

Haringey Council

Agenda item:


[No.]

GENERAL PURPOSES COMMITTEE

On 11th January 2011

Report Title. **Policy for the Licensing of sex Establishments**

Report of **Niall Bolger – Director of Urban Environment**

Signed :  (Urban AD Frontline Services)

Contact Officer : Robin Payne – Head of Enforcement Services

Wards(s) affected: **All**

Report for: Key Decision

1. Purpose of the report

- 1.1. To inform the General Purposes Committee of responses received during the consultation on the proposed draft Sex Establishment Policy, and to seek agreement that the policy should be adopted.
- 1.1. To seek agreement to set fees for applications for sex establishment venues at £6000.00.

2. State link(s) with Council Plan Priorities and actions and /or other Strategies:

- 2.1. Haringey's Community Safety Partnership within the Strategic Partnership strategy 'Safer for All' seeks to reduce harm from antisocial behaviours and in particular to protect families and children.
- 2.2. Our Licensing Policy Statement currently reflects the legal position that venues can operate without licence 11 times a year without licence.

3. Recommendations

- 3.1. That General Purpose Committee note the consultation comments and agree adoption of the policy as per Appendix 2

4. Summary

- 4.1. This report sets out a draft Sexual Entertainments Venue Policy. This policy if approved will provide Members of the Miscellaneous Functions Committee with a framework for considering all future relevant applications. The policy identifies sensitive locations in the borough where the proximity of a sexual entertainment venue would be considered inappropriate. On this basis the policy recommends that there is no ward in the borough where a sexual entertainment venue is appropriate, although all applications must be considered on their merits, having regard to the policy.
- 4.2. There are currently no such premises in the borough and no applications have been submitted for determination at this time.
- 4.3. The report seeks agreement of the General Purposes Committee for adoption .
- 4.4. We have recently received further benchmarking information from across the country which show the average costs to be in excess of £5000.00, we are mindful of the need to ensure that the fees are not set as a deterrent for any would be applicant , but at the same time needing to ensure that the fees cover the full cost of dealing with an application.

5. Chief Financial Officer Comment.

The costs of preparing this report and implementing the associated recommendations can be contained within existing budgets.

6. Head of Legal Services Comments

6.1 The amendment to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 by Section 27 of the Policing and Crime Act 2009 permits more effective regulation of lap dancing clubs and similar venues. This amendment was adopted by Full Council on 19 July 2010. The adoption of a policy (upon which applications for sex establishments may be considered by the Miscellaneous Functions Sub-Committee of the General Purposes Committee) is optional. Paragraph 12(4) of Schedule 3 to the 1982 Act specifies that a local authority may determine that nil is the appropriate number for such establishments within a locality.

6.2 The licensing policy relating to sex establishments reflects the legal position that venues may provide "relevant entertainment" e.g. the display of nudity without a sex establishment licence up to 11 times a year.

The definition of a sexual entertainment venue excludes venues where relevant entertainment has been provided on no more than 11 occasions within a 12 month period. Operators of such venues should be aware that this

"exemption" must not be abused and that effective monitoring will take place to ensure this is the case. Operating outside the exemption without a licence is a criminal offence and prosecution is an option that will be seriously considered.

7. Equalities & Community Cohesion Comments

7.1. The Government carried out an Equality Impact Assessment to see if there would potentially be some less favourable treatment of groups that would be affected and how this could be mitigated. No negative impact on equalities groups was predicted.

7.2. The Gender Equality Duty 2007 is a 'statutory' code providing guidance to the Sex Discrimination Act 1975. This places a general duty on local authorities to promote equality between women and men. At consultation one respondent raised the view that permitting sexual entertainment may not be consistent with this duty. However, the Policing and Crime Act 2009 provides the power for local authorities to permit licensed sexual entertainment and indicates that licensing is consistent with duties under the code.

8. Consultation

Consultation was undertaken across the borough as a whole and with partners for a 12 week period ending around the 15th December 2010. The comments received are detailed at Appendix 1 to this document.

9. Service Financial Comments

The cost of any public notice to complete adoption of the policy will be resourced within the Services budget. .

The proposed fees would ensure that any application received would enable the Authority to determine the application without impacting on other resources.

10. Use of appendices

- 10.1. Appendix 1- Summary of consultation responses.
Appendix 2 – Draft Sex Establishment Policy

11. Local Government (Access to Information) Act 1985

- The Policing and Crime Act 2009
- The Local Government (Miscellaneous Provisions) Act 1982
- Home Office Guidance for Sexual Entertainment Venues dated 1 April 2010
- Equalities Impact Assessment – (Home Office paper – April 2010))

12. Background

12.1. The Policing and Crime Act 2009 (“the 2009 Act”) amends Schedule 3 of the Local Government (Miscellaneous Provisions Act) 1982 to allow the licensing of “Sexual Entertainment Venues”. Section 27 introduces a new category of sex establishment called a “sexual entertainment venue”. A “sexual entertainment venue” is defined as “any premises, which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer.” “Relevant entertainment” may take the form of a live performance or live display of nudity and must be of such a nature that, ignoring financial gain, it must reasonably be assumed to have been provided solely or principally for the purpose of sexually stimulating any member of the audience. The audience can consist of one person and would cover lap dancing, pole dancing, table dancing, strip shows, peep shows and live sex shows.

12.2. Haringey Council resolved to adopt this legislation on 19th July 2010. By adopting powers relating to Sex Establishments (as amended) the Council, as the licensing authority, is now able to decide the number of sex establishments appropriate for any relevant locality. The Council cannot make a general declaration in respect of the entire borough. The relevant locality for each application would be an area close to or in the immediate vicinity of the premises concerned.

13. Draft Policy

13.1. As well as providing the Miscellaneous Functions Committee with a stronger basis for decision making, adopting a policy for sexual entertainment venues will provide all potential applicants will know in advance the criteria against which their applications would be considered.

13.2. The draft policy has provided a set of recommended criteria for assessing the suitability of an area and specifically a set of sensitive locations where proximity to a sexual entertainment venue may be determined as inappropriate. Sensitive venues will include (this is not considered to be exhaustive) -

- domestic dwelling, including any sheltered housing and accommodation for vulnerable persons,
- educational establishments,
- places of worship to the premises,
- main access routes to and from sensitive locations,
- schools, play areas, nurseries, children’s centres or similar premises,
- shopping centres,
- community facilities / halls and public buildings such as libraries swimming pools, leisure centres,
- public parks, youth centres / clubs.

13.3. On this basis, and having assessed the borough by ward, the policy has established a nil limit for every ward in the borough. However, each application must still be considered on its own merits and we cannot refuse to receive an application.

13.4. It is significant that if such a policy were agreed, and an application refused, there would be no right of appeal to the Magistrates Court against a refusal on the ground that the appropriate number of establishments in the relevant locality was nil or that the appropriate number had been reached. However, the policy or an individual refusal might be subject to challenge on public law grounds by way of an application for Judicial Review in the High Court.

13.5. Additional factors which can be considered will be:

- The suitability of the applicant or persons involved
- Benefit derived by a third party who would be refused a licence
- The layout, character or condition of the premises that may apply for such licences.
- Whether patrons are likely to leave together or disperse gradually.
- Admission arrangements and other factors which may impact on the locality, by the presence of such premises.

14. Consultation findings

14.1. The majority of responses received were voicing their agreement and approval of the Council's proposals for a nil per ward policy in relation to sex establishments. However, we received 3 letters showing concern that having such a strong policy would drive the sex industry underground and therefore out of the control of the local authority. We have no evidence to support this suggestion at this time but will monitor the situation as we go forward bearing in mind that premises will be able to offer these activity at least 12 times per calendar year without the need to apply for licence from the Authority.

14.2. We have had some helpful contribution from Object and Leeds University, who have carried studies into the sex trade and have put forward some suggestions relating to the kind of standards the authority would wish to set from the very start. They also give some further guidance relating to standard conditions that could be imposed on all licences. For Sex Entertainment venues standard conditions that would impose a requirement on the operator to ensure that all checks are carried out in relation to the workers employed this would include checking on their right to work in the UK. Other conditions deal with their safety at the premises, during performances and leaving the premises. Codes of practice for dancers and customers would have to be agreed with the Licensing Authority and the Police for any given application.

15. Timetable

If agreed a public notice will be posted in a local paper advising that the adoption will come into affect after 28 days.