

ASSEMBLY

20 November 2019

Title: Sex Establishment Licensing Policy 2019 - 2022	
Report of the Cabinet Member for Enforcement and Community Safety	
Open Report	For decision
Wards Affected: None	Key Decision: No
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Summary <p>The Council currently acts as the local licensing authority for sex establishments under the Local Government (Miscellaneous Provisions) Act 1982, as amended by the Greater London Council (General Powers) Act 1986. The present local licensing regime covers sex shops, sex cinemas and sex encounter establishments.</p> <p>Adoptive provisions established under Section 27 of the Policing and Crime Act 2009 extended the potential scope of the Act to also include sex entertainment venues. To date, these provisions have not been adopted locally.</p> <p>While enquiries to the Authority concerning the licensing of such venues have been few in recent years, it is considered prudent, in the light of the ongoing regeneration of the borough, to now adopt these provisions. This will help to ensure that any future proposal to establish a sex entertainment venue within the borough may receive full and proper consideration and, in the event of any licence being granted, to enable such premises to be properly regulated.</p> <p>Any decision to adopt the amended provisions is required by law to be subject of public consultation. Public consultation on both the adoption of the amended provisions and, also, on the content of a draft revised, supportive sex establishments licensing policy has been carried out over the summer months.</p> <p>The consultation responses have now been collated and considered. This report summarises and presents those consultation responses and asks Assembly to adopt the amended provisions and the revised policy document accordingly.</p> <p>Full copies of the report on the consultation responses; the draft revised sex establishments licensing policy and associated standard licensing terms, conditions and restrictions, are appended for information.</p>	

This report was considered and endorsed by the Cabinet at its meeting on 15 October 2019.

Recommendation(s)

The Assembly is recommended to:

- (i) Adopt the provisions contained in Section 27 of the Policing and Crime Act 2009 extending the local sex establishments licensing regime to also include sex entertainment venues; and
- (ii) Adopt the Sex Establishment Licensing Policy 2019 as set out at Appendix 2 to the report, including the associated Standard Licensing Terms, Conditions and Restrictions for Sex Establishments as set out at Appendix 3 to the report.

Reason(s)

The adoption of the amended licensing provisions and the revised licensing policy will best place the Council to give proper consideration to any future proposal to establish a sex entertainment venue within the borough and to properly regulate any venue that might be granted a licence.

Such a step would support the Council's visions and priorities in empowering people; and promoting both inclusive growth and citizenship and participation.

1. Introduction and background

- 1.1 Part II and Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 established a national regime for the licensing of sex establishments, under adoptive provisions covering:
 - Sex shops; and
 - Sex cinemas.
- 1.2 This Authority adopted the provisions of the Act on 27 October 1982.
- 1.3 The scope of the Act was broadened in those areas of Greater London where the Act applied, through adoptive provisions contained in the Greater London Council (General Powers) Act 1986. This added an additional category of 'sex encounter establishments.
- 1.4 In 2008, this Council adopted a Sex Establishments Licensing Policy together with standard conditions applicable to all categories of licensed sex establishment. The policy is intended to set out the Council's approach to licensing; how licence applications will be determined; the Council's expectations of any licensed operator; and make clear the terms, conditions and restrictions under which any licensed premises may operate.
- 1.5 In order for the Council to properly fulfil its licensing functions and responsibilities and ensure proper protections are afforded to the local community, the Council must be able to deploy the full range of regulatory powers available to it.

- 1.6 Section 27 of the Policing and Crime Act 2009 then sought to further extend the scope of the Act. Its primary effect was to remove 'loopholes' in the licensing of sex establishments that existed by way of the alcohol and entertainment licensing regime established under the Licensing Act 2003 by replacing the category of 'sex encounter establishments' under Schedule 3 with a new category of 'sex entertainment venues'. Local licensing authorities that adopt these provisions are able to additionally regulate lap dancing and similar venues. Note: 'Sexual entertainment venue' means any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer, such as lap dancing and striptease venues. 'Relevant entertainment' is defined as any live performance or live display of nudity which is of such a nature that, ignoring financial gain, it must be reasonably be assumed to be provided solely or principally for purpose of sexually stimulating any member of the audience whether by verbal or other means.
- 1.7 This Authority has not adopted the provisions of Section 27 to date. Enquiries to this Authority around sex establishments in recent years have been few. However, it is considered prudent, in the light of the ongoing regeneration of the borough, to now adopt these provisions so as to ensure that the Council is able to make use of all the regulatory powers available to it and be able to afford proper protections to local residents; responsible business operators; and premises users.
- 1.8 Without this adoption taking place, the Council's sex establishment licensing powers are limited mainly to sex cinemas and sex shops. The only licensing control that can be exerted are lap dancing and similar venues, through alcohol and music and dancing licensing legislation, which means that many of the real issues relating to such venues will not be matters of consideration.
- 1.9 It is important therefore that the new licensing provisions are adopted, and that the Council's sex establishments licensing policy is updated to be able to consider the new category of venues.
- 1.10 In order to pursue the adoption of the Section 27 provisions, the Council is required by law to firstly conduct public consultation on the matter. A public consultation exercise was carried out through the Summer of 2019 accordingly.
- 1.11 The consultation considered not only the adoption of the amended provisions but also the adoption of a supporting revised sex establishments licensing policy that considered the broadened remit of the licensing regime.
- 1.12 The consultation responses have been collated and considered. A summary of the consultation responses has been prepared and a copy is provided at Appendix 1 to this report. Some 'headlines' are provided in this report.
- 1.13 A copy of the revised draft policy document is provided at Appendix 2. A brief outline of the draft policy is provided in this report with some of the most important matters dealt with in more detail. Appendix 3 provides the associated revised standard licence terms, conditions and restrictions.

2. Proposals and Options

The response to the public consultation

- 2.1 The public consultation exercise ran through June to August 2019. At the heart of the consultation an online questionnaire providing multiple-choice answers was made available. The consultation sought views on whether the Council should use available adoptive provisions to extend the current sex establishment licensing regime to also include sex entertainment venues and, subject to this, on the content of a supportive draft revised sex establishment licensing policy.
- 2.2 Some 136 responses were received in total. Respondents were asked to select from multiple choice answers to the questions asked. Many respondents provided further additional comments.
- 2.3 The consultation response provided strong support for a local licensing scheme for sex entertainment venues.
- 91.9% of respondents supported the proposal;
 - 92.6% of respondents believe that the Council should be able to determine the matters to be taken into account when determining licence applications;
 - 91.9% of respondents believe the Council should be able to determine the locations that are suitable for a licence to be granted;
 - 95.5% of respondents believe that the Council should be able to determine the terms, conditions and restrictions under which any licensed premises might operate;
 - 75% of respondents did not agree that applications should be considered upon their own merits;
 - 80.5% of respondents believe that no area of the borough is suitable for a licensed sex entertainment venue to operate; and
 - 72.1% of respondents support a licensing establishing 'nil' as the appropriate number for local licensed sex establishments (a 'nil' policy).
- 2.4 When questioned about whether any area of the borough is suitable for a sex entertainment venue, 19 respondents provided views. These offered a number of different locations without any degree of strong support being demonstrated for any particular location.
- 2.5 Views were also sought on the draft revised sex establishments licensing policy and licence conditions:
- 91% of respondents considered the policy and conditions to be clear and easy to understand;
 - 73% of respondents considered the policy and conditions to be fair and reasonable;
 - 76% of respondents considered the policy and conditions to be proportionate;
 - 77% of respondents supported the proposed approach to determining licence applications;
 - 73% of respondents believe that the policy and conditions give appropriate consideration to equality issues; and
 - 43.1% of respondents consider the standard conditions to be appropriate.

- 2.6 Respondents were asked what they considered to be the most important issues to be taken into account when deciding whether a sex establishment licence should be granted. In total 103 respondents offered their views. Around 100 different issues were raised in response.
- 2.7 The most common issue raised was that of location. Particular concern was shown around the proximity of venues to residential accommodation and schools.
- 2.8 Other matters commonly raised were
- Impact on local residents;
 - Impact on image of the borough / local area;
 - Crime and anti-social behaviour;
 - Security and safety;
 - Exploitation of workers;
 - Operating hours;
 - Noise nuisance; and
 - Parking.
- 2.9 Around 20% of those who commented emphasised that they do not believe any licences should be granted.
- 2.10 A further 49 additional comments were given at the end of the questionnaire. Again, many different matters were raised. Most commonly (circa 40%) respondents emphasised their opposition to the grant of any licences.

3. The draft revised sex establishment licensing policy

- 3.1 The Local Government (Miscellaneous Provisions) Act 1982 enables a local licensing authority to:
- Grant, transfer and renew a licence to any applicant, on such terms, conditions and restrictions as may be so specified;
 - Establish a licensing policy, as long as this does not prevent any individual application from being considered on its own merits;
 - Determine the number of sex establishments that are considered appropriate in a relevant locality (and that number may be nil);
 - Determine where the grant or renewal of a licence would be inappropriate having regard to
 - The character of the locality;
 - The use to which any premises in the locality are put; and
 - The layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.
 - Revoke licences; and
 - Carry out enforcement actions.
- 3.2 The draft policy not only provides for the inclusion of the new category of sex entertainment venues but represents a thorough rewrite to bring the Council up to date with latest local authority approach on licensing. It does not change existing licensing process and practice, but it does clarify how licence applications will now be determined.

- 3.3 It will continue to protect the right of any person to make a representation against an application and it establishes that applications for licences will continue to be considered on their own merits but against a new policy stance that the Council does not consider any area of the borough to be suitable location for sex establishments. A 'nil' policy. This is supported by new 'policy presumptions' setting out criteria or situations where sex establishment licences will not be granted (e.g. near schools, places of worship, hospitals and medical facilities etc).
- 3.4 The draft policy also establishes that any application made will be subject of very thorough consideration and that a very broad and diverse range of issues are relevant matters for consideration. These range from the days, times and hours of operation; to the premise's external appearance and advertising; the location; protections afforded to customers, staff and performers; potential for anti-social behaviour and crime and disorder and more. It places particular focus on matters such as preventing sexual exploitation and protection of children and young adults.
- 3.5 It also incorporates a newly revised set of standard terms, conditions and restrictions to be attached to any licence application that might be granted. These are broken down into a general section applying to all sex establishments and with new specific additional conditions which relate to sex shops, sex cinemas and sex entertainment venues.
- 3.6 The section on sex entertainment venues is especially detailed and gives particular attention to matters such as a code of conduct for both customers and performers; performers welfare; use of booths and more. The draft policy also includes a more detailed section on the council's approach to enforcement.
- 3.7 The draft policy has been compiled having regard to the content of the Act. It comprises of five main sections, with further information provided in appendices, as follows:

Section One – Introduction

- 3.8 Section One sets out the Council's Vision and Priorities.

Section Two - Purpose and Scope of the Policy

- 3.9 The aim of the policy is:

- To reinforce to elected members on the Licensing and Regulatory Committee, the powers available to the Council as licensing authority
- To inform licence applicants how this Council will make licensing decisions and how licensed premises are likely to be able to operate within its area
- To set out how this Council intends to support responsible operators and take effective actions against irresponsible operators
- To inform residents, business and licensed premises users, the protections afforded to the local community within the Act and by this Council
- To support licensing decisions that may be challenged in a court of law

- 3.10 The scope of the policy applies to all categories of sex establishment.

Section Three – Procedure and Principles

- 3.11 This section explains the processes around licence applications; public consultation; objections; and public hearings.

Section Four – Licensing Decisions and Conditions

- 3.12 This section deals with the decision-making process. It sets out the reasons for refusal, as established by statute, and details the range of matters that this Authority will take into account when determining licence applications. In particular:

Numbers of premises that are appropriate for a locality

- 3.13 Section 12(3)(c) of Schedule 3 of the Act establishes that one reason for refusal of a licence is that ‘the number of sex establishments in the relevant locality at the time the application is made is equal to or exceeds the number which the authority consider is appropriate for that locality’. The appropriate number may be set at nil.
- 3.14 ‘Locality’ is not defined within the Act. For the purpose of this draft policy, ‘locality’ has been interpreted as being the ward in which the premises that is subject of the application is situated, although a different view may be taken following representations raised in individual cases (for example, where a premises subject of an application borders another ward).
- 3.15 While the policy acknowledges that every application for a licence is required by law to be considered upon its own merits, it proposes, that having had regard to the considerations set out in the policy document (including the responses to the public consultation) that no ‘locality’ within the borough is identified as being appropriate for sex establishments. The appropriate number for each locality (or ward) is thereby set as nil.

The character of the locality and the use to which any premises in the vicinity are put

- 3.16 Section 12(3)(d) of Schedule 3 of the Act establishes that a reason for refusal is that ‘the grant or renewal of the licence would be inappropriate for that locality, having regard –
- To the character of the locality; or
 - To the use to which any premises in the vicinity are put; or
 - To the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.
- 3.17 For the purposes of consultation, the draft policy takes the position that there should be a general policy presumption against permitting further licensed sex related activities either adjacent to or in the vicinity of premises in the following defined categories, irrespective of location:
- Schools and other facilities used primarily by children and young persons, including playgroups and playgrounds;
 - Facilities used primarily by vulnerable adults and adult social care facilities;
 - Facilities used primarily by women;
 - Places of worship;

- Hospitals and medical facilities;
- Community facilities or public buildings;
- Community leisure facilities and open spaces;
- Cultural facilities, including cinemas, theatres and galleries;
- Residential accommodation; and
- Another licensed sex establishment.

Section Five – Enforcement.

3.18 This section details the Council’s and partner services approach to enforcement. It is prepared to be consistent with the Council’s Enforcement Policy which sets out the principles for effective enforcement.

4. Consultation

4.1 The public consultation took place over 10 weeks between 17 June and 24 August 2019. It comprised of:

- Direct notifications sent to:
 - Interested partner services;
 - Local licence holders and trade representative groups;
 - Representatives of local resident and known local interest groups;
 - Ward councillors; and
 - Neighbouring licensing authorities.
- An online questionnaire made available through the resident’s engagement forum, together with a copy of the policy and supporting information;
- Awareness raising through use of: Social media; and
- An article in the Council’s e-newsletter.

4.2 All responses have been collated and considered in preparation of this report.

4.3 This report was considered and endorsed by the Cabinet at its meeting on 15 October 2019.

5. Timetable for progression

5.1 Any decision to adopt the provisions of Section 27 of the Policing and Crime Act 2009 must be taken by the Assembly.

6. Legal Implications

Implications completed by Dr Paul Feild, Senior Corporate Governance Lawyer

6.1 As outlined in the body of this report, the 2009 Act inserted a new category of “sex establishment” called a “sexual entertainment venue” into Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 bringing the licensing of lap dancing and pole dancing clubs and other similar venues under the regime set out in the Local Government (Miscellaneous Provisions) 1982 Act, which is currently used to regulate establishments such as sex shops and sex cinemas

6.2 The report explained the need for the Council to prepare for such applications as may be made by having a Policy. By having a comprehensive policy which has

been open to proper consultation the Council as a licensing authority is enabled to set clear operating criteria in terms of what will be permissible and what will not with emphasis against such establishments being within the vicinity of other identified premises such as for example, but not limited to schools and other facilities used primarily by children and young persons, furthermore it will enable standard conditions to be understood by all.

- 6.3 As mentioned in the body of this report as a licensing body and local authority the Council is subject to the Public Sector Equality duty and this must inform the policy and licensing of the activities. Furthermore, such arrangements must be open to review for effectiveness over time.
- 6.4 After the Consultation response has been considered, the final policy will need to be approved by the Assembly

7. Financial Implications

Implications completed by Katherine Heffernan, Finance Group Manager

- 7.1 This report seeks approval to regulate licensing decisions and ensures an adopted policy will ensure consistency in licensing practices and processes.
- 7.2 There are no direct financial implications arising from the implementation of this draft policy.

8. Other Implications

- 8.1 **Risk Management** – The adoption of a sex establishments licensing policy will both support good decision making and strengthen the Council’s position in the case of any relevant future decision being appealed.
- 8.2 **Corporate Policy and Customer Impact** – The draft policy acknowledges and supports the broader Council vision and priorities. It provides for openness in decision-making and benefits all interested parties by making the licensing process clear and transparent.
- 8.3 **Safeguarding Children** – A primary concern in the preparation of this policy has been around safeguarding and the prevention of child sexual exploitation. It has been compiled with the assistance of the Child protection team.
- 8.4 **Health Issues** - Although public health is not a specific licensing objective, the draft policy recognises the broad range of relevant issues that must come into consideration when determining licence applications and controlling licensed premises. The draft policy intends to ensure that adequate protections are provided for vulnerable persons.
- 8.5 **Crime and Disorder Issues** – Similarly, the draft policy recognises that crime and disorder issue are also relevant and takes these into account. The development of the policy is being carried out in conjunction with expert responsible authorities.

8.6 **Property / Asset Issues** - None directly. Any licensable activity provided on Council owned or operated venues would be subject to the same controls as other commercially run venues or facilities.

Public Background Papers Used in the Preparation of the Report: None

List of appendices:

- Appendix 1 – Summary of consultation responses
- Appendix 2 - Draft Sex Establishment Policy
- Appendix 3 – Standard Licence terms, conditions and restrictions