

Item No. 8.	Classification: Open	Date: 26 July 2011	Meeting Name: Licensing Committee
Report title:		Local Government (Miscellaneous Provisions) Act 1982 – Southwark Sex Establishments Licensing Policy	
Ward(s) or groups affected:		All	
From:		Strategic Director of Environment	

RECOMMENDATION

1. That the licensing committee recommends council assembly to adopt the draft Southwark sex establishments licensing policy at Appendix A to this report.

BACKGROUND INFORMATION

2. On 20 October 2010, council assembly adopted new legislative provisions introduced under Section 27 of the Policing and Crime Act 2009 concerning the regulation of lap dancing clubs and similar operations. These provisions had the effect of reclassifying such premises as ‘sexual entertainment venues’ and enabled the council, as the local licensing authority, to introduce a new scheme to licence local venues as sex establishments under schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982.
3. The first appointed date for the new sex establishment licensing regime was set as 1 April 2011. On this date transitional arrangements commenced which will lead to the new regime taking full effect from the third appointed date on 1 April 2012.
4. On 6 January 2011, officers returned to the licensing committee with a draft Southwark Sex Establishments Licensing Policy which is intended to support future licensing decisions to be taken by the council under the new regime. The committee considered and agreed the draft document for the purposes of public consultation.
5. The public consultation exercise ran from January through to March 2011. Responses received from the consultation exercise have now been reviewed and a revised policy statement is put to the committee accordingly.
6. The committee is asked to consider the revised document and recommend it to council assembly for adoption as the Southwark Sex Establishment Licensing Policy 2011. A copy of the policy document is provided at Appendix A.

KEY ISSUES FOR CONSIDERATION

The new licensing provisions

7. 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; and

- Sexual entertainment venues;
8. Full definitions for each of the categories of sex establishment are provided in part D of the draft policy document at Appendix A. From 1 April 2012, it will be illegal to provide any of the above without a licence obtained from this authority.
9. The new licensing regime provides for:-
- Formal applications to be made for a sex establishment licence;
 - Payment of a fee;
 - Public advertisement of all applications;
 - Provision for written objections to be lodged relevant to the grounds for refusal of a licence; and
 - Public hearing of the application and any objection.
10. 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

11. 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.
12. While the intention of the licensing regime is to ensure that sex establishments operate in a lawful manner; in appropriate locations; with necessary protection afforded to residents, customers and employees. The draft Southwark sex establishments policy 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.
13. 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 previously contained 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 had been licensed as music and dancing venues under the 2003 provisions. These policy provisions, previously agreed by council assembly, had already established the council's initial views on matters of locality and conditioning.

The consultation

14. As noted, the public consultation ran through January to March 2011. The consultation was:

- 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).
15. A draft proforma response was compiled to help interested parties to submit their views.
 16. The consultation ran as scheduled. The matter was brought to each Community Council and notices were given. The responses received are summarised in Appendix B to this report. A low response was received. Some 25 individual responses were given. Two letters written in response to the consultation are provided at Appendices C and D.
 17. Overall the response received was supportive of the steps being taken by the council. Some 80% of the respondents supported the introduction of a licensing regime. Some 87% found the draft policy clearly written and easy to understand.
 18. Some of the main issues within the policy are dealt with below.

Locations policy

19. At the heart of the overall policy lies a proposed 'locations policy'.
20. Paragraph 12(3)(c) and 12(3)(d) of Schedule 3 allow licensing authorities to refuse applications on grounds related to an assessment of the "relevant locality". A licence can be refused if either, at the time the application is determined the number of sex establishments, or sex establishments of a particular kind, in the relevant locality is equal to or exceeds the number that the authority considers appropriate for that locality; or that a sex establishment 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. Nil may be the appropriate number.
21. 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.
22. The guidance also sets out that it is for the licensing authority to decide what constitutes 'relevant locality' on the facts of the individual application. Case law has defined, however, that a 'relevant locality' cannot be an entire local authority area or entire city or town.
23. The consultation considered the position by proposing criteria for examining appropriate locality and asking respondents to consider whether they a) supported the stated criteria; and b) if so, whether on the basis of this criteria, their ward provided an appropriate location for any category of sex establishment.
24. The criteria proposed was that already offered as guidance under the 2003 Act policy. The proposal was 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 the above categories.
25. The response to the consultation provided 87% support for the first and third categories and 80% support for the second and fourth categories. It is proposed that the criteria are adopted into the council's final policy.
26. However, the response received to the questions as to appropriate location on a ward by ward basis is not so easy to rely on. Of the eight community councils, only three (Bermondsey, Nunhead and Peckham Rye and Walworth fully considered the matter).
- Bermondsey Community Council took a general view on the position from the floor of the meeting and this firmly emphasised that no area within the three local wards was appropriate for any category of sex establishment;
 - Nunhead and Peckham Rye Community Council ran a workshop that considered the issues. The response returned was again that no area within the 3 local wards was appropriate for any category of sex establishment; and
 - Walworth Community Council ran a voting exercise on appropriate location. The outcome of this was an 88% majority supporting the contention that there are no suitable areas for any category of sex establishment within any of the three local wards. This area received the most individual submissions, however, and two respondents from nine suggested that there might be potential for sex shops or a sex cinema in East Walworth ward.
27. The consultation did not identify any specific area as being appropriate for any category of sex establishment. It is proposed, therefore rather than specify specific numbers within any particular ward, that the council policy establish as guidance for future applicants, that no appropriate location within the borough is identified, but that applications will be assessed on their own relative merits against the stated location criteria. In accordance with the current council constitution, every application for sex establishment licences will be determined at member level.

Consultation on applications

28. Applicants for a sex establishment licence must give public notice of the application by publishing an advertisement in a local newspaper that is circulated in the local authority area no later than 7 days after the date the application is made. A notice should also be displayed on or near the premises in a place where it can be conveniently read by members of the public. The notice should be displayed for a period of 21 day beginning with the date the applications was made. It is open to any person to write in and either object to, or support an application, although objection may not be made on moral grounds.
29. The draft policy document, which went out to consultation, additionally proposed that applications would be advertised on the council's web site and that direct letter notifications would be sent to residents and business operators recorded on the post office database within a 100 metre radius,. This proposed level of consultation received 73% support and is recommended for adoption within the policy.

30. It should be understood that the 100 metre radius, referred to above is a gauge set for administrative purposes only, as being likely to canvass a representative selection of people likely to be affected by the application. It is not intended to represent this council's definition of location. The term 'location' is intended to remain undefined as this may alter given the individual circumstances of a case.

Licence conditions

31. Where a local authority may decide to grant a licence, the authority is able to impose terms, conditions and restrictions on that licence. These may 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.
32. 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 were compiled using existing best practice. These are set out in part H of the draft policy at Appendix A.
33. The proposed sets of conditions received from 73-80% support and are recommended for adoption within the policy.

Licence hours

34. The draft policy also proposes standard hours of operation for each category of premises, to be applied in the event that any licence may be granted. The suggested standard hours are:
- Sexual entertainment venue, from 09:00 to 23:00hrs on Monday to Saturday;
 - Sex shop, from 09:00 to 18:00hrs on Monday to Saturday;
 - Sex cinema, from 09:00 to 23:00hrs on Monday to Saturday; and
 - Premises shall not open on Sundays, Christmas Day or Good Friday
35. Under this proposal any extended operation outside of these timings would have to be the subject of specific consideration within the initial application or by way of variation application.
36. The proposed timings received 66% support within the consultation and are recommended for adoption within the policy.

Community impact statement

37. The decision to adopt these new licensing provisions was taken to enable better decision making around the adult entertainment market sector. The existence of this licensing scheme means that applications for premises providing adult entertainments will be given full and proper consideration with proper acknowledgement given to the types of entertainment intended to be provided.
38. In doing so, the local community will be properly empowered to take full part in the licensing process; have all relevant concerns raised and considered; and to be afforded necessary protections.
39. It will ensure that the authority is able to give full and proper consideration to appropriate locations for adult entertainments. It will also ensure that such entertainments are properly controlled with adequate protections being afforded local

residents and employees.

40. While operators will find that a more rigorous licensing process will be applied in future, the establishment of this regime and this policy helps establish a clear framework for licensed operations under a licence.
41. In these ways this draft policy looks to support broader council objectives.
42. This new licensing regime has been subject of an equalities impact assessment. The licensing process which supports this new regime is an inclusive and transparent process, designed to be open to all, so as to ensure all issues may be raised, heard and considered. No issues are identified at this time but the situation will be subject of review as the new regime is implemented.

Resource implications

43. 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.
44. 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.
45. The same approach was taken toward setting fees under this Act. Present fees for applications for sex establishments licences in 2011-12 stand at £7984.00 (plus an additional compliance charge of £567) for new applications and a fee of £7402.00 for renewal and variation applications.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Strategic Director of Communities, Law & Governance

46. The licensing and control of sex establishments is governed by Section 2 and Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 ("the 1982 Act"). These provisions previously applied only to sex cinemas, hostess bars and sex shops.
47. The Policing and Crime Act 2009 amended the provisions of Schedule 3 to introduce a new category of sex establishment, called a sexual entertainment venue, which brought venues such as lap dancing clubs within the licensing regime of the 1982 Act.
48. The Council has resolved to adopt these amended provisions, so that sexual entertainment venues (as well as all other types of sex establishment) in Southwark will require a licence under the 1982 Act.
49. The Council is the authority which issues licences for sex establishments.
50. The 1982 Act sets out the grounds on which an application for a licence can be refused. These include instances where the applicant does not meet certain statutory criteria (e.g. they are under 18 or disqualified from holding a licence), and also where the applicant is considered unsuitable.
51. The other grounds of refusal are based on considerations of the locality of the area in

which a premises is situated. These include a consideration of the appropriate number of sex establishments in the locality, and it is open to the Council to refuse on the basis that there should be no sex establishments in the locality.

52. Other reasons include the character of the locality, the use of other premises in the vicinity and the premises themselves.
53. The relevant locality is the area in which the premises are situated, and it will be for the Council to decide the extent of this area in each case, although it cannot be as wide as the whole of Southwark.
54. Each application must be determined on its own merits and a consideration of the particular locality in which a premises is located.
55. Under Schedule 3 the Council can prescribe standard conditions which will automatically apply to sex establishment licences, unless the Council feels that in a particular case those conditions should be excluded or modified.
56. The 1982 Act does not require the Council to publish a statement of its licensing policy in relation to sex establishments which must be considered when determining applications, nor is there statutory guidance which the Council must legally consider, although the Home Office has also issued non-statutory guidance.
57. However both case law and the non-statutory guidance state that the Council may publish a licensing policy in relation to sex establishments, to provide guidance to applicants on whether a sex establishment is likely to be considered appropriate in a particular area.
58. The Council cannot rely on its policy as a ground for refusing an application, although it may look to the policy for guidance. Each application must be determined on its own facts, and this must be made clear to applicants, interested parties and decision makers.
59. Positive equalities obligations are placed on local authorities, sometimes described as equalities duties, with regard to race, disability and gender. Race equality duties were introduced by the Race Relations Amendment Act 2000 which amended the Race Relations Act 1976. Gender equalities duties were introduced by the Equality Act 2006, which amended the Sex Discrimination Act 1975. Disability equality duties were introduced by the Disability Discrimination Act 2005 which amended the Disability Act 1995.
60. Equality impact assessments are an essential tool to assist councils to comply with our equalities duties and to make decisions fairly and equalities and human rights impact assessments that are carried out should be mindful of the protected characteristics under the Equality Act 2010.
61. Under the Local Authorities (Functions and Responsibilities) (England) Regulations 2000, as amended, decisions relating to licensing matters cannot be the responsibility of an authority's executive. Under Part 3 of the Council's Constitution, decisions on the Council's licensing policies are reserved to council assembly. The decision on whether to adopt the statement of licensing policy for sex establishments must therefore be taken by council assembly.

Finance Director

62. This report asks that the licensing committee recommends council assembly to adopt

the draft Southwark sex establishments licensing policy. This is a new licence, and as yet none have been issued.

63. The licence fees included in this report were approved as part of the overall community safety fees and charges report by the cabinet member for finance and community safety on 28 February 2011.
64. For the 2011/12 budget it was assumed that this would be cost neutral (costs and income match). The position will be monitored carefully during the year and any variation will influence the budget proposals for the 2012-13 process.

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	Name: 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	Summary of responses to the public consultation exercise
Appendix C	Letter from Southwark Cathedral
Appendix D	Letter from Metropolitan Tabernacle

AUDIT TRAIL

Lead Officer	Strategic Director of Environment	
Report Author	Richard Parkins, Health Safety Licensing and Environmental Protection Unit Manager	
Version	Final	
Dated	15 July 2011	
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	No
Date final report sent to Constitutional Team	15 July 2011	