits. It should be noted that the latter option allows members to decide if an application is appropriate for an area or not.

## **8.0 OPTIONS**

1. To instruct officers to carry out appropriate research, consultation and analysis and to present their findings to a subsequent meeting of the Licensing Committee, subject to the Executive Councillor authorising the estimated expenditure in the region of £30,000,

**or**

2. To adopt the Sex Establishment Policy as originally drafted following consultation and as set out in Appendix C, noting that this will enable the licensing sub committee on each application to determine whether it is appropriate to licence any SEVs in the “relevant locality”.

## **9.0 CONCLUSIONS**

A sex establishment licensing policy, albeit non- statutory, can play a pivotal role in the achievement of the pattern, quantum and standards of sex establishments to which the authority aspires. However, the policy must be reasonable and proportionate and must directly reflect the strategic objectives of the authority and the wider community.

## **10.0 IMPLICATIONS**

### **(a) Financial Implications**

If members resolve for this extensive research to be carried out it would involve costs in the region of £30,000, to carry out the research and also to undertake public consultation. This funding must be agreed by Executive Councillor for Environment and Waste Services and then the money is taken from the Councils reserves or a bid put in as part of the Council’s budget process.

### **(b) Staffing Implications**

If members resolve that this extensive research should be carried out it will require considerable staff resources, in particular in the Council’s Environmental and Legal Services.

### **(c) Equal Opportunities Implications**

Section 149 of the Equality Act 2010 obliges public authorities in the exercise of their functions to have due regard to the need to eliminate discrimination, harassment and victimisation, to advance equality of opportunity between the sexes and to foster good relations between the sexes. If SEV licences were granted the

Council would be able to attach conditions to licences as appropriate, for example to protect performers from harassment and any threat to their dignity and to address any suggestion that women may be less welcome in premises than men. The fears of women and vulnerable persons using the vicinity of the premises can be addressed in decisions as to the locations of such facilities and by conditions. An Equality Impact Assessment (EqIA) (Appendix D) has been compiled addressing perceived equality issues and this will be further reviewed following decision of this committee.

(d) Environmental Implications

The environmental implications for the relevant locality are one of the matters that the Committee should consider in determining each application.

(e) Human Rights

The following human rights are potentially engaged:

Article 8: This protects the right to a private and family life, home and correspondence

Article 10: This protects the right to freedom of expression, including artistic expression

Article 1: This protects the peaceful enjoyment of possessions

Section 19 of the Human Rights Act 1998 requires a Minister of the Crown in charge of a Bill to make a written statement of compatibility with the rights conferred by the European Convention on Human Rights. While the Local Government (Miscellaneous Provisions) Act preceded the Human Rights Act, the provisions of the Policing and Crime Act 2009 post-dated it. In considering the application of the provisions relating to sexual entertainment venues the Council can be assured that the wide powers they have been given to control SEV's have themselves been validated in human rights terms.

(f) Community Safety

The Government's intention is to give local people a greater say over the number and location of sexual entertainment venues within their area. The introduction followed consultation with local authorities which highlighted concerns that the existing legislation did not give communities sufficient powers to control where lap-dancing clubs were established. The adoption of the amendment and associated procedures provide checks and balances to ensure greater community involvement.

## **BACKGROUND PAPERS**

The following are the background papers that were used in the preparation of this report:

- Local Government (Miscellaneous Provisions) Act 1982
- Cambridge City Council Sex Establishment Policy
- Cambridge City Council's Our Vision – 'One Cambridge –Fair for All'

## **APPENDICES**

Appendix A – Cambridge City Council Sex Establishment Policy

Appendix B – Comments received from Public Consultation and with summary and response to the comments.

Appendix C – Draft Sex Establishment Policy

Appendix D – Equality Impact Assessment

To inspect these documents contact Yvonne O'Donnell on extension 7951. The author and contact officer for queries on the report is Yvonne O'Donnell on extension 7951.

Report file: M:Licence/04 – OTHER LICENCES/Sex Establishments/Committee reports/SEV Policy 2016

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