

Report to: Cabinet

Date of Meeting: 8th July 2019

Report Title: Sex Establishments Policy Review

Report By: Mike Hepworth, Assistant Director, Environment & Place

Purpose of Report

To provide Cabinet with feedback from a consultation on proposed changes to the council's sex establishments policy, and seek Cabinet approval to recommend that Full Council adopts the updated policy.

Recommendation(s)

- 1. That Cabinet endorse the draft policy attached at appendix 1, and recommend that it is adopted by Full Council.**

Reasons for Recommendations

From time to time the council's sex establishments' policy should be reviewed and updated. The existing policy was adopted in July 2015 and is now due for a review.

Background

1. Sex establishments have been licensed by local authorities for many years as a result of adopting Schedule 3 of The Local Government (Miscellaneous Provisions) Act 1982. Hastings Borough Council adopted these provisions on the 24th November 1982.
2. At that time sex establishments were defined as either sex shops or sex cinemas and Hastings historically has had up to two such premises (both shops).
3. In November 2005 district and borough councils implemented the responsibilities of the new Licensing Act 2003, and due to an anomaly of that Act there was a rise in applications under that legislation for lap dancing clubs. They were being authorised under the regulated entertainment part of the 2003 Act. Hastings was no different, one such establishment in the Borough that had previously existed with a Public Entertainment Licence developed into a full time lap dancing club (Club XS in Prospect Place).
4. Central government decided that the increase in premises such as lap dancing clubs should be better controlled by an amendment to the 1982 Act. They defined a new category of sex establishment to be known as Sexual Entertainment Venues (SEVs) by an amendment under Sec 27 of the Policing and Crime Act 2009.
5. This amendment needed to be adopted by local authorities if they wished to licence such establishments. They could opt out, but to do so required extensive public consultation. Hastings Borough Council decided to adopt the amendment and did so on the 6th December 2010.
6. At that time the Council had an opportunity to make a resolution setting the appropriate number of sexual entertainment venues in the borough as zero. The Council did not do so, and as a result the one such establishment in Hastings (Club XS) applied and obtained the appropriate SEV licence; and continues to hold that licence now.
7. There is no statutory requirement for the Council to have a specific policy on sex establishments. However, following a relatively high profile application for a sexual entertainment venue 6 years ago, Councillors indicated that adoption of a clear policy would help make the application process more transparent to all concerned, including applicants and objectors, and the Committee Members authorised to determine such applications on behalf of the council.
8. It should be noted that irrespective of whether or not the council adopts a licensed sex establishment policy, and irrespective of the details of such a policy, the council must accept and determine properly made applications, and consider each on its own merits.
9. It is also important to note that the legislation allows operators of entertainment premises already licensed under the general liquor and regulated entertainment provisions of the Licensing Act 2003, to hold up to 11 adult type entertainments a year, without the need for a sex establishment licence. Over the years we have

had several such premises in Hastings, and we are unable to apply licence conditions to such events. Whereas with a full sex establishment licence we can apply a range of reasonable conditions to control the activity and safeguard those involved.

The Existing Sex Establishment Policy for Hastings

10. The existing policy was developed in 2015 with reference to policies already adopted by other licensing authorities, the relevant statutory Home Office guidance, a comprehensive consultation with a range of local stakeholders, and following advice from the Council's Chief Legal Officer.
11. In considering our approach to setting a policy on the appropriate number of SEVs for Hastings, and the most appropriate locations for them, we decided that only predominantly industrial or commercial areas of the borough are suitable locations for such premises. These locations are referred to within the policy and the associated maps are attached in appendices 2 to 8 of the draft policy. The policy allows for 1 sex shop and 1 sexual entertainment venue.
12. We also considered the statutory Home Office guidance in 2015 which indicated that the setting of a zero policy across the entire borough could attract legal challenge from potential applicants, and could be considered a restrictive practice against a legitimate business use. The guidance hasn't changed in this respect. Although the demand for sex establishments and the way people source the type of goods they sell has changed.
13. During the development of the existing policy in 2015 there were significant changes to the way that people access the sort of sex articles sold by licensed sex shops, and the sort of films that can be shown by licensed sex cinemas. Due to advances in internet shopping and digital streaming services, it was questionable whether the old operating model for sex shops and sex cinemas was economically viable. Since then on-line shopping has become even more popular, and this is probably why the council has never received any interest in a sex cinema, and why the last sex shop in the borough closed in about 2015.

Reviewing the Existing Policy

14. This policy has now been in place for 4 years and so the Licensing Manager has reviewed and updated it. His assessment is that the existing policy has stood the test of time and has not been challenged. However, it needed updating to reflect the changes to the Borough over the past 4 years and take account of the latest legal advice.
15. There have been 2 cases that are relevant to this policy review. They related to one licensing authority that tried to set a zero limit across their whole area for sex establishments, and the Court ruled against this in an appeal. The other one related to a licensing authority that tried to set a zero limit for sexual entertainment venues, despite there already being a licensed SEV in their area. This meant that on an annual basis when the SEV had to apply to renew their licence, it was subject to objections on the basis that it was contrary to the local policy. The SEV had operated for years with no issues and argued that it was operating legitimately

in compliance with the appropriate legislation, and therefore the local policy was inappropriate. The Court ruled in their favour.

16. The main change from the existing policy has been to propose reducing the numbers of such establishments deemed to be appropriate for the borough down from the existing one sex shop and one SEV to just one SEV. As mentioned above the only sex shop in the Borough ceased trading over 4 years ago, probably due to the rise in internet sales for such products, and it is unlikely that this proposed policy change will be challenged.

Consultation

17. The proposed updated policy has been subject to a full consultation, including the statutory consultees (which include the police, fire service and operator of the existing licensed premise); in addition the consultation was placed on the Council website and circulated to all councillors. As a result of this, two telephone responses and two e mail responses were received and a précis is outlined below.
18. The existing licensed operator telephoned the licensing department to confirm that he had received and read the draft proposed new policy; he indicated his agreement with the amendments. The police licensing team also made telephone contact. They agreed with the policy change proposals, commenting that the existing SEV was well run and caused no issues.
19. The two e mail responses were both from Councillors. One agreed with the proposed changes, the second commented on her concerns for siting such establishments in her ward in an area that may be developed into homes.
20. In addition, legal advice on the review was obtained from James Button, Solicitor who is nationally recognised as a legal expert in licensing matters. The council subscribes to his advice service. He has indicated that the approach taken in the consultation is legally compliant. We asked for specific guidance on changing the policy on SEVs to nil, and he commented that making a borough wide “nil” policy would be too wide and likely to result in legal challenge and has given stated case evidence to support his advice.

Changes to draft policy following the consultation

21. As explained above the risk of challenge in relation to setting a zero policy for sex establishments (sex shops and cinemas) rather than SEVs is now thought to be very low. If we do receive an application for a sex establishment it will need to be considered on its merits, and the Committee will need to decide whether to refuse it on the basis of the new zero limit on sex establishments and/or other elements of the policy, or to approve it.
22. On balance having considered all the consultation responses, no further changes are needed to the proposals that were consulted on. But in future should the existing preferred areas for siting such establishments change in nature, the policy could be amended to reflect the situation. The amended draft updated policy is attached at Appendix A.

Policy Implications

23. The licensing of sex establishments is an emotive subject. Sex shops and SEVs such as lap dancing clubs are morally and socially offensive to some people. For example, people with strong religious and/or cultural beliefs, and some strongly held social beliefs. When the policy was developed initially several strong views were received, on this occasion no such comments have been received.
24. From an equalities and community cohesion perspective, some people argue that SEVs such as lap dancing clubs are demeaning to women, and promote gender inequality because they may employ more female than male dancers. Some argue that this is a form of exploitation of women, and potentially of young vulnerable women, portraying them as sex objects, which could lead to men being more likely to abuse women.
25. Similarly from an anti-poverty policy perspective, it might be argued that vulnerable people with poor job prospects may be attracted to the sort of work available at SEVs, and therefore be more likely to be exploited as a result.
26. In 2015 we considered these views and perspectives with the assistance of a critical friend, and carried out an equalities screening exercise to assess the potential for the policy to result in discrimination, harassment or victimisation related to the statutory protected characteristics. We concluded that this was unlikely to be the case. As there are no changes proposed relating to this, there is no need to carry out another equalities screening exercise.
27. It should also be noted that sex shops and SEVs are lawful business interests in England, and the Home Office statutory guidance on sexual entertainment venues refers to case law that states that licensing authorities should not consider objections to SEVs based on moral grounds/values.
28. There are also references to case law associated with successful appeals against decisions to refuse applications made by Tunbridge Wells and Cheltenham Borough Councils, in relation to whether or not the entire town or local authority area can be deemed to be the relevant locality, when considering setting a limit on the appropriate number of sex establishments for that locality. This is an important consideration from a corporate risk management perspective, as case law suggests that setting zero as the appropriate number of SEVs for the whole borough could be subject to potentially successful legal challenges from aggrieved applicants. But as mentioned in paragraphs 16 and 21 this appears to be a low risk.
29. In considering the crime and fear of crime policy implications, we noted the fact that the Police have not objected to the sex establishment policy proposals, and that they have not identified any crime and disorder problems associated with the existing sex establishment.
30. We also considered the fact that the Council has not received material complaints about the operation of the existing sex establishment, which was borne out by the telephone conversation with the police during the consultation.

31. The consultation process primarily focussed on seeking feedback from the statutory consultees. It also gave local people the opportunity to submit their views, but none were received.
32. Overall we believe that the proposed update to the sex establishments policy for Hastings still balances the rights of all interested parties, and that if the updated policy is adopted it will continue to be of great help to all concerned, whether applicants, the general public, or Councillors.

Timetable of Next Steps

33. Please include a list of key actions and the scheduled dates for these:

Action	Key milestone	Due date (provisional)	Responsible
Report draft updated policy to Cabinet	Cabinet endorse updated draft policy and recommend that Full Council adopts it.	8 th July 2019	Assistant Director Environment and Place
Report draft updated policy to Full Council	Full Council adopts updated policy	24 th July 2019	Portfolio Holder for for Environment, Community Safety and Equalities

Wards Affected

Ashdown, Baird, Braybrooke, Castle, Central St. Leonards, Conquest, Gensing, Hollington, Maze Hill, Old Hastings, Ore, Silverhill, St.Helens, Tressell, West St. Leonards, Wishing Tree.

Implications

Relevant project tools applied? Yes

Have you checked this report for plain English and readability? Yes

Climate change implications considered? Yes. None were identified.

Please identify if this report contains any implications for the following:

Equalities and Community Cohesiveness	Yes
Crime and Fear of Crime (Section 17)	Yes

Risk Management	Yes
Environmental Issues	No
Economic/Financial Implications	No
Human Rights Act	Yes
Organisational Consequences	No
Local People's Views	Yes
Anti-Poverty	Yes

Additional Information

Appendix A – Draft Sex Establishment Policy

Officer to Contact

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