

Gravesham Borough Council

Report to: Licensing Committee
Date: 21 September 2010
Reporting officer: Assistant Director (Communities)
Subject: Proposed Statement of Licensing Policy for Sex Establishments and Sexual Entertainment Venues

Purpose and summary of report:

To present to Members a proposed draft Statement of Licensing Policy for Sex Establishments and Sexual Entertainment Venues

To apprise Members of the proposed consultation methodology

Recommendations:

- 1) Members to approve the draft policy for consultation
- 2) Members to request officers to proceed with the consultation process as outlined

1. Background

- 1.1 Since November 2005, the Licensing Act 2003 has required a wide range of regulated entertainment to be licensed by the Council acting as the Licensing Authority. This includes live and recorded music as well as dancing and dance performances.
- 1.2 The definition of regulated entertainment in the 2003 Act led in part to a national increase in the number of lap dancing and similar venues licensed under the Act although Members will note that there are no such establishments currently within Gravesham borough.
- 1.3 Members will be familiar with the restrictions in the 2003 Act, which mean that any representation against a Premises licence can only be based on the four licensing objectives namely:
 - The prevention of crime and disorder
 - The prevention of public nuisance
 - The protection of public safety
 - The protection of children from harm

Whilst licences can be subject to review procedures, they otherwise continue in force for the life of the business concerned

- 1.4 Sex shops, in contrast, are licensed under the Local Government (Miscellaneous Provisions) Act 1982. This regime gives the Licensing Authority a wider discretion in determining whether to grant or refuse licences (including the statutory grounds for refusal), a power to set a limit on the number of premises that may be suitable for a particular locality, greater flexibility on applying licence conditions and the ability to accept representations from a wider scope of the community. Sex shop licences are only valid for a year at a time, meaning there is scope for regular review.
- 1.5 These concerns have now been addressed by amending Schedule 3 to the 1982 Act through Section 27 of the Policing and Crime Act 1009. A new class of licensed sex establishment – Sexual Entertainment Venues – has been created which will require lap dancing venues and similar premises to be licensed under the more flexible 1982 Act rather than under the Licensing Act 2003.
- 1.6 Local Authorities are required to resolve whether or not to adopt the new licensing requirements. Even if, as in the case of Gravesham, the authority has adopted Schedule 3 of the 1982 Act in relation to sex shops, it must formally adopt the new provisions before it can licence SEV's under the 1982 Act.
- 1.7 A decision to adopt the new provision only relates to relevant adult entertainment. Any other relevant activity at a venue such as alcohol sales and late night refreshment will remain licensable under the Licensing Act 2003.
- 1.8 The amendments to Schedule 3 of the 1982 Act will, in particular
 - Allow local people to oppose an application for a sexual entertainment venue if they have legitimate concerns that it would be inappropriate given the character of an area, for example, if the area was primarily a residential area. Interestingly however, an objection cannot be made on purely moral or religious grounds.
 - Allow a local authority to decide whether or not to set a limit on the number of sex establishments of a particular type in a locality, as well as the number of sex establishment generally. The limit for a particular locality may be set as nil, but it is however unlikely that a local authority could set the limit as nil for the whole of its area without running the risk of judicial review.
- 1.9 Members will be aware that a report on this subject was presented to Cabinet on 5 July 2010. The following resolutions were made:
 - (1) the putting of a resolution before full Council on 5 October 2010 to adopt the amendment to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, as introduced by the Policing and Crime Act 2009, so as to allow for the licensing of sexual establishment venues under a strictly controlled regime be endorsed;
 - (2) the setting of the operational date (1st appointed day) such that a licensing policy may be developed, consulted upon and adopted by Council well in advance of the operational date be endorsed;

- (3) delegating sex establishments licensing (this delegation to include all categories of sex establishment), to the Licensing Committee established for the purposes of the Licensing Committee 2003: so that this delegation may be made by Council and the Constitution updated accordingly;
- (4) a draft policy relating to sex establishments licensing be presented to the Licensing Committee at the earliest opportunity;
- (5) the Assistant Director (Communities), in consultation with the Assistant Director (Transformation & Finance), be requested to prepare a comprehensive fee structure for the licensing of sex establishments, including sexual entertainments venues, so as to ensure that the service is self-financing.

2. Legal Implications

- 2.1 There is no statutory requirement to have a licensing policy for sex establishments, and the Council has not previously done so. However, it is considered best practice and also that a modern, effective policy document will ensure that the trade and public alike will have a document that fully explains the elements of the regulatory process which includes the principles to be applied when considering applications for sex establishments, the application process itself and the grounds for objection, refusal, the hearings procedure and the grounds for appeal.
- 2.2 Where criteria are set out for sex establishment licensing, the Provisions of Services Regulations 2009 state that the criteria must be:
 - a) Non-discriminatory
 - b) Justified by an overriding reason relating to public interest
 - c) Proportionate to that public interest objective
 - d) Clear and unambiguous
 - e) Objective
 - f) Made public in advance
 - g) Transparent and accessible

3. Development of the Gravesham Statement of Licensing Policy

- 3.1 The Gravesham Statement of Licensing Policy was developed in close conjunction with the other local authorities in Kent. This was achieved via the mechanism of the Kent and Medway Regulatory Licensing Steering Group.
- 3.2 The policy has been developed taking full account of the requirements of the legislation and guidance so as to minimise the prospect of future judicial review.
- 3.3 The aim of the joint working group was to promote consistency to the benefit of Licensees, potential licensees, businesses, residents and to regulatory agencies such as the police.

- 3.4 The common policy skeleton produced by the Kent-wide group has now been 'personalised' to Gravesham and is attached as Appendix A to this report. Members will note that the policy includes a Model Pool of Conditions which, whilst not exhaustive, will it is hoped, guide both applicants and the public regarding what would generally be expected from anyone seeking a sex establishment licence from this authority.
- 3.5 In common with the majority of the other Kent local authorities we propose setting no numerical limits for Sexual Entertainments Venues within Gravesham. Instead the proposed policy is that each application would be judged on its own merits but taking into account the various criteria laid out within the policy document. In this way each application will be considered as to whether it is suitable given the nature of the particular locality in question.

4. Consultation

- 4.1 The consultation pool should be wide and diverse; it is therefore proposed that consultees should be the same as those for Licensing Act 2003 policy.
- 4.2 As members are aware that policy is to be put for public consultation for the statutory three yearly review. It is therefore proposed that the same six week period should be used to consult on the Sex Establishment and Sexual Entertainments Venue policy i.e. 22 September until 2 November 2010.
- 4.3 Methods of consultation will include advertising in both a local newspaper and the Council website and direct mail shots.
- 4.4 In order to make the consultation meaningful and so that the public can fully engage with the proposed stance of not setting numbers or localities for the various sex establishments a consultation document has been devised which is attached as Appendix B. This will guide a structured response to the various elements of the proposed policy
- 4.5 All responses will be collated and a report on the outcome of the consultation will be presented to Licensing Committee on 17 November 2010.

5. Equalities Impact Assessment

- 5.1 An equalities impact assessment will be undertaken regarding the policy

6. Risk Assessment

- 6.1 Whilst each individual application will be judged on its own merits a policy would ensure a transparent and consistent approach to licensing that would reduce the opportunity for challenge through the courts. Challenges to a particular decision are more likely to fail if we can demonstrate that we have adhered to our published policy and there is no justifiable reason to depart from it. Any departure from the policy will be based on material evidence and documented giving clear and compelling reasons for doing so.
- 6.2 As local authorities adopt the new licensing provisions across England and Wales there is always the risk that those Councils either not adopting the new laws or setting out clear licensing criteria could attract a disproportionate number of application for sexual entertainment venues in their areas.

7. Financial Implications

- 7.1 If the consultation process is undertaken at the same time as that for the Licensing Act 2003 policy revision then costs will be kept to a minimum within existing printing and mail budgets.
- 7.2 A separate report will be presented to Cabinet in future regarding the setting of fees for the different sex licences as indicated in paragraph 1.9 (5) above. The fee structure will aim to ensure that the licensing regime is self financing.

8. Section 17 Crime and Disorder Act 1998

- 8.1 The introduction of a new licensing regime under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 gives the Council new powers to tackle issues of concern to communities around crime and anti social behaviour associated with sex establishments.
- 8.2 The licensing team will continue to engage in effective partnership working with agencies such as the police and other relevant authorities to deliver effective enforcement in respect of crime and anti-social behaviour and to continue to foster the 'Family Friendly Gravesham' ethos.

Background Papers

Report to Cabinet 5 July 2010 – Members are requested to bring this paper to Licensing Committee 21 September 2010