

Committee Name and Date of Committee Meeting

Cabinet – 20 November 2023

Report Title

Sex Establishment Policy

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

Yes

Strategic Director Approving Submission of the Report

Paul Woodcock, Strategic Director of Regeneration and Environment

Report Author(s)

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Ward(s) Affected

Borough-Wide

Report Summary

The Council's current Sex Establishment Policy was introduced in 2019. The effectiveness of the Policy was assessed in 2020 and found to be delivering the aims of the Policy, and a commitment was made to undertake a further review of the Policy within three years. Following a review by Officers of the existing Policy, a draft version was shared for consultation. This report outlines the findings of the review and subsequent consultation and recommends that Cabinet approves the reviewed Policy.

Recommendations

1. That Cabinet adopts the Sex Establishment Licensing Policy that is attached to this report as Appendix 1.

List of Appendices Included

- Appendix 1 Sex Establishment Licensing Policy 2023
- Appendix 2 Summary of Consultation Responses
- Appendix 3 Equalities Screening Assessment
- Appendix 4 Equalities Analysis
- Appendix 5 Carbon Impact Assessment

Background Papers

None

Consideration by any other Council Committee, Scrutiny or Advisory Panel

None

Council Approval Required

No

Exempt from the Press and Public

No

Sex Establishment Policy

1. Background

- 1.1 On 22 May 2019, the Council passed a resolution adopting the powers contained within Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended).
- 1.2 The adoption of Schedule 3 powers allows the Council to more effectively regulate establishments where adult activity would take place and introduced the ability to licence venues such as lap dancing clubs which previously had been ineffectively regulated under the Licensing Act 2003.
- 1.3 Following the adoption of the powers in 2019, the Council developed and consulted on a Sex Establishment Licensing Policy. A Policy was approved by Cabinet and subsequently adopted, becoming effective on 1 July 2019.
- 1.4 It was agreed that the effectiveness of the Policy would be assessed 12 months after its introduction. The assessment, conducted by Licensing Officers, concluded that the Policy was achieving its aims but an assurance was given that the policy would be subjected to a further review in three years' time.
- 1.5 That three year period has now been reached, and this report details the finding of the Policy review, the results of the consultation and recommends the adoption of a reviewed version of the Sex Establishments Licensing Policy.

2. Key Issues

- 2.1 Whilst the statutory powers relating to the licensing of Sex Establishments can be applied without a formal Policy being in place, Home Office guidance establishes that it is reasonable and potentially useful to future applicants for the Council to develop a Policy for the Licensing of Sex Establishments. This provides clarity to applicants, in advance of an application that certain areas are, or are not, considered appropriate locations for sex establishments or that a particular number of sex establishments might be assumed to be allowed in certain locality areas.
- 2.2 The current Sex Establishment Licensing Policy applies to premises falling into the following categories:
 - sexual entertainment venues
 - sex shops
 - sex cinemas
- 2.3 Council officers have taken into consideration the aims of the current Policy and the Council's priorities prior to producing the draft Policy for consultation and have confirmed that the current Policy requires no amendment, except where required due to changes in legislation due to the UK's exit from the

EU. In addition, a full public consultation has been conducted, details of how this consultation was undertaken can be found in section 4 of this report.

- 2.4 In total, there have been 63 responses to the consultation. Of these 63 responses, the overwhelming majority are in favour of maintaining the status quo with regard to the Policy requirements.
- 2.5 A full summary of the consultation responses is attached to this report as Appendix 2.
- 2.6 In addition to the above, consultation has also taken place with Members of the Council's Licensing Board, who were generally in agreement that the Policy delivered on the intended aims and that it would not be appropriate to make amendments to it.
- 2.7 Officers are therefore recommending that the current policy is adopted and will become immediately effective. Key aspects of the current (and proposed) policy are detailed below.

Appropriate Localities

- 2.8 There is provision within the Act which enables the Council to impose a numerical control on the number of sex establishments in a particular locality. The control applies not only to the number of sex establishments overall, but also to the number of each kind of premises.
- 2.9 The Council's proposed Sex Establishment Licensing Policy identifies defined areas that would not be appropriate locations for sex establishments, or where sex establishments would not fit in with the character of such areas.
- 2.10 The current Policy is that there is a presumption against licensing sexual entertainment venues or sex cinemas in any of the following areas:
- A residential area;
 - A rural area, including for example where an industrial unit may already be located;
 - Rotherham town centre;
 - Built up areas like other town and village centres in the borough;
 - An industrial area.
- 2.11 In relation to Sex Shops, the Policy is that there is a presumption against licensing Sex Shops in any of these types of areas, with the exception of Industrial Areas.
- 2.12 Furthermore, the Policy sets out that there is a presumption against licensing any sex establishments (sexual entertainment venues, sex cinemas or sex shops) in proximity to any of the following sensitive locations:
- People's homes,
 - Premises used by charities,

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

Number of Sex Establishments

- 2.13 The Council may refuse a licence on the grounds that the number of licences of that type is equal to or exceeds the number which the authority considers is appropriate for that locality. Nil may be an "appropriate number" where the character of the area is considered to be unsuitable for the siting of a sex establishment.
- 2.14 In considering each of Rotherham's Wards, Officers have considered if there are any localities which would fall outside of the areas and locations described in 2.7 and 2.9 above. Whilst the Council would still be required to consider applications when they arise, on the basis of this consideration, there is no locality in the Borough where it would be appropriate for a Sexual Entertainment Venue or Sex Cinema to be located. Accordingly, the Policy proposes that the appropriate number of Sexual Entertainment Venues and Sex Cinemas in each Ward of the Borough is nil.
- 2.15 Cabinet are requested to be mindful that, although the policy has a presumption towards the non-registration of Sexual Entertainment Venues and Sex Cinemas within the Borough, it would not be lawful for the Council to fetter its discretion in this matter. An application for a licence for any Sex Establishment will be formally considered and the appropriate decision made set against the Sex Establishment Licensing Policy. The facts of each individual application will be fully considered before any decision is made either by officers, where it is consistent with the Policy set or by referral to the Licensing Board.
- 2.16 The Policy does not propose a limit on numbers in each locality in relation to Sex Shops. These applications will be dealt with on a case by case basis.

Worker Rights

- 2.17 In addition to safeguards around safety and welfare, it is essential that, where sexual entertainment venues are licensed, workers are protected from exploitation. The Policy requires that sex establishments have clear policies and codes of conduct in place, to protect staff and the interests of customers. These include:

- A workers' welfare policy including clear guidance as to the process for workers to report any concerns anonymously to the manager of the venue, and/or the Licensing Authority (a 'whistleblowing policy').
- A code of conduct for workers on the premises.
- A code of conduct for customers.
- A pricing policy.

2.18 The appropriate standard conditions will be applied to all sex establishment licences issued by Rotherham Metropolitan Borough Council. The Council does however reserve the right to amend these conditions or attach additional conditions as appropriate to individual applications.

Charging Arrangements

2.19 Fees associated with the licensing of Sex Establishments are set in accordance with the Council's existing arrangements for the agreement of fees and charges and are considered as part of the Council's annual budget setting process.

2.20 The proposed policy is attached to this report as Appendix 1.

3. Options considered and recommended proposal

Option 1

3.1 The Council does not adopt the reviewed Sex Establishment Licensing Policy. The Council has adopted the powers contained within Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended), and sex establishments can therefore be licensed using the powers under this Act.

3.2 However, the lack of a clear Policy would mean lack of clarity for both applicants, and for the Licensing Committee, in terms of the determination of licences. This could potentially mean a lack of consistency in determining licenses and potential unnecessary legal challenge to decisions.

Option 2

3.3 The Council adopts the proposed Sex Establishment Licensing Policy. The adoption of the policy would enable the Council to respond more robustly to ensure that the licensing of sex establishments takes account the views of residents when considering the appropriate number and localities for such establishments and the setting of welfare conditions for those working within such venues.

3.4 A Policy would give clarity to both applicants and the Licensing Committee in determining applications.

3.5 The preferred option is Option 2, and the proposed Sex Establishment Licensing Policy is attached at Appendix 1.

4. Consultation on proposal

4.1 Consultation has taken place with members of the public, and those affected by the Policy. This consultation has taken the form of:

- Direct contact with representatives of businesses / organisations that are directly affected by the Policy.
- Online consultation via the Council's website.
- Direct mail contact with local residents (a mailshot to over 1000 randomised residential addresses within the Rotherham Borough).
- Public drop in sessions throughout the Borough.
- Consultation at Rotherham Show.
- Contact with groups / organisations within the Rotherham Community
- Direct contact with individuals that have previously responded to a consultation regarding the development of this policy (where their details are known).
- Consultation with local ward Members.
- Publicity via local newsletters and mailings
- Press releases / social media publicity raising awareness of the policy review.

4.2 The outcome of the consultation is detailed in section 2 and appendix 2 of this report.

5. Timetable and Accountability for Implementing this Decision

5.1 If adopted, the revised Policy will become effective immediately.

5.2 If adopted the Policy will be published on the Council's website and all relevant parties will be written to advising that the new Policy has been implemented.

6. Financial and Procurement Advice and Implications

6.1 The regulation of establishments that come under the remit of this policy is funded by means of the licensing fee that is attached to applications of this nature. This fee is reviewed as part of the Council's annual budget setting process.

6.2 As a result, the delivery of the functions outlined in this report, the costs of the consultation and the implementation of this policy will be contained within existing approved budgets.

6.3 There are no procurement related implications introduced by this report.

7. Legal Advice and Implications

7.1 The powers contained within Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 regulates the control of sex

establishments. The Council is able to rely upon these powers in the absence of a specific policy.

- 7.2 An informed policy will ensure consistency and transparency in relation to all applications received and minimise the risks in relation to any legal challenge around the application process. Depending upon the result of an application, each applicant has the right of appeal to the Magistrates Court. A policy will provide guidance in relation to the application and decision making process, which in turn should serve to minimise the potential for any challenge.
- 7.3 The Home Office Guidance issued states that whilst Local Authorities are not required to publish a licensing policy, they can do so providing that it does not prevent any application from being considered on its own merits. Such a policy might include statements about appropriate locations and the number considered appropriate for a particular locality.
- 7.4 In considering the appropriate number of establishments within a locality to be Nil, the Council may be open to legal challenge in respect of the policy by way of judicial review. However, careful consideration has been given when considering this issue and it has been made clear that this is a presumption and does not mean that applications cannot be received and considered in accordance with the legislation and Council policy.

8. Human Resources Advice and Implications

- 8.1 There are no HR implications arising from this report.

9. Implications for Children and Young People and Vulnerable Adults

- 9.1 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.
- 9.2 In addition, vulnerable adults may be exploited by the practices of sexual 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.
- 9.3 It is considered that the adoption of the Sex Establishment Licensing Policy will allow for the effective regulation of sex establishments in Rotherham and mitigate the risk of harm that is presented to children, young people and vulnerable adults.

10. Equalities and Human Rights Advice and Implications

- 10.1 There are no implications for equalities or human rights as the proposed amendment will be within existing legal frameworks.
- 10.2 An Equalities Screening Assessment is attached at Appendix 3, and a full Equality Analysis is attached as Appendix 4.

11. Implications for CO2 Emissions and Climate Change

11.1 This report does not introduce any implications for CO2 emissions or climate change. A Climate Impact Analysis is attached as Appendix 5.

12. Implications for Partners

12.1 There no implications envisaged from this report for partners or other Directorates.

13. Risks and Mitigation

13.1 Failure to implement the adoptive legislation and Policy, presents a continuing risks to children and vulnerable adults.

13.2 Failure to regulate sex establishments effectively with the best available regulatory tools, presents a risk of reputational damage to the Council.

14. Accountable Officers

Alan Pogorzelec, Licensing Manager

Approvals obtained on behalf of Statutory Officers: -

	Named Officer	Date
Chief Executive	Sharon Kemp	06/11/23
Strategic Director of Finance & Customer Services (S.151 Officer)	Judith Badger	01/11/23
Assistant Director Legal Services (Monitoring Officer)	Phil Horsfield	01/11/23

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