

CAMBRIDGE CITY COUNCIL

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REPORT OF: Head of Refuse and Environment (HRE)  
Head of Legal Services

TO: Licensing Committee

6 June 2011

WARDS: All

**LICENSING OF SEX ESTABLISHMENTS - THE APPROVAL OF A SEX ESTABLISHMENT LICENSING POLICY FOLLOWING PUBLIC CONSULTATION**

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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 On 21<sup>st</sup> October 2010 full council resolved 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 1<sup>st</sup> December 2010, with delegation of the regulatory functions and responsibilities to the Licensing Committee.
- 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> January 2011 Licensing Committee approved a draft Sex Establishment Licensing Policy for public consultation. Twelve weeks consultation took place between 31<sup>st</sup> January 2011 and 26<sup>th</sup> April 2011.

- 1.5 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 the drawing up of a final policy.

## 2. **RECOMMENDATIONS**

- 2.1 That the Licensing Committee:

- 2.1.1 consider the results of the public consultation exercise as summarised as Appendix 1 of this report.

- 2.1.2 approve the wording of the final Sex Establishment Licensing Policy attached as Appendix 2 to this report, having taken into consideration the comments contained in paragraphs 3.5 – 3.13 of this report and Appendix 1.

- 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 27th October and 3<sup>rd</sup> November 2010. Full council also delegated the licensing and regulatory functions to the Licensing Committee. 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.

- 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. The current practice for the existing two licensed sex shops within Cambridge city has been 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 standard conditions attached. 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. The draft policy was formulated using the model standard conditions applied to the two current sex establishment licences as Appendix A and the council's existing model conditions for exotic dancing as proposed for SEVs as Appendix B. The documents have been now been amended using track changes following consultation responses.

- 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** Seven of the consultation responses received request that the Council imposes a numerical control on the number of sex establishments in Cambridge and decides that nil is the appropriate number.
- 3.9** There are currently two sex shops in the City, licensed by the Council under the provisions of the Local Government (Miscellaneous Provisions) Act 1982 and one lap-dancing club, which is currently licensed under the provisions of the Licensing Act 2003.
- 3.10** The Court of Appeal 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.
- 3.11** Under the Policy as currently drafted the Licensing Sub-Committee can decide what is the relevant locality on the facts of an individual application. The Sub-Committee can look at the premises for which the licence is being sought and then decide the appropriate number of sex establishments in respect of the relevant locality or whether the character of the area is such that it is inappropriate to grant a licence at all. At the hearing, the Sub-Committee can hear submissions as to the locality. The Sub-Committee will also consider paragraphs 9.1 and 9.2 of the Policy in deciding whether to grant a licence.
- 3.12** Although it would be possible to pre-determine “relevant localities” in the Policy and decide the appropriate number of sex establishments or type of sex establishment for each locality, this can cause problems, for example in respect of premises that are on the edge of a locality, the Sub-Committee would have to either ignore the adjoining locality or have regard to the character of more than one locality. If relevant localities and numerical limits were specified within

the Policy it would not be open to the Council to refuse to consider an application as, however strict a policy, an Authority must still decide whether the facts of a particular case warrant an exception.

3.13 It is recommended that predetermined localities are not set and that each application is considered on its own merits. This will enable the Sub-Committee, when hearing an application, to determine the “relevant locality” in respect of that application, having considered any relevant representations, and to consider the characteristics of that locality.

**3.14 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 Bill proposed amendment for Licensing Act 2003 policies.

#### **4. CONSULTATIONS**

4.1 Public consultation was undertaken in accordance Government’s Code of Practice for 12 weeks between the 31<sup>st</sup> January 2011 and 26<sup>th</sup> April 2011. 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 officers attended area committees during the consultation period.

4.2 Fifteen responses have been received in total, one prior to the response period, 13 during the response period and one on the day following the consultation period. All comments received have been summarised in Appendix A for consideration by committee and the draft policy amended as appropriate.

#### **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. Committee. The consultation draft of the Policy was approved by Licensing Committee on 24<sup>th</sup> January 2011 and has been the subject of consultation. The options are: (a) to adopt the Policy as set out in Appendix 2; (b) to adopt the Policy as amended; (c) not to adopt the Policy. If members decide that “relevant locations” should be specified within the Policy, further work will be needed to consider and recommend appropriate locations and numerical limits.

## 6. CONCLUSIONS

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

## 7. IMPLICATIONS

### (a) Financial Implications

(i) Schedule 3 to the 1982 Act states that the applicant for grant, renewal, variation or transfer of a sex establishment licence shall pay a reasonable fee, but gives discretion to the council. The Provision of Services Regulations 2009 require that any fees charged must be reasonable and proportionate to the costs incurred and must not exceed those costs (excluding enforcement).

(ii) There has been a cost to the Council in 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 has been 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 further reviewed following consideration of the consultation responses and taking into account the content of the final policy statement.

### (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 provide checks and balances to ensure greater community involvement. Cambridgeshire Constabulary and various community bodies were included in the consultation process for the statement of licensing policy.

(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. 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

Sex Licensing by Philip Kolvin QC

To inspect these documents contact Christine Allison on extension 7899

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