

Public Report
Licensing Board

Summary Sheet

Council Report

Licensing Board – Monday 24th September 2018

Title

Rotherham MBC Sex Establishment Policy

Is this a Key Decision and has it been included on the Forward Plan?

Yes.

Director Approving Submission of the Report

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Ward(s) Affected

All wards

Executive Summary

This report introduces an amendment to the Local Government (Miscellaneous Provisions) Act 1982 that classifies lap dancing clubs (and similar venues) as sex entertainment venues.

In addition, the amended Act will give local communities a greater say in the relation to the presence of sex establishments (which include sex entertainment venues, sex shops and sex cinemas) and allows the local authority to more effectively regulate such premises.

This reports seeks the Licensing Board's views and comments in relation to the adoption of the amendment and also a proposed Sex Establishment Licensing Policy.

Recommendations

- That the Licensing Board consider and provide comment in relation to the proposed Rotherham MBC Sex Establishment Policy.
- That Members of the Licensing Board give their view in relation to the proposal to adopt Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended).
- That the comments and views of the Licensing Board are incorporated into a further report to Cabinet in relation to both of the above matters.

List of Appendices Included

- Appendix 1 - Draft Rotherham MBC Sex Establishment Policy

Background Papers

- Home Office Guidance for England and Wales in relation to Sexual Entertainment Venues

Consideration by any other Council Committee, Scrutiny or Advisory Panel

Decision is to be made by Cabinet – report is presented to Licensing Board for information and comment only.

Council Approval Required

No.

Exempt from the Press and Public

Not exempt.

Rotherham MBC Sex Establishment Policy

1. Recommendations

- 1.1 That the Licensing Board consider and provide comment in relation to the proposed Rotherham MBC Sex Establishment Policy.
- 1.2 That Members of the Licensing Board give their view in relation to the proposal to adopt Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended).
- 1.3 That the comments and views of the Licensing Board are incorporated into a further report to Cabinet in relation to both of the above matters.

2. Background

- 2.1 Any sex shop and sex cinema located within the Borough of Rotherham requires a licence from the Council issued under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 ("the 1982 Act"). Such premises are referred to in the 1982 Act as "Sex Establishments".
- 2.2 At the present time, all premises in Rotherham that provide lap dancing or similar activity require a premises licence issued under the Licensing Act 2003.
- 2.3 Although the Licensing Act provides local authorities with the ability to regulate establishments where lap dancing or similar entertainment takes place, it is generally accepted that this legislation did not give communities sufficient powers to control where lap dancing clubs etc. were established, or give local authorities sufficient powers in relation to their regulation (such as the requirement for sex establishments to apply for an annual licence – with appropriate conditions being attached as appropriate) .
- 2.4 In order to address these concerns, the Government amended Schedule 3 of the 1982 Act by way of section 27 of the Policing and Crime Act 2009 ("the 2009 Act").
- 2.5 Section 27 of the 2009 Act came into effect in April 2010 and had the effect of reclassifying lap dancing clubs and similar as 'sexual entertainment venues' and added these to the category of "sex establishment" within the 1982 Act (along with sex shops and sex cinemas). These provisions allow local authorities to consider and determine applications on potentially wider grounds than is permitted under current law and will give local people a greater say over the regulation of sex establishments in their area.
- 2.6 Importantly, the amended Schedule 3 allows local authorities to set a policy in relation to the licensing of sex establishments that sets out the

authority's approach to the licensing of these premises – including the setting of licence conditions, restrictions on locations and limits on the number / type of sex establishments within the authority's area.

- 2.7 However, the amendments to Schedule 3 of the 1982 Act will only apply where they are adopted by local authorities. This report outlines the reasons why adoption is considered necessary, and introduces a proposed policy for the control of sex establishments within Rotherham.
- 2.8 The scheme of delegation has yet to be confirmed, however as the Licensing Board is currently responsible for determining matters around sex shops, the views of the Board are important in the development of any policy regarding a function which is relevant to their work.
- 2.9 Once the Licensing Board have given their views, these will be incorporated into a report to the Council's Cabinet. If Cabinet is minded to adopt the amended Schedule 3 and the proposed Sex Establishment Policy then officers will commence the relevant processes (which will include a period of public consultation) , before a bringing a report back to the appropriate Council meeting seeking formal adoption of Schedule 3 and the Sex Establishment Policy.

3. Key Issues

- 3.1 Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 provides local licensing authorities with adoptive licensing provisions for sex establishments, comprising the categories of sex shops and sex cinemas.
- 3.2 The majority of venues providing lap dancing, table dancing or other similar striptease entertainment currently need hold only premises licences with music and dancing issued under the 2003 Act to operate lawfully. Applications for premises licence under the 2003 Act are subject only to considerations relevant to the four licensing objectives:
 - The prevention of crime and disorder
 - Public safety
 - The prevention of public nuisance and
 - The protection of children from harm.
- 3.3 Paragraph 2A of Schedule 3 as inserted by Section 27 of the Policing and Crime Act 2009 defines the newly created category of 'sexual entertainment venue' as "any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer". The meaning of 'relevant entertainment' is "any live performance or live display of nudity which is of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of an audience (whether by verbal or other means)".

3.4 Guidance produced by the Home Office provides that while local authorities should judge each case on its merits, the definition of relevant entertainment would be expected to apply to the following forms of entertainment as they are commonly understood:

- Lap dancing
- Pole dancing
- Table dancing
- Strip shows
- Peep shows
- Live sex shows

3.5 The guidance emphasises that although reference is made to “live display of nudity” the mere fact that there is a display of nudity does not mean that a sex establishment licence will necessarily be required. For example, if the display forms part of a drama or dance performance in a theatre, in most cases it cannot reasonably be assumed to be provided ‘solely or principally for the purpose of sexually stimulating any member of the audience’.

3.6 Schedule 3 sets out the definition of a ‘display of nudity’. In the case of a woman, it means exposure of her nipples, pubic area, genitals or anus and, in the case of a man, it means exposure of his pubic area, genitals or anus.

3.7 The provisions do include some clarifications and exemptions. Spontaneous displays of nudity or a lap dance by a customer or guest will not result in the premises being classified as a sexual entertainment venue. Furthermore, paragraph 2A(3) of Schedule 3 sets out those premises that are not sexual entertainment venues. These are:

- Sex shops and sex cinemas (which fall into other categories under the 1982 Act);
- Premises which provide relevant entertainment on an infrequent basis. These are defined as where:
 - No relevant entertainment has been provided on more than 11 occasions within a 12 month period;
 - No such occasion has begun within a period of one month beginning with the end of the previous occasions; and
 - No such occasion has lasted longer than 24 hours.

3.8 Premises which provide relevant entertainment on an occasional basis will continue to be regulated by the 2003 Act. Premises which provide relevant entertainment on a regular basis will require a licence under the 1982 Act and, in all probability, a further licence under the 2003 Act should alcohol or late night refreshment sales be intended, but they will no longer be able to operate only under a 2003 Act licence alone.

Application process

3.9 Schedule 3 of the 1982 Act outlines the application process for a sex establishment licence, and provides details of the circumstances that merit (or may merit) refusal of an application for a licence.

3.10 Applications for a licence should be made in writing and should provide all details as set out in the 1982 Act and the Council's Sex Establishment Licensing Policy.

3.11 In addition, the application process will require:

- The payment of a reasonable fee
- Public advertisement of applications by way of a notice exhibited at the premises for a period of 21 days and a notice published in a local newspaper
- Written objections to be lodged relevant to the ground for refusal of a licence and
- Public hearing of the application and any objection(s) to the application.

3.12 The 1982 Act sets out mandatory grounds for the refusal of an application and makes it clear that a licence must not be granted

- To a person under the age of 18
- To a person who is for the time being disqualified due to the person having had a previous licence revoked in the area of the appropriate authority within the last 12 months
- To a person, other than a body corporate, who is not resident in an EEA State or was not resident throughout the period of six months immediately preceding the date when the application was made or
- To a body corporate which is not incorporated in an EEA state or
- To a person who has, within a period of 12 months immediately preceding the date when the application was made, been refused the grant or renewal of a licence for the premises, vehicle, vessel or stall in respect of which the application is made, unless the refusal has been reversed on appeal.

3.13 Additionally, a Council may choose to refuse a licence on discretionary grounds where:

- The applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason

- If the licence were to be granted, renewed or transferred the business to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant, renewal or transfer of such a licence if he made the application himself
- The number of sex establishments, or of sex establishments of a particular kind, in the relevant locality at the time the application is determined is equal to or exceeds the number which the authority consider is appropriate for that locality
- That the grant of the licence would be inappropriate, having regard:
 - To the character of the area or the relevant locality, or
 - To the use to which any premises in the vicinity are put, or
 - To the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.

3.14 Further information in relation to locality considerations is provided below.

Locality

3.15 As stated above, a local licensing authority may refuse applications on grounds related to an assessment of the 'relevant locality'. The Home Office guidance establishes that it is reasonable and potentially useful to future applicants for a local authority to decide in advance of receiving applications that certain areas are, or are not, appropriate locations for sex establishments or a particular number of sex establishments.

3.16 The proposed Rotherham MBC Sex Establishment Licensing Policy identifies examples of such sensitive locations, and these include:

- Residential areas
- Parks / play areas
- Places of worship
- Women's refuge facilities
- Family leisure facilities such as cinemas, theatres and concert halls
- Youth facilities
- Places used for celebration or commemoration
- Schools and other education establishments
- Cultural leisure facilities such as libraries and museums
- Historic buildings
- Retail shopping areas

3.17 The locations will be specifically referenced during the public consultation period that will take place as part of the adoption process. The views of

respondents will be taken in account when considering the appropriateness of these locations for inclusion in the policy.

- 3.18 When considering a particular application case law has indicated that the relevant locality does not have to be a clearly pre-defined area nor are local authorities required to be able to define its precise boundaries.
- 3.19 Therefore, while a local authority is not prevented from defining the exact area of the relevant locality, it is equally free to conclude that it simply refers to the area which surrounds the premises specified in the application and does not require further definition.
- 3.20 Nevertheless a local authority's view of what constitutes a locality could be open to challenge if they took a completely unreasonable view of the area covered, and therefore it would be appropriate for the licensing authority to confirm their interpretation of the term "relevant locality" on a case by case basis.
- 3.21 Case law also indicates that a relevant locality cannot be an entire local authority area or an entire town or city.
- 3.22 Once the appropriate authority has determined the relevant locality, it should seek to make an assessment of the 'character' of the relevant locality and how many, if any, sex establishments, or sex establishments of a particular kind, it considers appropriate for that relevant locality. 3.38 Section 27 amends paragraph 12(3)(c) of Schedule 3 to allow local authorities to determine an appropriate number of sex establishments of a particular kind. In practice, this means that the appropriate authority may, for example, decide that a particular locality is suitable for a sex shop but is not suitable for a sexual entertainment venue or vice versa.
- 3.23 The draft policy proposes that rural, built up and residential areas are unacceptable localities for sexual entertainment venues to be located – however this proposal will be considered as part of the public consultation.
- 3.24 The policy further proposes that all areas outside of Rotherham town centre are unacceptable localities for sexual entertainment venues to be located due to their proximity to rural, built up or residential areas.
- 3.25 Although there is residential accommodation within the town centre, it is considered that the late night economy means that the town centre would be an acceptable locality to locate sexual entertainment venues. Again, this will be considered as part of the public consultation.
- 3.26 The extent of the town centre area referred to above is detailed in the Council's Sex Establishment Licensing Policy.
- 3.27 Taking the above into consideration, it is proposed that it would be inappropriate to issue a licence to a sexual entertainment venue outside of the town centre.

3.28 The policy proposes to limit the number of sexual entertainment venues within the town centre area to a maximum of two, providing those premises are not too near and / or do not impact properties with sensitive uses or in sensitive locations. It is considered that this limit will allow for any demand for such venues in Rotherham to be met, whilst facilitating commercial competition between premises.

3.29 There is no proposal to place a limit on the number of premises in relation to sex shops or sex cinemas. However, applicants will be required to take into consideration sensitive use premises and areas when submitting applications for a licence. Such applications will be dealt with on a case by case basis, and may be refused if their presence in the locality is inappropriate or likely to have an adverse impact on the local community (including amenity and environment).

Conditions

3.30 When granting licence to a sex establishment, a local authority is able to impose terms, conditions and restrictions on that licence. It is proposed that standard conditions are attached each category of sex establishment. These conditions are intended to protect the general public, customers, performers and the local environment.

3.31 In addition to safeguards around safety and welfare, Rotherham MBC consider it essential that the employees at sex entertainment venues are protected from exploitation and as such it is proposed that specific conditions to address this are attached to all sex entertainment venue licences.

3.32 The appropriate proposed standard conditions will be applied to all sex establishment licences issued by Rotherham MBC. The Council does however reserve the right to amend these conditions or attach additional conditions as appropriate.

4. Options considered and recommended proposal

4.1 Option 1 – the Council does not adopt the amended Schedule 3 to the 1982 Act.

This option will retain the status quo, and therefore limit the ability of local people to challenge the presence of sex establishments in their area.

In addition, the current position of regulating lap dancing clubs via by utilising the Licensing Act 2003 will remain – limiting the ability of the Council's licensing team to deal with any concerns around lap dancing clubs via the most effective means.

4.2 Option 2 – the recommended option.

The Council considers the adoption of the amended Schedule 3 to the 1982 Act and approves the commencement of consultation on both the adoption of Schedule 3 and the introduction of the proposed Sex Establishment Licensing Policy.

5. Consultation

- 5.1 This report constitutes consultation with the Licensing Board Council's – the views of the Board will be incorporated into any further reports / documents regarding this issue.
- 5.2 Should Cabinet approval be given to begin consultation on the proposals within this report, licensing officers will commence a period of public consultation.
- 5.3 The consultation period will commence following agreement of the approach by Cabinet and Commissioners in October 2018, and will be for a period of 8 weeks. All appropriate consultation methods will be used in order to ensure that the consultation is both effective and meaningful, this will include direct contact with Representatives of local businesses, representatives of existing licence holders, South Yorkshire Police and the Safer Rotherham Partnership.

6. Timetable and Accountability for Implementing this Decision

- 6.1 Public consultation will commence during December 2018, with a view to seeking final approval of the policy, subject to consultation responses, early / mid 2019
- 6.2 In the event that the adoptive provisions are to be taken up, the Council must pass a resolution stating this decision and which specifies the day (the first appointed day) that the provisions will come into effect in the area. The specified date must be more than one month after the day on which the resolution was passed.
- 6.3 The resolution and the date of the first appointed day must then be published in notices appearing for two consecutive weeks in a local newspaper circulated in its area. The first publication of the notices must give at least 28 days' notice of the specified date.
- 6.4 A 'transitional period' then commences lasting twelve months beginning with the first appointed day. The process that follows is set out below:
 - To allow time to comply with the new regime, existing operators, who immediately before the first appointed day, hold a premises licence issued under the 2003 Licensing Act, which allows the licensee to lawfully use premises as a sex entertainments venue

will be allowed to continue to provide relevant entertainment until either the third appointed day (which falls twelve months after the first appointed day) or until such time as any application they have submitted is determined.

- New operators (who do not hold relevant 2003 Act premises licences) who wish to use premises as sexual entertainment venues after the first appointed day will not be able to use those premises until they have been granted a sexual entertainment venue licence.
- After the second appointed day (which falls six months after the first appointed day) the local authority must consider all applications received since the first appointed day, together. New applications granted will then take immediate effect. Licences granted to existing operators come into effect on the third appointed day.
- Applications made after the second appointed day shall be considered when they are made but only once all applications made before the second appointed day have been determined.

6.5 The decision to adopt the amended Schedule 3 is one which must be made at a meeting of the full Council. Council may also determine to delegate the decision making in relation to applications and other matters to a Council Committee or Regulatory Board – this matter will be addressed further in the final report that will be brought before Council following public consultation.

7. Financial and Procurement Implications

- 7.1 Schedule 3 to the 1982 Act states that the application for grant, renewal, variation or transfer of a sex establishment licence shall pay a reasonable fee determined by the appropriate authority, but does not expand upon what would be considered to be reasonable.
- 7.2 Currently the fee for a new sex establishment licence is £7,560 (this is the fee for a sex shop licence).
- 7.3 In the event that the new provisions are adopted a costings exercise will be carried out aimed at establishing appropriate application fees on a cost recovery basis. Regard will be had to existing guidance issued by central government in relation to locally set licence fees.
- 7.4 The cost of consultation will be met from within existing service budgets.
- 7.5 There are no anticipated procurement implications introduced as a result of the proposals within this report.

8. Legal Implications

1.1 All legal implications are detailed elsewhere in this report.

2. Human Resources Implication

2.1 There are no HR implications arising from this report.

3. Implications for Children and Young People and Vulnerable Adults

3.1 A failure to effectively regulate sex establishments may expose children and young people to psychological harm as a result of coming into contact with activities that are intended for adults only.

3.2 In addition, vulnerable adults may be exploited by the practices of sex entertainment venues (in particular) and therefore it is essential that such premises are appropriately regulated in order to ensure that vulnerable people are not exposed to physical, emotional and psychological harm.

3.3 It is considered that the adoption of the amended Schedule 3 along with the introduction of the Sex Establishment Licensing Policy will allow for the effective regulation of sex establishments in Rotherham and the mitigate the risk of harm that is presented to children, young people and vulnerable adults.

4. Equalities and Human Rights Implications

4.1 A full Equality Assessment will be undertaken in order to ensure that the proposed adoption and policy has no adverse impacts on equalities and human rights.

4.2 The findings of the assessment will be incorporated into the final policy.

5. Implications for Partners and Other Directorates

5.1 There are no implications anticipated for partners or other Directorates.

6. Risks and Mitigation

6.1 See section 10.1 to 10.3 above.

6.2 There are no other apparent risks in relation to the proposals within this report.

7. Accountable Officer(s)

7.1 Alan Pogorzelec – Licensing Manager, Regulation and Enforcement,
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