

CAMBRIDGE CITY COUNCIL

REPORT OF: Head of Refuse & Environment

TO: Area Committees 10th & 24th Feb, 3rd & 24th March 2011

WARDS: All

LICENSING OF SEX ESTABLISHMENTS – PUBLIC CONSULTATION ON THE DRAFT STATEMENT OF LICENSING POLICY

1 INTRODUCTION

- 1.1 Section 27 of the Policing and Crime Act 2009 introduced a new category of sex establishment called 'sexual entertainment venues' (SEV's) and gives local authorities in England and Wales the power to regulate 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 local councils greater scope and discretion as to how those venues are controlled within their areas. The new measures came into effect on 6th April 2010.
- 1.3 On 11th October 2010, the Licensing Committee recommended to full council that Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982, as amended by Section 27 of the Policing and Crime Act 2009, shall apply to the Cambridge City Council area with effect from 1st December 2010. On 21st October 2010 full council resolved to adopt the amendment with delegation of the regulatory functions and responsibilities to the Licensing Committee.
- 1.4 The adoption of the new powers started a 12-month transitional process for the one existing lap-dancing club in Cambridge City and will provide a framework for any future applications of this nature.
- 1.5 We now need to ensure that the necessary steps are put in place to enable the authority to exercise their functions in licensing SEV's as sex establishments.
- 1.6 The purpose of this report is to inform the Area Committees of the public consultation process and to request feedback on the draft statement of licensing policy attached at Appendix 1. The HM Government Code of Practice on Consultation recommends a 12-week consultation period.

2. RECOMMENDATIONS

- 2.1 The Area Committee is recommended to:

- 2.1.1 Make the public aware of the 12-week public consultation period on the draft Sex Establishment Statement of Licensing Policy, between 31st January and 26th April 2011 and to involve them in the consultation process.
- 2.1.2 Request that any comments regarding the draft statement be submitted to the Licensing Manager before the close of the consultation period on 26th April 2011.

3. BACKGROUND

- 3.1 **History.** Since the introduction of the Licensing Act 2003 in November 2005, the Council has exercised its statutory function to license premises selling/supplying alcohol, providing late night refreshment and providing regulated entertainment. This includes live and amplified music, dancing and dance performances. Under the Licensing Act 2003, if no relevant representations relating to any of the four licensing objectives have been made, all applications must be granted, as applied for. Only responsible authorities or interested parties living/working in the vicinity can make representations. Premises licences are granted for the life of the business and although they can be reviewed, this mechanism is rarely used.
- 3.2 In contrast, sex shops and sex cinemas are classified as sex establishments, licensed under the Local Government (Miscellaneous Provisions) Act 1982. The regime gives the council a wider 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, giving greater scope for review.
- 3.3 To address concerns about the growth and operation of lap-dancing / similar venues and recognition that the existing legislation did not give communities sufficient powers to control where such clubs were established, section 27 of the Policing and Crime Act 2009 created a new class of licensed sex establishment, the sexual entertainment venue. The new provisions give local authorities more powers to control where and how many SEV's open and operate in their areas.
- 3.4 Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, relating to sex shops was adopted by full council on 19th October 1989 and the adoption was advertised in the Cambridge Evening News on 27th October 1989. On 21st October 2010 the full council resolved to adopt the amended provisions introduced by section 27 of the 2009 Act as it relates to the new category of SEV's with effect from 1st December. In accordance with the regulations, this was advertised in the Cambridge Evening News on 27th October and 3rd November 2010.
- 3.5 The meanings of 'sexual entertainment venue' and 'relevant entertainment' are now defined in the 1982 Act and appear at paragraphs 4.1 and 4.2 of the draft policy.
- 3.6 **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.

- 3.7 Guidance suggests relevant forms of entertainment that could apply, although authorities should judge each case on its individual merits. This is reflected in paragraphs 4.3 and 4.4 of the draft policy.
- 3.8 **Timetable for implementation and impact on existing businesses.** The 1st December 2010, the day the resolution came into force, marks the start of a 12-month transitional period. There is currently only one premises within Cambridge City known to be offering 'relevant entertainment' in the form of lap-dancing that will need to apply for a SEV licence under the transitional arrangements in order to continue operating. The decision to adopt the amended Schedule 3 applies to the relevant 'adult' entertainment element provided in a SEV. Alcohol sales, late night refreshment and other forms of regulated entertainment at the premises will still require a premises licence under the Licensing Act 2003.
- 3.9 **New applicants/ application procedure.** New applicants will not be able to operate as a SEV until they have been granted a Sex Establishment licence. To do so would be an offence, which on summary conviction attracts a maximum fine of £20,000.
- 3.10 As a part of the procedure, applicants will need to advertise the application in a local newspaper and copy their application to the police within 7 days. They must display a notice for 21 days. Objections can be received for a period of 28 days on relevant grounds (not moral grounds) and objections will be considered at a hearing of the Licensing Sub-Committee. Appeals will be heard in the Magistrates' Court. Application forms will be made available on the council's website.
- 3.11 **Terms, conditions and restrictions** can be imposed on a licence that are necessary, non-discriminatory and proportionate. We currently have model standard conditions that have been applied to the two existing sex establishment licences and it is proposed that they continue in their current format. The conditions appear in the draft licensing policy as Appendix A. We also have model conditions for exotic dancing and it is proposed that they be adopted for SEV's. The conditions appear in the draft licensing policy as Appendix B.
- 3.12 **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.
- 3.13 **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. The current practice for licensing sex shops within Cambridge city is to follow a

standard operating procedure document, which sets out matters including the application and consultation process to be followed. Both current sex shop licences have the same model standard conditions attached. Any changes to the model conditions are determined by the licensing committee. These current practices will be extended to include SEV's.

- 3.14 Government Guidance considers it to be good practice for Licensing Authorities to have a statement of licensing policy for Sex Establishments. It is recommended that it be reviewed every five years, in line with the Police Reform and Social Responsibility Bill proposed amendment for Licensing Act 2003 policies.

4. CONSULTATIONS

- 4.1 We are undertaking public consultation on the draft policy in accordance with the Government's Code of Practice, consulting widely with the public, statutory authorities, including the police, businesses likely to be affected and existing and potential premises licence holders.
- 4.2 Consultation is being undertaken for 12 weeks between the 31st January 2011 and 26th April 2011. The document and process is available to view on the consultation section of the council's website www.cambridge.gov.uk and officers will be attending Area Committees during the consultation period.
- 4.3 Raising awareness at Area Committees gives the opportunity for members of the public to be involved in the process of developing the policy. We welcome any feedback or any concerns you may have on the requests. All comments will be considered in drawing up the final policy, although we will not be able to give individual responses to comments received. We will be publishing the results on our website in June 2011.
- 4.4 Early feedback would be appreciated, with all feedback being received by 26th April 2011. All comments received will be reported back to the licensing committee for consideration after the close of the consultation period.

5. ISSUES AND OPTIONS

- 5.1 Having adopted the amendment introduced by section 27 of the 2009 Act, the Council now has the power to regulate sex entertainment venues as sex establishments under Schedule 3 to the 1982 Act. Establishing procedures will enable the council to exercise their statutory function to regulate and licence lap dancing and other sexual entertainment venues in the same way as sex shops, rather than as pubs and clubs.

6. CONCLUSIONS

- 6.1 Government Guidance recommends the formulation of a Statement of Licensing Policy as good practice and the establishment of such a policy will give greater scope and discretion to the council as to how Sex Establishments are controlled within the area.

7. IMPLICATIONS

(a) **Financial Implications**

(i) Schedule 3 to the 1982 Act states that the application for grant, renewal, variation or transfer of a sex establishment licence shall pay a reasonable fee, but gives discretion to the council. Any fees charged must be reasonable and proportionate to the costs incurred and must not exceed those costs (excluding enforcement).

(ii) There is a cost to the Council of undertaking public consultation.

(b) **Staffing Implications**

The new procedures will be processed as an additional workload, but within existing staff resources. The additional workload arising from the consultation process will also be absorbed within existing staff resources.

(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. The Council will 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 Equalities Impact Assessment (EqIA) has been compiled addressing perceived equality issues and this will be reviewed at the close of the consultation period after consideration of the consultation responses.

(d) **Environmental Implications**

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

(e) **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 and its 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 will provide checks and balances to ensure greater community involvement. Cambridgeshire Constabulary is a consultee.

(f) **Human Rights**

The following human rights are potentially engaged:

Article 10 – the right to freedom of expression, Article 1 of the First Protocol – the right to 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. Therefore 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.

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

Local Government (Miscellaneous Provisions) Act 1982

To inspect these documents contact Christine Allison on extension 7899

The author and contact officer for queries on the report is Christine Allison on extension 7899

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