

Item

SEX ESTABLISHMENT LICENSING POLICY



To:

Licensing Committee 31/01/2021

Report by:

Luke Catchpole, Senior Technical Officer

Tel: 01223 - 457818 Email: luke.catchpole@cambridge.gov.uk

Wards affected:

All

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 6th April 2010.
- 1.3 Government guidance recommends as good practice for Licensing Authorities to have a Statement of Licensing Policy for Sex Establishments. In October 2016, the Licensing Committee approved a Sex Establishment Licensing Policy. The policy and accompanying conditions are attached to the report as Appendix A.
- 1.4 The policy statement has been kept under review prior to October 2021.
- 1.5 The process to start the review began in April 2021 and a twelve week public consultation took place between 10th May 2021 and 1st August 2021.

- 1.6 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 Members are recommended:

To consider the results of the public consultation exercise as summarised as Appendix B of this report;

Approve the Sex Establishment Licensing Policy attached as Appendix C to this report;

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 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 amended provisions introduced by section 27 of the 2009 Act as it relates to the new category of SEVs with effect from 1st December 2010. The amended provisions were advertised in the Cambridge Evening

News on 27th October and 3rd 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 requests 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 2016.
- 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 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. Implications

(a) Financial Implications

There are no financial implications of adopting the policy.

(b) Staffing Implications

Existing staff resources will apply the new policy once finalised.

(c) Equality and Poverty 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 Equalities Impact Assessment has been completed and is attached as Appendix D.

(d) Environmental Implications

There are no environmental implications that result from the draft policy.

(e) Procurement Implications

There are no procurement implications that result from the draft policy.

(f) Community Safety Implications

The Statement of Principles will ensure that in carrying out its statutory duties, the Licensing Authority will promote the licensing objectives.

5. Consultation and communication considerations

- 5.1 In accordance with Government Code of Practice on consultation, the draft policy was subject to a 12 week public consultation between 10th May 2021 and 1st August 2021
- 5.2 Consultation was undertaken as widely as possible, including the Chief Officer of Police, businesses likely to be affected and existing and potential premises licence holders. The consultation was also available to view on Cambridge City Council website and appeared in the Cambridge News on Monday 10th May 2021.
- 5.3 Two responses were received in total. All comments have been summarised in Appendix B.

6. Background papers

Background papers used in the preparation of this report:

- Local Government (Miscellaneous Provisions) Act 1982
- Cambridge City Council Sex Establishment Policy.

7. 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 – Proposed Sex Establishment Policy

Appendix D – Equality Impact Assessment

8. Inspection of papers

To inspect the background papers or if you have a query on the report please contact Luke Catchpole, Senior Technical Officer, tel: 01223 - 457818, email: luke.catchpole@cambridge.gov.uk.