

CAMBRIDGE CITY COUNCIL

REPORT OF: Jas Lally Head of Refuse and Environment

TO: Licensing Committee

24/10/2011

WARDS: All

SEX ESTABLISHMENTS LICENSING POLICY

1 INTRODUCTION

- 1.1 On 6th June 2011 Licensing Committee considered a report recommending the approval of a Sex Establishment Licensing Policy. The draft Policy had been subject to public consultation and a summary of the consultation responses was attached to the report. In addition, at the hearing, Members heard representations from public speakers.
- 1.2 Members heard that the London Borough of Hackney has adopted a policy stating that there are no wards within Hackney where it is appropriate to licence a sexual entertainment venue described as a “nil policy”). An extract from that authority’s Sex Establishment Licensing Policy was presented to Members. Members did not have the advantage of seeing the whole of the policy and were not informed of the comprehensive steps which had been taken by that authority prior to the adoption of the policy.
- 1.3 Committee resolved to approve the wording of the draft Sex Establishment Policy subject to amendments proposed by Councillor Hart and seconded by Councillor Pogonowski as set out in appendix A to this report. In essence the amendments, if adopted in the final policy, would treat each ward in the City as a “relevant locality” for the purposes of the Policy and would determine that the appropriate number of sexual entertainment venues (“SEV”s) in each ward is nil.
- 1.4 The proposed amendments were modelled on the extract from Hackney’s policy, and had not been the subject of public consultation and Members decided that there would be further consultation.

- 1.5 Following this second round of consultation the policy would return for consideration by Licensing Committee at a subsequent meeting.

Prior to adopting a “nil policy” for each ward the Council would need to be satisfied that it would be appropriate and proportionate in relation to Cambridge. Officers have made enquiries of two other Authorities that have adopted “nil policies” in relation to SEVs. Those nil policies are based on lengthy research and analysis, specific to their areas undertaken at a cost estimated to be £30,000.

- 1.6 For Cambridge to carry out the necessary research and analysis to determine whether a “nil policy” should be introduced, extensive research financial and officer resources would be required. Any policy adopted must be lawful and capable of sustaining a legal challenge. A second round of consultation requires the presentation of facts specific to Cambridge supporting the reasoning for a “nil policy” to be circulated to all relevant parties, together with the proposed amended policy.
- 1.7 Any costs which might be associated with the implementation of a proposed "nil" policy would need to be referred to Executive Councillor for Environment and Waste Services for approval before proceeding further.
- 1.8 The report sets out the procedure to be followed in order to adopt a lawful, well reasoned and robust policy, through research and analysis that must be carried out in order to enable the Council to decide whether it is appropriate to adopt a “nil policy” and the cost implications of this;

2. RECOMMENDATIONS

- 2.1 That the licensing committee resolves:
 - (a) Subject to the Executive Councillor authorising the estimated expenditure of £30,000, to instruct officers to carry out appropriate research, consultation and analysis and to present their findings to a subsequent meeting of the Licensing Committee, **or**
 - (b) To adopt the Sex Establishment Policy as set out in Appendix B, noting the flexibility that this gives to sub-committees on individual applications for all wards

3. BACKGROUND

- 3.1 Sex shops, sex cinemas and sexual entertainment venues 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 Establishment licences are only valid for up to one year, also giving scope for regular review.
- 3.2 Full Council adopted Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, relating to sex shops 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 new powers enabling the Council to regulate the new category of SEVs with effect from 1st December 2010. The adoption of the amended provisions was advertised in the Cambridge Evening News on 27th October and 3rd November 2010. Full council delegated the licensing and regulatory functions to the Licensing Committee.
- 3.3 Adopting the new powers enables the Council to regulate sex establishments and makes it possible for the Council to consider issues relating to the premises such as gender equality, the character of the area or locality, the protection of the paying public, the staff of the premises, or the general management standards of the premises.
- 3.4 Government guidance recommends as good practice for Licensing Authorities to have a Statement of Licensing Policy for Sex Establishments. On 24th January 2011 Licensing Committee approved a draft Sex Establishment Licensing Policy for public consultation. Twelve weeks consultation took place between 31st January 2011 and 26th April 2011. Consultation was community wide. The consultation paper was posted on the Internet, over 600 letters were posted out and presentations were carried out at the four area committees. Fifteen responses were received in total.
- 3.5 Seven 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.

- 3.6 On 6th June 2011 Licensing Committee resolved to adopt the draft wording of the policy subject to the amendment set out in paragraph 1.3 and appendix B of this report, on the basis that the amended policy would be subject to further public consultation.
- 3.7 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.
- 3.8 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
- 3.9 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.
- 3.10 There are currently two licensed sex shops in the City, and one lap-dancing club. The lap-dancing club is licensed under the provisions of the Licensing Act 2003 but will require a licence under the new powers to licence SEVs.
- 3.11 The Court of Appeal in *Rv 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.
- 3.12 On 6th June 2011 members proposed designating each ward in the City as a “relevant locality”. However, as yet, there has been no consideration and analysis of individual wards. The proposed amendment would have the same effect as designating the whole of the City.
- 3.13 Under the Policy as originally drafted 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.

3.14 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.

4. OTHER LOCAL AUTHORITIES WITH A “NIL POLICY”

4.1 City of London

City of London introduced a “nil policy” in their sexual entertainment venues policy which became effective in May 2011 see appendix C or <http://www.cityoflondon.gov.uk/NR/rdonlyres/D8C48483-497E-4FA8-B09B->

[BB3486276FAC/0/HS_SexualEntertainmentLicensingPolicyfinal.pdf](http://www.cityoflondon.gov.uk/NR/rdonlyres/D8C48483-497E-4FA8-B09B-BB3486276FAC/0/HS_SexualEntertainmentLicensingPolicyfinal.pdf)

City of London carried out an extensive consultation exercise, which involved a face-to-face survey, an on-line survey and a postal survey. They had 2,300 responses. The results of the survey informed the content of the policy. They also considered the Home Office Guidance, The Community Strategy, Cultural Strategy and Local Development Framework when formulating their policy. The City of London spent £30,000 on set up costs, £20,000 to carry out the survey and £10,000 on associated costs such as legal advice from senior Counsel.

4.2 London Borough of Hackney

At the Licensing Committee hearing on 6th June, members heard that the London Borough of Hackney had introduced a “nil policy” with regard to sex establishments.

The policy became effective on 26th 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 Frame 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

5. **CAMBRIDGE CITY COUNCIL**

5.1 Cambridge currently has two licensed sex shops and one sexual entertainment venue. The sexual entertainment venue comes within the new licensing powers. They currently operate without cause for concern although occasional complaints are received about street noise from the sexual entertainment venue. See appendix E for locations.

5.2 Only fifteen consultation responses were received with regard to the draft policy, seven of which contained representations asking the Council to adopt a “nil policy”. No responses were received from the Police or other enforcement agencies. Bearing in mind the extent of the consultation carried out in Cambridge, it is not known why there was such a low response level.

5.3 By contrast, 30 responses were received to the public consultation on the Council’s Licensing Act policy and substantial representations were received from the Police and members of the public supporting a cumulative impact policy in a number of areas within the City.

5.4 Currently there has been no opportunity for the public to comment on the proposed “nil policy” amendments to the draft sex establishments policy. Any further consultation would have to consult with those people and groups previously consulted. A copy of the consultation letter is attached as Appendix F

6. THE COUNCIL'S VISION

6.1 The 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 for the future of our City, a vision that we share with Cambridge citizens and with partner organisations.

Our vision is for:

- A city which is diverse and tolerant, values activities which bring people together and where everyone feels that have a stake in the community
- A city which recognises and meets needs for housing of all kinds – close to jobs and neighbourhood facilities
- A city which draws inspiration from its historic centre and achieves a sense of place in all of its parts with generous urban open spaces and well designed buildings
- A city in the forefront of low carbon living and minimising its impact on the environment from waste and pollution
- A city whose citizens feel they can influence public decision making and are equally keen to pursue individual and community initiatives
- A city where people behave with consideration for others and where harm and nuisance are confronted wherever possible without constraining the lives of all
- A city where getting around is primarily by public transport, bike and on foot
- A city with a thriving knowledge-based economy that benefits the whole community and builds on its reputation as a global hub of ideas and learning.

6.3 Local Sustainable Community Strategy

The Local Strategic Partnership aspires to: Cambridge being a place that is fair for all, where the need for housing of all kinds, close to jobs and neighbourhood facilities, is met and where people:

- Influence decisions that affect their communities
- Are comfortable with the diversity of the area where they live
- Have the freedom and support to pursue individual and community initiatives that will improve quality of life
- Feel they have a stake in their communities and inequalities between different communities is reduced
- Are at the forefront of improving quality of the environment so that patterns of consumption, energy use and travel do not affect the well-being of future generations
- Want to live

The LSP has identified four priority areas that it feels are important in improving the quality of life for people living in Cambridge.

The priority issues are:

- Engaging communities to create better outcomes
- Reducing inequalities
- Improving our environment and being at the forefront of low carbon living
- Providing sustainable communities that meet local need and are places where people want to live.

6.4 Local Development Framework Core Strategy

This Local Plan sets out the City Council's policies about how the demands of growth and change can be met without compromising the many qualities that make Cambridge such a wonderful place.

The City is set to grow rapidly – by up to 30% in population over the next 15 years – and those who live and work here will experience changes in the physical surroundings and our sense of the community in which we live. We will be joined by thousands of new citizens, and many new businesses and other organisations, which will help to shape the physical character and the spirit of the City.

This growth will bring with it many benefits – a better chance for our key workers and young people to find an affordable home in the City; the prospect of enhanced economic prosperity for us all; the provision of new cultural, shopping and leisure services; and opportunities to create new

and improved green spaces within the urban framework and linking to the countryside beyond.

7.0 SUMMARY

7.1 Cambridge City Council has a vision and the strategies in place for implementing that vision over a 15-year span. A sexual entertainments venues policy must sit within the wider aspirations for the area and fit in with that vision.

When the Council considers what the appropriate number of sex establishments is, either within the whole of the city, or within a particular locality in the city, it must take into account a range of possible factors in order to make a reasonable decision based on facts.

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 previously 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 of £30,000,

or

2. To adopt the Sex Establishment Policy as originally drafted and as set out in Appendix A, 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 Equalities Impact Assessment (EqIA) (Appendix G) 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. Cambridgeshire Constabulary and various community bodies were included in the consultation process for the statement of licensing policy.

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
- Cambridge City Council vision statement
- Cambridge City Council Local Sustainable Community Strategy
- Cambridge City Council Local Development Framework Core Strategy

APPENDICES

Appendix A Minutes to meeting held on 6th June 2011 (See item 3 of agenda)

Appendix B Draft Sex Establishment Policy

Appendix C City of London Sex Establishment Venue Policy

Appendix D London Borough of Hackney Sex Establishment Policy
Appendix E Location Map of Sex Establishment Venues in Cambridge City
Appendix F Copy of the consultation letter
Appendix G Equality Impact Assessment

To inspect these documents contact Yvonne O'Donnell on extension 7951.
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