

LICENSING AND REGULATORY COMMITTEE

17 July 2019

Title: Public Consultation on the adoption of the amended provisions and Draft Sex Establishments Policy 2019	
Report of the Director of Law and Governance	
Open Report	For information
Wards Affected: None	Key Decision: No
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Accountable Director: Andy Opie, Operational Director for Enforcement and Community Safety	
Accountable Strategic Leadership Director: Fiona Taylor, Director of Law and Governance	
Summary <p>The Council currently acts as 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 licensing regime deals with sex shops, sex cinemas and sex encounter establishments.</p> <p>Adoptive provisions established under Section 27 of the Policing and Crime Act 2009 further extended the scope of the Act to also include sex entertainment venues. To date, these provisions have not been adopted locally. Enquiries to the Authority concerning the establishment of such venues have been few in recent years; however, it is considered prudent in the light of the continued regeneration of the borough, to now adopt these provisions so as to ensure that any future approaches for licensing may receive full and proper consideration and enable such premises to be properly regulated.</p> <p>The decision to adopt the amended provisions is required, by law, to be subject to public consultation.</p>	
Recommendation(s) <p>The Licensing and Regulatory Committee is recommended to</p> <ul style="list-style-type: none">(i) Provide observations on the revised draft Policy, at Appendix A;(ii) Note that the draft Policy will be subject to consultation before being presented to Cabinet and Assembly for adoption.	
Reason(s) <p>The Terms of Reference for the Licensing and Regulatory Committee include the monitoring and reviewing of the discharge of the Council's functions as a Licensing Authority. The Committee's observations on the revised draft policy will form part of the</p>	

wider feedback obtained via a public consultation on the draft policy. The issues arising from the consultation will be reported to the Cabinet and Assembly, who will be asked to adopt the final version of the policy.

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 first adopted a Sex Establishments Licensing Policy together with standard conditions applicable to all categories of licensed sex establishment. Local licensing authorities may establish a policy relating to the licensing of sex establishments, as long as this does not prevent any individual application from being considered on its merits at the time the application is made.
- 1.5 Section 27 of the Policing and Crime Act 2009 set out to extend the effects of the 1986 amendments nationally; 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; and, further extend the scope of the Act. A new category of 'sexual entertainment venues' replaced 'sex encounter establishments' within the scope of Schedule 3. Local licensing authorities that adopt these provisions are able to additionally regulate lap dancing and similar venues.
- 1.6 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 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.
- 1.7 In order to pursue the adoption of the Section 27 provisions, the Council must firstly conduct public consultation on the matter.
- 1.8 It is considered important that in the event that the Council should decide to adopt the Section 27 provisions, the Council's sex establishment policy is updated and revised.

1.9 A copy of the revised draft policy is provided as **Appendix A**. A brief outline of the draft policy is given in this report. Some of the more important issues are dealt with in greater detail.

2. **Proposals and options**

Section 27 of the Policing and Crime Act 2009

2.1 Section 27 of the Policing and Crime Act 2009, where adopted, introduces a new category of 'sexual entertainment venue' into the sex establishments licensing regime.

2.2 Under this legislation '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. '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.

2.3 A range of exemptions apply. The adoption of Section 27 also enables 'sex entertainment venues' to be brought under the remit of the Council's established licensing policy.

3. **A sex establishments 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;
- 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.
- Prescribe standard conditions;
- Revoke licences; and
- Carry out enforcement actions.

4. **A Draft Barking and Dagenham Sex Establishment Licensing Policy**

4.1 A copy of the draft policy document is attached at **Appendix A** to this report.

4.2 The draft policy comprises of five main sections, with further information provided in the appendix, as follows:

- **Section One – Introduction**

This sets out the Council's Vision and Priorities.

- **Section Two - Purpose and Scope of the Policy;**

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

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

- **Section Three – Procedure and Principles;**

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

- **Section Four – Licensing Decisions and Conditions**

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

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.

'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).

While the policy acknowledges that every application for a licence is required by law to be considered upon its own merits, it proposes for the purpose of consultation, that having had regard to the considerations set out in the policy document that no 'locality' within the borough is identified as being appropriate for sex establishments. The appropriate number for each locality (or ward) is thereby initially set as nil.

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

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.

- **Section Five – Enforcement.**

The Policy will use the Council’s Enforcement Policy, which sets out the principles for effective enforcement of this licensing regime.

4.3 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.

5. Consultation

5.1 The public consultation will take place over 12 weeks. It is intended to comprise 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 on the Council’s web site, together with a copy of the policy and supporting information; and
- Awareness raising through use of:
 - Social media;
 - Flyers distributed at key points in the borough; and
 - An article in the Council’s e-newsletter.

5.2 All responses will be reviewed and reported back to Cabinet and the Assembly together with the final version of the policy.

6. Timetable for progression

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

6.2 The public consultation started on 24 June, running to 16 August 2019 and is on the Council new resident's engagement forum via the link below:
<https://oneboroughvoice.lbbd.gov.uk/>

6.3 Following review of consultation responses and any necessary update of the draft policy, a final decision on adoption may be taken in October 2019 with a view to having the licensing process up and operable for the next financial year.

7. Legal Implications

Implications completed by Dr Paul Feild, Senior Corporate Governance Lawyer

7.1 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

7.2 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.

7.3 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.

7.4 After the Consultation response has been considered, the final policy will need to be approved by the Assembly

8. Financial Implications

Implications completed by Katherine Heffernan, Finance Group Manager

8.1 This report seeks approval to regulate licensing decisions and ensures an adopted policy will ensure consistency in licensing practices and processes.

8.2 There are no direct financial implications arising from the implementation of this draft policy.

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

List of appendices:

- Appendix A – Draft Sex Establishment Policy