

Item No. 7.	Classification: Open	Date: 6 January 2011	Meeting Name: Licensing Committee
Report title:		Local Government (Miscellaneous Provisions) Act 1982 – Draft Southwark Sex Establishments Policy for Purposes of Public Consultation	
Ward(s) or groups affected:		All	
From:		Strategic Director of Environment and Housing	

RECOMMENDATION

1. That the licensing committee approves the draft Southwark sex establishments policy at appendix A to this report, for the purpose of public consultation.

BACKGROUND INFORMATION

2. Section 27 of the Policing and Crime Act 2009, came into effect on 6th April 2010. It has had the effect of reclassifying lap dancing clubs and similar as 'sexual entertainment venues'. This offers local licensing authorities in England and Wales adoptive provisions to regulate such venues as sex establishments under schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982.
3. These provisions were reported, in full, to the licensing committee meeting of 28 September 2010. Having considered the report the committee decided to recommend council assembly to adopt the new provisions.
4. On 20 October 2010, council assembly duly adopted the provisions with effect from 1 April 2011.
5. At the meeting of 28 September 2011, members noted the intention to return to the committee with a draft sex establishment policy for the basis of formal public consultation to take place early in 2011.
6. This report presents a draft policy document for consideration. A copy is provided at appendix A.
7. The policy, once formally approved, will establish how this authority intends to approach it's new licensing responsibilities under the Act. It will include the council's views on important issues such as 'appropriate locality'. Public consultation is intended to ensure that the local community is able to contribute toward the debate.

MATTERS FOR CONSIDERATION

The new licensing provisions

8. Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, as amended, provides a licensing regime for the following categories of sex establishment:
 - Sex shops;
 - Sex cinemas;

- Sex encounter establishments; and
 - Sexual entertainment venues;
9. Definitions for each of the categories of sex establishment are provided in part C of the draft policy document at appendix A (pages 7 to 9).
10. The provisions contained within Schedule 3 of the 1982 Act provide for:-
- Written applications to be made for a sex establishment licence providing details as set out in the Act and as the local authority may reasonably require;
 - 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 grounds for refusal of a licence (see sections 71 to 73 of the draft policy at appendix A); and
 - Public hearing of the application and any objection.
11. In determining a licence application, paragraph 12 of Schedule 3 sets out the grounds for refusing an application. Importantly, the grounds for refusal include;
- That the number of sex establishments in the relevant locality that the application is made is equal to or exceeds the number which the council considers appropriate for that locality; and
 - That the grant or renewal of the licence would be inappropriate having regard to:
 - The character of the relevant locality;
 - The use to which any premises in the vicinity are put; or
 - The layout, character or condition of the premises, vehicle, vessel, or stall in respect of which the application is made.
12. Under the Act, licensing authorities may publish a licensing policy relating to sex establishments so long as it does not prevent any individual application from being considered on its merits at the time that the application is made.
13. Guidance on the new 'sexual entertainment venues' licensing scheme has been produced by the Home Office. Copies may be viewed or downloaded at <http://www.lacors.gov.uk/lacors/ContentDetails.aspx?id=23464>

The draft policy

14. The draft Southwark sex establishments policy at appendix A has four main objectives:
- To reinforce to elected members on the licensing committee, the boundaries and powers of the local authority and provide the parameters under which those licensing decisions are made;
 - To inform licence applications of the parameters under which this authority will make licence decisions and how a licensed premises is likely to be able to operate within an area;
 - To inform residents and businesses of the parameters under which licence decisions will be made and how their needs will be addressed; and
 - To support licensing decisions that may be challenged in a court of law.
15. While the draft policy acknowledges all relevant provisions, of the Act and Home Office guidance, the basis for some of the most important sections of the draft policy (relating to locality and conditioning of licences) derive from relevant provisions currently set out

within the council's current statement of (alcohol, entertainment and late night refreshment) licensing policy made under the Licensing Act 2003. Members will be aware that up until the advent of the Policing and Crime Act 2009, lap dancing and similar venues in Southwark have been licensed as music and dancing venues under the 2003 provisions. These policy provisions, previously agreed by council assembly, have already established the council's initial views on matters of locality and conditioning.

Locality

16. The section on relevant locality appears across pages 18 and 19 of the draft policy document at appendix A.
17. The Home Office guidance establishes that it is for the local licensing authority to decide what constitutes 'relevant locality' on the facts of the individual application. It also sets out 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. Case law has defined, however, that a 'relevant locality' cannot be an entire local authority area or entire city or town.
18. In order to try and balance these two positions it is proposed that the consultation approaches this matter on a ward by ward basis and that local views are sought on whether, having had regard to the criteria set out in the draft policy, any ward can be deemed as being appropriate for the grant of any category of sex establishment licence.
19. The draft policy proposes that applications will not normally be granted where the premises are located:
 - Near residential accommodation;
 - Near places of worship, community facilities or public buildings;
 - Near schools, youth clubs, shops, parks, leisure and recreational establishments and any other similar premises directed at, or primarily used by children or families;
Or
 - Within sight of pedestrian routes or transport nodes (such as stations or bus stops) serving categories (a), (b) or (c).

Conditions

20. Where a local authority may decide to grant a licence, the authority is able to impose terms, conditions and restrictions on that licence. Subject to the provision in section 21 of this report, these can be in the form of either standard conditions applicable to all sex establishments or specific categories of sex establishment or conditions specific to the particular operation under consideration at the time.
21. In the case of the new category of sex entertainment venues, legislation specifies that conditions may address, but are not restricted to:
 - The hours of opening and closing;
 - Displays and advertisements on or in sex establishments;
 - The visibility of the interior of a sex establishment to passers-by;
 - Any change of use from one kind of sex establishment to another;
 - The exclusion of persons under 18 at all times from the premises;
 - The prohibition of exterior advertising of the sex-related entertainment at the premises;

- The prohibition of leafleting or touting for business.;
- That the provision of services will be to seated customers only;
- The prohibition of the participation of customers in the performance;
- The maintenance of a minimum distance of 1 metre between performer and customers during the performance;
- The provision of CCTV and the maintenance of a library of recordings;
- A code of conduct for dancers including appropriate disciplinary procedures for failure to comply with the code;
- Rules of conduct for customers, including appropriate procedures for breach of these rules;
- Procedures to ensure that all staff employed in the premises have pre-employment checks including suitable proof of identity, age and (where required) permission to work; and
- The provision of supervisors and security staff.

22. The policy duly contains proposed standard conditions for each category of premises plus common conditions to apply to all categories of premises. These proposed conditions are compiled using existing best practice.

Enforcement

23. In addition to the processing of applications for licences, the licensing authority also has an enforcement role which includes the investigation and prosecution of unlicensed premises; the inspection of licensed premises for compliance with licence terms, conditions and restrictions; and enforcement of breach of conditions.

24. The policy looks to set the criteria for proportionate enforcement in line with government recommendations and guidance.

Community Impact Statement

25. The adoption of these new provisions and establishment of this policy is anticipated to enable better decision making around the adult entertainment market sector. It will ensure that the authority is able to give full and proper consideration to appropriate locations for adult entertainments. It will ensure that such entertainments are properly controlled.

26. Also, importantly, the local community will be empowered to take full part in the licensing process; have its concerns raised and considered; and be afforded necessary protections.

27. While operators will find that a more rigorous licensing process will be applied in future, the establishment of a policy helps establish a clear framework for licensed operations under a licence.

28. In these ways this draft policy looks to support broader council objectives.

Consultation arrangements

29. It is proposed to consult on the draft policy from 10 January 2011 through to 4 March 2011.

30. Our intention is that the consultation will be

- Advertised in local Southwark press and on the council's website;
- Brought to each of Community Councils through the January – March 2011 meeting round; and
- Notified directly to known interested parties (including responsible authorities, representatives of licensees and local residents, and local ward councillors).

31. A draft proforma compiled to help interested parties in submitting their views, is attached at appendix B. The responses of the consultation will be brought back for consideration and discussion to the next suitable meeting of the committee after the closing date.

Resource implications

32. Schedule 3 to the 1982 Act provides that the applicant for the grant, renewal, variation or transfer of a sex establishment licence shall pay a reasonable fee determined by the appropriate authority. The term 'reasonable' is not defined.

33. In other circumstances where this authority has some discretion over fees set, those fees have been set with regard to existing guidance issued by the former Local Authority Co-Ordinator for Regulatory Services (LACORs) now Local Government Regulation, on a cost-recovery basis.

34. The same approach will be taken in setting fees under this Act when the matter of 2010-2011 licensing fees is considered by council assembly early next year.

35. Currently the fee for a new sex establishment licence is £7,604.

36. The costs of the public consultation can be covered within the licensing unit budget for 2010-11.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Strategic Director of Communities Law & Governance

37. The director of legal & democratic services (acting through the licensing and prosecutions section) notes the content of the report.

38. Section 27 of the Policing and Crime Act 2009 came into force on 6th April 2010, expanding the provisions of Schedule 3 Local Government (Miscellaneous Provisions) Act 1982 to include "sex entertainment venues". If the council wishes to adopt the amended legislation it must conduct a public consultation by 6th April 2011. The relevant procedures are clearly and comprehensively set out in the body of this report.

39. As a public authority, the London borough of Southwark has general and specific equality duties imposed on it under section 49(a) and section 49(d) of the Disability Discrimination Act 1995, section 71 of the Race Relations Act 1976 and under section 76(a) and (b) of the Sex Discrimination Act 1975. The local authority must have due regard to these duties when carrying out these functions, which includes making decisions in the current context. An equality impact statement should address all six strands to the council's equality agenda: age, disability, belief and non belief, gender, race, sexual orientation and human rights.

40. The report author refers to a community impact statement; consequently a continuing need has been identified during the assessment. Equality impact assessments are an essential tool to assist councils to comply with our equalities duties and to make decisions fairly. The council's equalities impact assessment process goes beyond our current equalities duties to incorporate religion/belief, sexual orientation and age. The

Equalities Act 2010 which introduces additional protected characteristics does not come into effect until April 2011.

41. I understand that there are no existing contracts which would be affected by this policy, although some venues, where occasional licences are required, can apply under the exemptions provided in paragraph 32 of the policy document.
42. So far as the impact on major regeneration projects is concerned, the proposed measures would have to tie in with the contracts to be entered into with contractors in the future.
43. No significant risks have been identified.

Finance Director (Env/ET/101210)

44. The head of service has confirmed that any costs of implementing the proposed consultation can be contained within the existing revenue budgets of the division. The cost of issuing licenses will be met from the licence fee.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Local Government (Miscellaneous Provisions) Act 1982 and related subsequent legislation	Health Safety Licensing & Environmental Protection Unit, C/O The Chaplin Centre, Thurlow Street, London, SE17 2DG	Mrs Kirty Read Phone number: 020 7525 5748
Policing & Crime Act 2009		
Licensing Act 2003		
LACORS Guidance on fee setting		
Various 2003 Act case files		
Home Office Guidance on Sex Entertainment Venues		

APPENDICES

No.	Title
Appendix A	Draft Southwark Policy for Sex Establishments
Appendix B	Draft questionnaire

AUDIT TRAIL

Lead Officer	Strategic Director of Environment & Housing	
Report Author	Richard Parkins, Health Safety Licensing and Environmental Protection Unit Manager	
Version	Final	
Dated	15 December 2010	
Key Decision?	Yes	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments included
Strategic Director of Communities Law & Governance	Yes	Yes
Finance Director	Yes	Yes
Cabinet Member	Yes	Yes
Date final report sent to Constitutional Team	15 December 2010	