

LICENSING AND REGULATION COMMITTEE
10 March 2025

PART 1 – PUBLIC DOCUMENT

TITLE OF REPORT: **ADOPTION OF A SEX ESTABLISHMENT LICENSING POLICY**

REPORT OF: **THE LICENSING AND COMMUNITY SAFETY MANAGER**

EXECUTIVE MEMBER: **HOUSING AND ENVIRONMENTAL HEALTH**

COUNCIL PRIORITIES: **PEOPLE FIRST, SUSTAINABILITY, A BRIGHTER FUTURE TOGETHER**

1. EXECUTIVE SUMMARY

The purpose of this report is to adopt a sex establishment licensing policy incorporating minor amendments to the existing policy.

2. RECOMMENDATIONS

- 2.1. That the Committee be recommended to adopt the sex establishment licensing policy attached as Appendix A.

3. REASONS FOR RECOMMENDATIONS

- 3.1 The current policy worked well when the district did have a licensed sex shop, however some minor amendments are needed to ensure it remains fit for purpose, particularly in areas of safeguarding and the Council's White Ribbon commitment.
- 3.2 The adoption of a policy ensures that applicants, licence holders, and the public have a clear understanding of the licensing process and objectives; it also ensures a consistent and transparent approach.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 Consideration was given to adopting a 'nil resolution' whereby no sex establishment licences would be issued in the district. Whilst the legislation does not explicitly provide for this, case law has established that there is the opportunity for an application to be refused on the grounds 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'. Ultimately, the risks of such activity taking place in unregulated settings were deemed by the Licensing Team to be significant and therefore a 'nil resolution' is not suggested for progression.
- 4.2 No other options were considered as the previous policy is effective, save for the minor amendments proposed.

- 4.3 All licensing policies are subject to regular review and this policy can be reviewed at the appropriate time to ensure it remains fit for purpose.

5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS

- 5.1 The Executive Member for Housing and Environmental Health has been consulted and supports the proposed policy.
- 5.2 No other consultation has been undertaken with Members; it is the committee's role to consider the appropriateness of the proposed policy.
- 5.3 No public consultation was undertaken as there are currently no sex establishments in the district and the proposed policy only includes minor amendments that are not required to be subject to public consultation by virtue of section 4 of the existing policy. It should be noted that any application for a new license must go to a licensing sub-committee where objectors have the opportunity to have their views heard. If there was clear opposition at this point, the council could open the policy up for consultation.
- 5.4 A discussion was held at the Council's White Ribbon Steering Group (which includes officers and members) to consider whether it was appropriate to adopt a 'nil resolution' for the district, i.e. have a stated policy position not to licence sex establishments.
- 5.5 The policy includes provisions for public consultation regarding any future changes to the policy if it is determined appropriate to review standards in the future.

6. FORWARD PLAN

- 6.1 This report does not contain a recommendation on a key Executive decision and has therefore not been referred to in the Forward Plan.

7. BACKGROUND

- 7.1 The Local Government (Miscellaneous Provisions) Act 1982 Schedule 3 provides the legal framework for the control of sex establishments in England and Wales. The legislative framework is not an automatic entitlement and Council's must formally adopt the legislation if it wishes to regulate street trading in its area.
- 7.2 Having adopted Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 ("the Act") with effect from 1 March 1983, the Council are able to control and regulate sex shops, sex cinemas and sexual entertainment venues¹ within North Hertfordshire. No such premises would be able to lawfully operate without first having obtained a licence from the Council.
- 7.3 In order to ensure a clear and transparent licensing process, the Council adopted its first modern, effective policy with effect from 3 April 2008 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.

¹ Any live performance involving nudity for the purpose of sexually stimulating an audience (introduced by virtue of the Policing and Crime Act 2009) for example, lap dancing or pole dancing

- 7.4 The Policy was reviewed and amended with effect from 4 January 2011 following a public consultation process, incorporating the new provisions for regulating sexual entertainment venues that did not exist when the original Policy was adopted. In order to regulate the new sexual entertainment venue provisions, Schedule 3 of the Act, as amended, had to be adopted. The Council adopted the revised Schedule 3 of the Act on 11 November 2010.
- 7.5 The policy was further reviewed, amended and adopted with effect from 5 February 2018.

8. RELEVANT CONSIDERATIONS

- 8.1. In order to assist the committee, amendments in the proposed policy have been highlighted red in Appendix A.

Existing policy

- 8.2 The existing policy has worked well since its initial adoption, albeit there has only been one sex shop in the district which closed in 2019. The only issue raised about that premises was advertising on roadside billboards significantly away from the premises which falls outside the remit of this policy.

Nil resolution

- 8.3 Whilst the legislation does not explicitly provide for this, case law has established that there is the opportunity for an application to be refused on the grounds 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'.
- 8.4 Consideration was given to a nil resolution as part of the Action Plan of the White Ribbon Steering Group. There is no doubt that there is a moral argument against these type of premises, as well as concerns about the broader impacts of the sexual objectification of women and the ways in which this objectification may be legitimised by granting licenses to such venues. However this could be countered by not over-regulating and restricting personal choice.
- 8.5 A significant factor in this decision is whether the performers can be adequately protected in terms of welfare and safety.
- 8.6 The biggest risk in introducing a nil resolution is forcing this activity underground in an unregulated environment. There is also an exemption for this activity on a premises provided it is limited to no more than eleven times per year and there is at least a month's gap between performances. This would also lead to unregulated activities.
- 8.7 At the 2024 Institute of Licensing Conference there was a speaker on this topic who had long campaigned for a nil resolution in their district. They spoke about following the nil resolution, the sexual entertainment providers exploited the exemption to continue to host sexual entertainment on a regular basis across various unlicensed premises in their district. The speaker concluded that it was better to strongly regulate the activity than allow it to take place without any safeguards.

- 8.8 In order to safeguard any performers in sex establishments we, on balance, believe it preferable to regulate sex establishments.

White Ribbon

- 8.9 To support the Council's commitment to White Ribbon, a section has been added to the policy to explain the reason for not adopting a nil resolution.

Safeguarding

- 8.10 The existing policy already contains a section on safeguarding however this has been further enhanced.
- 8.11 It is now a requirement, as part of an application, to provide policies detailing how vulnerable persons will be protected on the premises and how any children outside the premises will be protected.
- 8.12 Whilst children cannot enter these premises, there is a risk that they could wait outside the premises and be subject to safeguarding risks either from visitors to the premises or other persons. The applicant will be expected to acknowledge and address this issue during the application process.
- 8.13 In the case of sexual entertainment venues, an additional policy will be required to address welfare and safeguarding of performers.
- 8.14 These policies will be attached to the licence as conditions so that they can be enforced by officers and failure to comply could result in prosecution and/or licence revocation.

Inclusivity

- 8.15 It is now a requirement, as part of an application, to provide a policy regarding disability access and inclusivity. Reasonable adjustments will be expected, subject to any planning or listed building restrictions, to ensure that the premises is accessible to all. Staff should also be trained to ensure diversity is welcomed and no visitor should feel disadvantaged due to any protected characteristic.
- 8.16 This policy will be attached to the licence as conditions so that it can be enforced by officers and failure to comply could result in prosecution and/or licence revocation.

Licensing objectives

- 8.17 For transparency, licensing objectives have been included so persons reading the policy understand what the Council expects to achieve through this licensing regime.

9. LEGAL IMPLICATIONS

- 9.1. Section 8.2.3 states that the Licensing and Regulation Committee shall meet at least once per civic year:

- (a) ***to consider all licensing matters with the exception of the statements of licensing policy under the Licensing Act 2003 and the Gambling Act 2005 and***

those matters delegated to the Licensing Sub-Committee and the Service Director: Housing and Environmental Health

(c) **to consider and amend other non-executive licensing policies** (minor amendments to be delegated to the Licensing Manager in consultation with the Chair of Committee and the relevant Executive Member).

9.2 Schedule 1 of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended) lists power to license sex establishments as a function not to be the responsibility of an authority's executive.

9.3 The adoption of a sex establishment licensing policy is not an executive function, nor is it delegated to a licensing sub-committee or the relevant service director, therefore falls within the remit of the Licensing and Regulation Committee.

9.4 Whilst the proposed policy includes no significant change to the existing policy, therefore would ordinarily fall under the definition of a minor amendment for officers in consultation with the Chair and Executive Member, it is appropriate for the committee to consider this policy as part of this meeting.

10. FINANCIAL IMPLICATIONS

10.1 There are no financial implications arising from the adoption of this policy as it places no additional administrative or enforcement burdens on the Council.

10.2 Legislation permits the Council to recover its reasonable costs of administration and enforcement of the street trading licensing regime through licence fees.

10.3 Licence fees are set annually in accordance with the Medium-Term Financial Strategy and a resolution of the Licensing and Appeals Committee held on 12 December 2013.

11. RISK IMPLICATIONS

11.1 The provision of a robust, transparent policy will help mitigate the risk of formal complaints.

12. EQUALITIES IMPLICATIONS

12.1. In line with the Public Sector Equality Duty, public bodies must, in the exercise of their functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.

12.2. A 'nil resolution' was considered as part of the creation of a White Ribbon action plan to help tackle the root causes of men's violence against women and girls. This was considered due to concerns about the broader impacts of the sexual objectification of women and girls, and the potential for sexual objectification to be legitimised through the granting of licenses to sexual entertainment venues. However, concerns were also raised about the potential for sexual entertainment to be driven underground and to occur in unregulated settings. There are risks to the safety and wellbeing of women performers in this scenario, and as such the preference of the Licensing Team is to be able to regulate sexual entertainment venues. As such, the decision is not to proceed with a 'nil

resolution'. If any applications for sexual entertainment venue licenses come forward, they will go to a licensing sub-committee where objectors can make their views heard.

- 12.3. The policy requires applicants to submit various documents with their applications, one of which is a disability access and inclusion policy.

13. SOCIAL VALUE IMPLICATIONS

- 13.1. The Social Value Act and "go local" requirements do not apply to this report.

14. ENVIRONMENTAL IMPLICATIONS

- 14.1. There are no known environmental impacts or requirements that apply to the adoption of this policy.

15. HUMAN RESOURCE IMPLICATIONS

- 15.1 There are no human resource implications arising from the adoption of this policy as it places no additional administrative or enforcement burdens on the Council.

16. APPENDICES

- 16.1 Appendix A Proposed sex establishment licensing policy

17. CONTACT OFFICERS

- 17.1 Steve Cobb, Licensing and Community Safety Manager
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18. BACKGROUND PAPERS

- 18.1 None