

TITLE OF REPORT: ADOPTION OF REVISED SCHEDULE 3 OF THE LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982 AND PROPOSED SEX ESTABLISHMENT POLICY 2011-16

REPORT OF THE STRATEGIC DIRECTOR OF PLANNING, HOUSING & ENTERPRISE

1. PURPOSE OF REPORT

- 1.1 The purpose of this report is to summarise the responses to the public consultation in respect of the Council's Sex Establishment Policy.
- 1.2 The Licensing and Appeals Committee, having considered this report, can make a recommendation to Cabinet in respect of the Policy.

2. FORWARD PLAN

- 2.1 This report contains a recommendation on a key decision that was first notified in the Forward Plan on 1st September 2010.

3. BACKGROUND

- 3.1 The licensing of sex establishments currently only relates to sex shops and sex cinemas, although there has been a recent change in legislation that will be detailed later in this Report. It is not currently a process for licensing premises such as brothels or sexual encounter establishments (more commonly known by names such as lap dancing clubs).
- 3.2 Having adopted Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 ("the Act") with effect from 1st March 1983, the Council are able to control and regulate sex shops and sex cinemas within North Hertfordshire. No such premises would be able to lawfully operate without first having obtained a licence from the Council.
- 3.3 With effect from 3rd April 2008, the Council adopted its first modern, effective policy document that ensured that the trade and the public had a Policy that fully explained the licensing process. It also ensured consistency of approach by the Council ensuring fairness to the trade.
- 3.4 The Policy is now due for its three yearly review as provided for within the Policy, the new Policy due to take effect from 1st January 2011.

4. APPROACH TO THE SEX ESTABLISHMENT POLICY

- 4.1 The development of the Statement of Licensing Policy has been based upon a consultation process undertaken by the Licensing and Enforcement Team. The format of the Policy was devised having considered a range of Local Authority policies across the country and the effectiveness of the current Policy document.
- 4.2 The consultation process was undertaken between Monday 7th June 2010 and Monday 30th August 2010. A policy consultation page was created on the

Council's website including the proposed policy and an explanation of the process for making a representation.

4.3 A letter advising of the consultation process was sent to each of the following consultees:

- All existing sex establishment licence holders
- Hertfordshire Constabulary
- NHDC Councillors
- NHDC Legal Services
- Public Libraries within North Hertfordshire
- Town Centre Managers
- All existing premises licence/certificate holders as defined by the Licensing Act 2003
- Chamber of Commerce
- Neighbouring Authorities in Hertfordshire and Bedfordshire
- Responsible Authorities as defined by the Licensing Act 2003

4.4 A summary of the responses to the consultation on the proposed Policy is attached as **Appendix A to this report**.

4.5 It was felt that in general terms the Policy appeared to be working well, therefore, no significant changes were proposed in respect of Policy content.

4.6 Due to changes in the legislation, the Policy was amended to include the licensing of sexual entertainment venues that now falls within the Council's remit. The revised Policy is attached as **Appendix B to this report**.

5. CONSIDERATIONS

5.1 Currently, the Council are unable to regulate sexual entertainment venues (more commonly known as lap dancing/ strip clubs) as these provisions of the Act relate to inner London venues only.

5.2 The Policing and Crime Act 2009 amends the Local Government (Miscellaneous Provisions) Act 1982 to include the ability for authorities outside of London to regulate sexual entertainment venues.

5.3 The definition of a sexual entertainment venue is:

"...any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer."

5.4 Relevant entertainment is defined as:

"any live performance, or any live display of nudity"

5.5 Other relevant definitions include:

audience *"audience includes an audience of one"*

display of nudity *"in the case of a woman, exposure of her nipples, pubic area, genitals or anus; and in the case of a man, exposure of his pubic area, genitals, or anus"*

- 5.6 Grandfather rights are included within the new legislation for existing premises, however, North Hertfordshire currently have no such premises.
- 5.7 There is an exemption within the Act for premises that would ordinarily qualify as a sexual entertainment venue but:
"...there have not been more than eleven occasions on which relevant entertainment has been so provided which fall (wholly or partly) within the period of 12 months ending with that time;

no such occasion has lasted for more than 24 hours; and

no such occasion has begun within the period of one month beginning with the end of any previous occasion..."
- 5.8 It is clear, therefore, that the legislation is targeted particularly at premises that provide regular sexual entertainment such as lap dancing clubs, strip clubs, etc.. Infrequent gentlemen's/ladies nights would not ordinarily be effected by these proposals.
- 5.9 Currently, any premises within North Hertfordshire that has the appropriate entertainment licence under the Licensing Act 2003 would be able to act as a sexual entertainment venue without the need for a sex establishment licence.
- 5.10 If the Council decide not to adopt the revised Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, that will continue to be the case and the Council would have limited, if any, control over the activities of such premises. The revised Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 is attached as **Appendix C to this report (Note: the additions to Schedule 3 are shown in bold in Appendix C)**.
- 5.11 If the Council were to adopt the revised Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 and the proposed Sex Establishment Policy, the Council would be able to regulate and control such premises including the imposition of the specialised conditions included within the proposed Policy. This would allow the Council to restrict the location and numbers of such venues in the same way as it currently regulates sex shops and sex cinemas. It is therefore the recommendation of Officers that the Licensing and Appeals Committee recommend to Full Council that it adopt the revised Schedule 3 and recommend to Cabinet that it adopt the revised Policy.
- 5.12 Whilst the previous Policy was adopted for a period of three years, it is proposed that the new Policy is adopted for a maximum period of five years. By setting a maximum period, this ensures that the Policy is reviewed on a regular basis to ensure its effectiveness and relevance, however, a five year period would allow more flexibility, particularly in ensuring that all licensing policies are not subject to review at the same time.

6. LEGAL IMPLICATIONS

- 6.1 There is no legal requirement for a Sex Establishment Policy, as with the Licensing Act 2003 and Gambling Act 2005.
- 6.2 A policy would ensure a transparent and consistent approach to licensing that would reduce the opportunity for challenge through the Courts.

- 6.3 Whilst there is always a right of appeal through the Courts to a decision of the local authority in respect of their licensing function, challenges to a particular decision are more likely to fail if the Council can demonstrate that it has adhered to its published policy and that there was no justifiable reason to depart from it.
- 6.4 Having adopted Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 with effect from 1st March 1983, the Council are able to control and regulate sex shops and sex cinemas within North Hertfordshire. The amendments to Schedule 3, by virtue of the Policing and Crime Act 2009, allow local authorities to regulate sexual establishment venues only if they choose to adopt the revised Schedule 3. A pre-cursor to including Sexual Entertainment Venues in this Policy is that the revised Schedule 3 be adopted. The legislation requires that this adoption is made by Full Council. If it is not adopted, the Council will not be able to regulate Sexual Entertainment Venues in North Hertfordshire and they would be able to operate without a Sex Establishment Licence. The Council would, however, be able to continue to regulate sex shops and sex cinemas.

7. FINANCIAL AND RISK IMPLICATIONS

- 7.1 The Council is able to set its own local fees for sex establishment licensing which should be realistic in terms of full cost recovery of the administration and enforcement of the licensing regime within the constraints of the legislation.
- 7.2 This Statement of Licensing Policy will not place any new financial resource implications on the Council.

8. HUMAN RESOURCE AND EQUALITY IMPLICATIONS

- 8.1 This Sex Establishment Policy will not place any new human resource implications on the Council. Any applications received as a result of the new sexual entertainment venue provisions will be dealt with by the existing licensing personnel.
- 8.2 The Council incorporates the statutory equalities duties which apply to all its activities into policies and services as appropriate, as set out in the Council's Corporate Equality Strategy. We also recognise that in our society, groups and individuals continue to be unfairly discriminated against and we acknowledge our responsibilities to actively promote good community relations, equality of opportunity and combat discrimination in all its forms.

9. CONSULTATION WITH EXTERNAL AND INTERNAL STAKEHOLDERS

- 9.1 The Licensing Authority have consulted with all relevant parties as listed in paragraph 4.3 of this Report.
- 9.2 The current Statement of Licensing Policy, as used for the consultation, is available on the Council's website. A hard copy can be forwarded on request.
- 9.4 A schedule of comments received and the action taken in respect of these comments is attached as **Appendix A of this Report**.
- 9.5 The proposed new Statement of Licensing Policy, incorporating amendments, is attached as **Appendix B of this Report**.

10. RECOMMENDATIONS

- 10.1 That the proposed Sex Establishment Policy, as attached at **Appendix B** to the report, incorporating the results of the public consultation exercise and including the new provisions for sexual entertainment venue licensing, be supported by the Licensing and Appeals Committee.
- 10.2 That the Licensing and Appeals Committee recommend the adoption of the Sex Establishment Policy to Cabinet, with effect from 1st January 2011 or from such time that Council adopt the amended provisions of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, whichever is the latter.
- 10.3 That the Licensing and Appeals Committee recommend to Full Council the adoption of the amended provisions of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, as attached at **Appendix C** to the report.

11. REASONS FOR RECOMMENDATIONS

- 11.1 A modern, effective policy will ensure that the trade and the public will have a document that fully explains the licensing process.

12. ALTERNATIVE OPTIONS CONSIDERED

- 12.1 An alternative option would be a Sex Establishment Policy that may differ in content and extent, for example not adopting the new sex establishment venue provisions.
- 12.2 An alternative option would be to have a 'nil resolution' policy that automatically precludes any new applications for sex establishments. The legislation does not provide for this, therefore any such policy would be unlawful. The proposed policy provides the opportunity for an application to be refused on several grounds as provided for in the legislation, including suitability of location and sufficiency of such premises within the area, where the Council has the option of determining the sufficiency of a specific area to be 'nil'.

13. APPENDICES

- 13.1 Appendix A – Schedule of comments received during the consultation, including recommendations.
- 13.2 Appendix B – Proposed Sex Establishment Policy.
- 13.3 Appendix C – Revised Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982.

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15. BACKGROUND PAPERS

- 15.1 Local Government (Miscellaneous Provisions) Act 1982.
- 15.2 Policing and Crime Act 2009.
- 15.3 Sex Establishment Policy 2008-11.