

Telford & Wrekin Council

Licensing Committee – 29th November 2011

Sex Establishment Policy

Report of Service Delivery Manager – Public Protection

1. Purpose

- 1.1 To inform Members of the results of the consultation on the Council's revised draft policy for the regulation of Sex Establishments.

2. Recommendation

- 2.1 That Members' consider the results of the consultation.
- 2.2 That Members resolve for the reviewed Policy to come into effect on 1st December 2011.

3. Summary

- 3.1 The report of the Service Delivery Manager: Public Protection was received by Members of the Council's Licensing Committee on 1st December 2010 seeking consideration of a revised Sex Establishment Policy following adoption by the Council on 7th October 2010 of the amendments made by Section 27 of the Policing and Crime Act 2009 to Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982.
- 3.2 Members resolved that the draft policy for the regulation of sex establishments as detailed within the report be approved subject to a period of public consultation.
- 3.3 Representations have been received by the Council's Licensing Service in relation to the consultation on the draft policy.

4. Previous Minutes

- 4.1 LC22 - Licensing Committee 8th September 2010.
LC41.- Licensing Committee 1st December 2010

5. Information

5.1 Background

- 5.1.1 On 7th October 2010 Telford & Wrekin Council adopted the amendments made by Section 27 of the Policing and Crime Act 2009 to Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982.
- 5.1.2 The 1982 Act makes no provision for the publication of a sex licensing policy. It is considered good practice to have a policy in place as it brings transparency, accountability, certainty and consistency. Telford & Wrekin Council already has a Sex Establishment Policy. This policy has been revised and redrafted in light of Full Council adopting the amendments made by Section 27 of the 2009 Act 2009 to Schedule 3 to the 1982 Act. The revised draft policy is attached at Appendix A.
- 5.1.3 On 1st December 2010 Members of the Council's Licensing Committee considered the revised draft policy and resolved to commence a consultation exercise on the draft document.
- 5.1.4 The consultation commenced on 6th May 2011 and ended on 29th July 2011. The Licensing Authority included in the consultation all premises licence holders in the area, community groups and associations and Town and Parish Councils. The revised draft Policy was also made available at Council Offices and local libraries and a copy was posted on the Council's website.. A copy of the consultation letter and monitoring form is attached at Appendix B and a full list of those consulted is attached at Appendix C.
- 5.1.5 The consultation resulted in eight responses from a mix of Town and Parish Councils, a rowing club and elected Members of Telford & Wrekin Council. A table containing the responses from consultees is attached at Appendix D.
- 5.1.6 The full response from Councillor Rae Evans is attached at Appendix E. The response recommends introducing a 'nil' policy for Sexual Entertainment Venues". It is permissible for a local authority to control the overall numbers of sex establishments in its area or just to control the numbers of a particular type of sex establishment in its area, however, each application must be considered on it's own merits.
- 5.1.7 The response, in giving reasons for introducing a nil policy, makes reference to Gender Equality. The Equality Act 2010, obliges Local Authorities, in the carrying out of their functions, to have due regard to the need to eliminate discrimination, harassment and victimisation. (Paragraph 5.2 of this report.). The Equality Impact Assessment carried out on this draft policy identifies a neutral impact on the majority of the protected characteristics.
- 5.1.8 The response from Councillor Evans also recommends additional standard conditions. The Authority may make criteria prescribing Standard Conditions to be applicable to licences for sex establishments, i.e. terms, conditions and restrictions on or subject to

which the licences are in general to be granted. Draft standard conditions are already included at Appendix A of the draft policy. Conditions, numbers 6 and 7, suggested in the response, are already included at 6.1 and 2.3 respectively in the standard conditions for Sex Entertainment Venues at Appendix A of the draft policy.

- 5.1.9 Standard conditions act as default conditions. There is a presumption that every licence granted, renewed or transferred is subject to such conditions, unless the conditions have been expressly excluded or varied.
- 5.1.10 In addition to standard conditions, if these are not sufficient to meet concerns which have been identified, a Local Authority may also attach individual conditions to licences upon grant, renewal or transfer to satisfy concerns relevant to individual premises.
- 5.1.11 The Provision of Services Regulations prohibit the imposition of conditions which duplicate requirements and controls to which the service provider (such as a lap-dancing provider) is already subject, e.g. under the Licensing Act 2003.
- 5.1.12 The recommendations in Councillor Evans' response in relation to the Council's Licensing Committee is not a matter which the Licensing Service, is able to comment on, save to report that all applications for a Sex Establishment Licence are considered individually at a hearing of the full Licensing Committee.

5.2 Equal Opportunities

- 5.2.1 An Equality Impact Assessment (EIA) has been carried out on this policy and has identified that this policy has a neutral impact on the majority of the protected characteristics (Age, Disability Gender, Gender reassignment, Race, Religion or belief and Sexual Orientation) and they will not be disadvantaged by the implementation of this policy. However, in relation to disability we have ensured that the policy reflects the requirements within the Equality Act 2010 section 20 which **requires applicants and licensees to take such steps as it is reasonable to avoid putting disabled people at a disadvantage caused by a physical feature, e.g. design or construction of a building, exist or access to a building and fixtures and fittings etc.** The Council expects applicants to be aware of and comply with all legislation relating to unlawful discrimination. Whilst applications cannot be determined on moral grounds, the policy states that the grant or renewal of the licence would be inappropriate, having regard to the character of the relevant locality, or the use to which any premises in the vicinity are put, or to the layout, character or condition of the premises. A copy of the Equality Impact Assessment is attached at Appendix F.

5.3 Environmental Impact

- 5.3.1 Not applicable for the purposes of this Report.

5.4 Legal Comment

5.4.1 There is no legal requirement to have a policy but it is best practice to do so. It is a matter for council to set it's own policy but in doing so it should have regards to the information provided in the report.

5.4.2 Section 13 of the Local Government (Miscellaneous Provisions) Act 1982 provides a power to prescribe standard conditions.

5.4.3 References to the relevant legislation are contained in the body of the report.

5.5 Links with Corporate Priorities

5.5.1 This report has links to the following Priority Plan objectives :

1. Creating a safer community

(b) Safeguarding the health and safety of the community

5.6 Financial Comment

5.6.1 There are no direct financial implications of the actions recommended within this report. JAC 141111

5.7 Risks and Opportunities

5.7.1 In proposing this action the Corporate Risk Management Methodology has been complied with. This approach is not intended to eliminate risks but to identify the risks and manage them. However not all risks can be managed all of the time and some risks may not have been identified.

5.7.2 The following key risks and opportunities associated with this action have been identified and assessed and arrangements will be put in place to manage them.

(i) Unlawful discrimination – the policy clearly states the responsibility that applicants and licensees have with regard to the Equality Act 2010.

(ii) Legal challenge – the policy states that the Council is duty bound to consider the rights that applicants for licences may have under Article 10 (right to freedom of expression) and Article 1, Protocol 1 (protection of property) of the European Convention on Human Rights.

6. Ward Implication

6.1 Borough Wide Implications

7. Background Papers

7.1 Local Government (Miscellaneous Provisions) Act 1982

7.2 Policing and Crime Act 2009

7.3 Home Office Sexual Entertainment Venues Guidance for England

- and Wales
- 7.4 Sex Licensing by Philip Kolvin QC
 - 7.5 Equality Act 2010
 - 7.6 Human Rights Act 1998
 - 7.7 Licensing Act 2003

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Appendices - Contents	
Appendix A	Copy of the Council's revised draft Sex Establishment Policy that was considered by the Licensing Committee on 1 st December 2010.
Appendix B	Consultation Letter and Monitoring Form
Appendix C	List of Consultees
Appendix D	Consultee Table of Responses
Appendix E	Response from Councillor Rae Evans
Appendix F	Equality Impact Assessment