

REPORT TO: LICENSING COMMITTEE – 24 FEBRUARY 2012

REPORT BY: LICENSING MANAGER

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Sex Establishment Licensing – Consideration of proposed draft policy for consultation.

Schedule 3 Local Government (Miscellaneous Provisions) Act 1982 as amended by section 27 of the Policing and Crime Act 2009.

1.0 PURPOSE OF REPORT

The purpose of this report is for the Licensing Committee to consider the proposed draft sex establishment policy and to approve the draft policy for public consultation prior to final determination and publication.

2.0 RECOMMENDATION

RECOMMENDED:-

- a) That the Licensing Committee approve the draft sex establishment policy as the consultation document for the purposes of the Local Government (Miscellaneous Provisions) Act 1982; and***
- b) Approve the proposed questions as set out in paragraph 6.4 of this report as part of the consultation process.***

3.0 BACKGROUND INFORMATION

- 3.1** Section 27 of the Policing and Crime Act 2009 (the “2009 Act”) introduced a new category of sex establishment called “sexual entertainment venues” (SEVs) which enables local authorities to regulate lap dancing clubs and similar venues under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (the “1982 Act”). Previous definitions were limited to either sex shops or sex cinemas. Portsmouth City Council (“PCC”) adopted the provisions relating to sex shops and sex cinemas in 1982 and the policy of PCC since 2002 is to consider each application on its individual merit so far as it relates to sex shops and sex cinemas.
- 3.2** Council resolved on 22 March 2011 to adopt the new provisions together with further recommendations which included the preparation of a proposed draft policy for consideration and adoption by the Licensing Committee.
- 3.3** On 21 September 2011, the Licensing Committee considered its preferred approach in the formulation of its draft sex establishment policy and decided to investigate the identification of pre-determined localities and the imposition of numerical controls.

3.4 Whilst the 1982 Act makes no provision for the adoption of a policy when considering applications for sex establishments, there is nothing to prevent the local authority from doing so, however, each application must be considered on its individual merit at the time the application is made.

4.0 SUMMARY OF CONTENT OF PROPOSED DRAFT POLICY

4.1 The proposed draft policy is attached as Appendix A, the content of which can be summarised under the following subject headings:

- Legal definitions of sex establishments;
- Mandatory and discretionary grounds for refusal of an application;
- Application process;
- Consideration and determination of applications (including appeal provisions);
- Imposition of Licensing Conditions;
- Waiving of the need for a sex establishment licence;
- Maps of the City showing various relevant factors associated with the consideration of the character of a particular locality; and
- Standard Conditions applicable to all classes of sex establishments including minimum standards relating to the formulation of Codes of Conduct for dancers and customers in respect of sexual entertainment venues.

4.2 In particular (at paragraphs 7.8 to 7.10), the proposed draft policy recognises that the 1982 Act allows discretion by the Licensing Authority to impose a numerical control on the number of sex establishments in a particular locality, including the provision that nil may be an appropriate number.

4.3 It sets out the various factors that the Licensing Authority has taken into account when considering the number of sex establishments and having regard to these considerations states that the Licensing Authority has reached the preliminary conclusion that there is no place within the City of Portsmouth of which it could be said that it was situated in a locality in which it would be appropriate to licence a sex establishment.

4.4 This statement also accords with legal precedents that have clearly established that a substantial administrative area should not be taken as a locality and directly follows the judgement of *R v Peterborough Council ex parte Quietlynn*¹ where Sir John Donaldson MR stated:

“If the Cheltenham Borough Council had said that it had reached the preliminary conclusion that there was no place within their boundaries of which it could be said that it was situated in a locality in which it would be appropriate to licence a sex establishment, no objection would have been taken. It would then have been open to an applicant to apply, saying, “You must have overlooked this site”, and the council would then have had to consider whether or not this was right. But what they should not have done was to apply the criteria of

¹ *R v Peterborough Council ex parte Quietlynn* (1987) 85 LGR 249, 259

appropriateness to the whole town, when Parliament had instructed them to apply in to the locality in which the premises the subject matter of the application was situated, which is a different concept”.

5.0 LEGAL CONSIDERATIONS

- 5.1 The Head of Legal, Licensing & Registrars has sought counsel’s opinion on the proposed draft policy and in particular counsel has been asked to advise on preliminary conclusion of the Licensing Authority that there is no place within the City of Portsmouth of which it could be said that it was situated in a locality in which it would be appropriate to licence a sex establishment.
- 5.2 Counsel has advised that he considered the proposed draft policy to be in good shape and has made only slight adjustments to provide more separation between the three grounds of refusal of numbers, character and premises in the vicinity along with a few other tweaks to the document.

6.0 CONSULTATION PROCESS AND TIMESCALES

- 6.1 Subject to Members approval of the proposed draft policy, the next course of action would be to publish the draft policy for public consultation.

It is proposed that full consultation will take place with:

- The Chief Officer of Police for Hampshire Constabulary;
- Persons/bodies representative of existing operators of sex establishments in the licensing authority area;
- Persons/bodies representative of those likely to be affected by or have an interest in the Policy which may include but is not limited to:
 - Regulatory bodies such as the Fire and Planning Authorities;
 - Community Safety and Children’s Social Care and Safeguarding;
 - Interested parties such as local residents associations, trade associations and interest groups.

- 6.2 It is proposed that a six week public consultation period will commence on 1 March 2012 until 12 April 2012.

- 6.3 To ensure that the consultation process is as effective as possible, as well as writing to the relevant persons/bodies referred to in paragraph 6.1 above, the following steps will be taken:-

- Copies of the draft Statement of Licensing Policy together with information as regards making representations will be available on the Council’s website;
- Copies of the document will be sent to all libraries and will also be available at the Licensing Section and the City Helpdesk;

- A press release will be prepared for the media;
- An item on the proposed draft policy will be published in the Members Information sheet and distributed to all Members; and
- A copy of the draft policy will be made available in each of the Group Rooms.

6.4 It is proposed that the formal consultation process should pose the following questions. (References to sections in this paragraph relate to those appropriate sections of the proposed draft policy),

Question 1.

Do you agree with the Council's proposed policy considerations in respect of situations where the grant of a licence would be inappropriate having regard to the use of the premises in the vicinity as set out in paragraphs 7.13 and 7.14 of the draft policy?

Question 2.

Do you agree with the Council's proposed preliminary conclusion that there is no place within the City of Portsmouth of which it could be said that it was situated in a locality in which it would be appropriate to licence a sex establishment as set out in paragraph 7.10 of the draft policy?

Question 3.

Do you think that existing sex establishment premises should be allowed to continue to trade so long as they comply with the law and other policy considerations?

Question 4.

Do you have any other comments to make regarding the draft policy?

6.5 As soon as practically possible after the end of the consultation period, the Committee will then receive a final report to consider and have due regard to the views of those consulted on the draft policy and any comments received shall be given appropriate weight when the policy is finally determined, including amendment of the proposed policy where considered appropriate to do so.

6.6 It is possible that applications for sexual entertainment venues may be received before the Licensing Committee has finally determined any policy and/or procedural guidance for sex establishments. Having regard to the transitional provisions under the 2009 Act, existing operators will be consulted and briefed on the proposed draft policy and will be advised that any applications received before the 2nd appointed day (1 May 2012) will be considered on merit and subject to policy guidance approved by members prior to the 3rd appointed day (1 November 2012).

7.0 OTHER BACKGROUND INFORMATION

7.1 Attached to this report for general consideration and information are two recent documents which will be of interest to the Licensing Committee in relation to the adoption of a sex establishment policy and recent research findings from the largest study into the lap dancing industry in the UK by the University of Leeds.

7.2 Attached as Appendix B is a League Table produced by "OBJECT" which is a human rights organisation set up in 2003 and aims to challenge the sexual objectification of women. The league table indicates which local councils have adopted the new statutory provisions relating to sexual entertainment venues.

7.3 Attached as Appendix C is a copy of the latest research findings by the University of Leeds in relation to a study of the strip and lap dancing industry in the UK night time economy. These findings are reproduced by way of a briefing paper for licensing practitioners.

8.0 EQUALITY IMPACT ASSESSMENT

A preliminary equality impact assessment has been undertaken in respect of the proposed draft policy which has identified that a full impact assessment is not required at this time.

9.0 APPENDICES

Appendix A – Draft Sex Establishment Licence Policy;

Appendix B – Council League Table produced by "OBJECT";

Appendix C – "The Regulatory Dance: Sexual Consumption in the Night Time Economy – Briefing Paper by the University of Leeds – January 2012.



Licensing Manager