

SEXUAL ESTABLISHMENT - STATEMENT OF LICENSING POLICY

Council - 25 February 2020

Report of Chief Officer Planning & Regulatory Services

Status: For approval

Also Considered by Licensing Committee - 7 January 2020

Key Decision: No

Executive Summary:

This report presents an amended 'Sex Establishment Statement of Licensing Policy' following an 8 week consultation. The purpose of the policy is to define how the Council will exercise and administer applications for Sex Shops, Sex Cinemas and Sexual Entertainment Venues submitted under Local Government (Miscellaneous Provisions) Act 1982 (as amended The Policing and Crime Act 2009).

This report supports the Key Aim of sustainable economy.

Portfolio Holder: Cllr. Margot McArthur

Contact Officer: Michael Moss, Ext. 7364

Recommendation to Licensing Committee To agree the 'Sexual Establishments Statement of Licensing Policy 2020-2023' (attached as **Appendix A** to this report) be recommended to the Council as a revised Policy to come into effect from 1 April 2020.

Recommendation to Council

That the Sexual Establishments Statement of Licensing Policy 2020-2023 as revised Policy be adopted as from 1 April 2020.

Reason for recommendation:

It is best practice for a Licensing Authority to have a Sexual Establishment Policy. The last Policy was reviewed in 2013 and has no expiry date.

It is important for the Licensing Department to obtain the views of interested parties on the proposed Policy and use these views to formulate any changes to the existing Policy.

A proposed policy includes a new section called 'European Convention on Human Rights' and additional information has been provided on immigration and rights

to work under 'The Application Process'.

Introduction and background

- 1 Local Government (Miscellaneous Provisions) Act 1982 puts a duty on the Council, acting as the Licensing Authority (LA), to determine whether a premises is suitability for the activities proposed.
- 2 There is no legal requirement for the Council to have a 'Sex Establishment Policy (SEP).
- 3 The purpose of the policy is to outline the approach that Sevenoaks will take when dealing with applications made under the Local Government (Miscellaneous Provisions) Act 1982; the document covers the following:
 - a) How the Licensing Authority (LA) will use its regulatory powers in relation to applications and enforcement complaints;
 - b) How the Council will assess the suitability of the premises
 - c) The LA's approach to regulation & expected standards; and
- 4 The existing SEP was approved in 2013.
- 5 The SEP 2020-2023 can be reviewed and updated at any time during the life of the document. The Council keeps the SEP under constant review to ensure services and expectations are transparent and promote public safety.
- 6 The new SEP 2020-2023 for the District is proposed to commence from 1 April 2020. The SEP 2020-2023 document does not cover any activity that is outside the scope of The Local Government (Miscellaneous Provisions) Act 1982 (for example, licensable activities regulated under the Licensing Act 2003).
- 7 There are currently no Sexual Entertainment premises within the District.

Proposal and Reasons

- 8 The Policing and Crime Act 2009 is not prescriptive about how local authorities should consult with local people
- 9 The new draft SEP 2020-2023 for the District has retained its Kent wide template with an amendment to include 'European Convention on Human Rights'. In addition, the format of the current SEP has been updated in order to make the new document easier to read and more accessible.

- 10 The final draft was produced as a result of the following stages:
- 11 **Stage 1: Production of first draft:** The first draft of the new SEP was produced by undertaking a review of the policy document and benchmarked against our partnership authorities (e.g. Maidstone Borough Council and Tunbridge Wells Borough Council).
- 12 The outcomes from the above and key difference between the current SEP and the Draft were as follows:
- 13 **Equalities:** When determining applications for licences under this policy the Licensing Authority will give consideration to any rights an existing operator may have under Article 1, Protocol 1 of the European Convention on Human Rights (ECHR) which entitles every person to the peaceful enjoyment of their possessions and Article 10 (freedom of expression).
- 14 The Secretary of State has certified that the Policing and Crime Act 2009 is covered by Section 19, Human Rights Act 1998 as being in compliance with the ECHR.
- 15 Whilst the rights under Article 1 and 10 may be activated the weight to be accorded to these rights in this context is low level. The right of freedom of expression to participate in the activities of sex shops, sex cinemas and sexual entertainment venues is not prohibited but may be controlled by licensing. Similarly the right to possession of an existing licence is proportionally protected subject to a fair balance of the rights of the holder and the public interest.
- 16 **Immigration:** The SEP now states that all licensed premises are expected to familiarize themselves with and adhere to their responsibilities regarding the prevention of illegal working under the Immigration Act 2016 and all aspects of the Act.
- 17 **Stage 2: Production of final draft:** Public Consultation on the draft SEP took place over an 8 week period between 21 October 2019 and 13 December 2019.
- 18 The Public Consultation consisted of a web page on Sevenoaks District Council's website which provided a full version of the draft SEP 2020-2025.
- 19 A notification email was sent to all Responsible Authorities under the Licensing Act 2003, Sevenoaks District Council's Elected Members and the business owners of Eureka (who may make an application under this Act in the future).

20 During the 8 week public consultation, there were no representations received.

Conclusion

21 The Councils processes should be transparent and despite there being no legal obligation to adopt a Policy, it would ensure better control over applications made for Sexual Entertainment premises.

Key Implications

Financial

There are no specific financial implications resulting from the matters considered in this report, as the minimal cost of consultation and publication in respect of the proposed Council's Statement of Sexual Establishment Statement of Licensing Policy - 2020- 2023 will be met from the running costs of the Licensing Team and Licensing Partnership.

Legal Implications and Risk Assessment Statement.

The Council's Statement of Licensing Policy is an important factor when determining certain applications under the Licensing Act 2003. If the Policy is silent on a matter then the Council will have less opportunity to guide and control applications.

Ensuring that the Policy is up to date and covers relevant areas assist the Council is ensuring a consistency of approach.

Equality Assessment

Section 149(1) of the Equality Act 2010 requires that, in exercising its functions public sector bodies to have 'due regard' to the need to -

- Eliminate discrimination, harassment and victimisation and any other conduct that is prohibited by or under the Act;
- Foster good relations between people who share a relevant 'protected characteristic' and those who do not;
- Advance equality of opportunity between people who share a relevant 'protected characteristic' and those who do not.

Assessing the potential impact on equality of proposed decision, changes to policies, procedures and practices is one of the key ways in which the Council can demonstrate that they have had 'due regard'. Assessing impact on equality should be tailored to, and be proportionate to, the decision(s) being made.

Officers have considered the impact of the proposals contained in

this report and consider that there would be no, or very limited adverse or disproportionate impact on those who share a protected characteristic. This will be kept under review as part of the Council's ongoing duty.

Appendices

Appendix A -Sexual Establishment
Statement of Licensing Policy - 2020-
2023

Background Papers:

Local Government (Miscellaneous Provisions)
Act 1982

Richard Morris
Chief Officer Planning & Regulatory Services