

# TONBRIDGE & MALLING BOROUGH COUNCIL

## LICENSING AND APPEALS COMMITTEE

15 JUNE 2011

### Report of the Chief Solicitor

#### Part 1- Public

## 1 SEXUAL ENTERTAINMENT VENUES

### Summary

**The purpose of this report is to seek approval to consult local residents & businesses about whether the Council should adopt the sexual entertainment provisions contained in the Policing and Crime Act 2009.**

### 1.1 Introduction

1.1.1 The Council has historically had powers to regulate sex establishments (sex shops and sex cinemas) through the provisions of the Local Government (Miscellaneous Provisions) Act 1982.

1.1.2 In August 2008 the previous Government announced its intention to review the licensing arrangements for lap dancing clubs, with a view to giving local people a greater say over the number and location of such clubs within their area. This was supported by the Policy Overview Committee of this Council, who considered the proposal at their meeting on 20 August 2008. The unanimous view of Members at that time was that the powers under the Licensing Act 2003 were inadequate, and the Government was urged to

- Amend the Local Government (Miscellaneous Provisions) Act 1982 in respect of sex encounter establishments to cover all areas of the country;
- Categorise lap dancing clubs as sex encounter venues; and
- Remove sex encounter establishments from the Licensing Act 2003

1.1.3 Section 27 of the Policing and Crime Act 2009 extended the relevant provisions within the 1982 Act by the introduction of a new category of sex establishment, namely sexual entertainment venues i.e. lap dancing clubs and similar venues. An update on the new provisions was submitted to this Committee on 7 June 2010. For the assistance of Members, a summary of the relevant changes is set out in section 1.2 of this report.

1.1.4 In order for the new provisions relating to sexual entertainment venues to take effect within Tonbridge and Malling, the Council would need to formally resolve to

adopt the changes to the 1982 Act. The Council is required to consult local people about whether or not it should make such a resolution.

1.1.5 This report seeks the approval of Members to embark upon the required consultation exercise.

## **1.2 Background**

1.2.1 A sexual entertainment venue is defined in the Local Government (Miscellaneous Provisions) Act 1982 as 'any premises at which relevant entertainment is provided before a live audience for financial gain of the organiser or the entertainer'.

1.2.2 The meaning of 'relevant entertainment' is 'any live performance or live display of nudity which is of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience (whether by verbal or other means)'. An audience can consist of just one person.

1.2.3 It is expected that the definition of 'regulated entertainment would apply to the following forms of entertainment – lap dancing, pole dancing, table dancing, strip shows, peep shows and live sex shows.

1.2.4 Venues that currently provide entertainment of this nature are able to do so under the authority of a premises licence granted under the Licensing Act 2003, and there is currently one such venue within the Borough. However, any representations concerning the grant or variation of a premises licence can only be based upon one of the 4 licensing objectives i.e. the prevention or crime of disorder, the prevention of public nuisance, the protection of public safety and the protection of children from harm.

1.2.5 Licensing Authorities cannot therefore consider representations on issues falling outside of the 4 licensing objectives e.g. whether a lap dancing club would be appropriate given the character and locality of the area in which it is proposed to be situated.

1.2.6 The changes introduced by the Policing and Crime Act 2009 will allow the Licensing Authority to refuse an application for the grant or renewal of a licence for a sexual entertainment venue on a number of specified grounds, including

- That the number of sex establishments, or sex establishments of a particular kind, in the relevant locality at the time the application is determined is equal to or exceeds the number which the authority consider is appropriate for that locality. This number may be nil.
- That the grant or renewal would be inappropriate, having regard -
  - to the character of the relevant locality; or

- the use to which any premises in the vicinity are put; or
- to the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made

Objections on moral grounds cannot however be considered.

- 1.2.8 Licences granted for sexual entertainment venues will be renewable annually, rather than lasting for the life of the business as is the case under the Licensing Act 2003. Furthermore, the authority will have a wider discretion when imposing conditions on a licence, and may apply different conditions for different types of venues. For example, it will be possible to regulate opening times, the display of advertisements and the visibility of the interior of the premises to passers by.
- 1.2.9 Premises providing other licensable activities in addition to sexual entertainment will still also require a premises licence under the Licensing Act 2003. In practical terms, this means that most sexual entertainment venues will require a licence under the 2003 Act as well as a sex establishment licence.
- 1.2.10 Premises which provide regulated entertainment on an infrequent basis i.e. on no more than 11 occasions within a 12 month period (subject to there being at least one month between events, and each event lasting no longer than 24 hours) will not need to be licensed as a sexual entertainment venue, and will instead continue to be licensed under the Licensing Act 2003.
- 1.2.11 Existing operators who hold a premises licence or club premises certificate under the Licensing Act 2003 will not automatically be entitled to the grant of a licence to operate as a sexual entertainment venue. However, they would be entitled to operate during the transitional period following adoption of the new provisions.
- 1.2.12 If adopted, the transitional period would last for 12 months starting on the date when the provisions come into force (The 'first appointed day'). The first appointed day must be not less than 1 month after the resolution to adopt the new provisions is passed.
- 1.2.13 During the period of 6 months after the first appointed day existing operators and new applicants can apply for a sex establishment licence. At the end of this 6 month period (the 'second appointed day') the Licensing Authority must consider all of the applications, and cannot grant any licences until all have been considered.
- 1.2.14 Applications made by existing operators will not become operative until the end of the 12 month period (the 'third appointed day'). Other licences granted will become effective immediately.

### **1.3 Options for consultation**

1.3.1 Members are entitled to express a preferred view as part of the consultation exercise. In this regard there are 2 options -

(1) Adopt the new provisions relating to sexual entertainment venues.

(2) Take no steps to adopt the new provisions, and continue to regulate the provision of sexual entertainment through the Licensing Act 2003.

1.3.2 In view of the matters raised in this report, it is suggested that Option 1 be approved as the preferred option for consultation.

1.3.3 It is proposed that the consultation should take place over a 6 week period. The results of the consultation would then be reported to the September meeting of this Committee.

1.3.4 If adopted, it is proposed that a draft policy would be prepared for approval by Members. Whilst there is no requirement to set a policy, and simply consider each application on its own merits, it is considered that a policy will aid transparency and promote consistency in our decision making process.

### **1.4 Financial and Value for Money Considerations**

1.4.1 Unlike the Licensing Act 2003, there are no statutory fees for sex establishments or sexual entertainment venues. The level of fee is therefore at the discretion of the Licensing Authority, subject of course to the general principle that the income generated should not exceed the costs of providing the service.

1.4.2 The current fee for a sex establishment licence within Tonbridge and Malling is £6000. If following consultation, it is proposed to adopt the relevant provisions relating to sexual entertainment, a suggested fee will be put forward for approval by Members.

### **1.5 Legal Implications**

1.5.1 The Council is legally required to consult local residents and businesses about whether or not it should adopt the new provisions relating to sexual entertainment venues.

### **1.6 Risk Assessment**

1.6.1 Failure to carry out the required consultation exercise could result in a legal challenge by an aggrieved party.

## 1.7 Conclusions and Recommendations

1.7.1 Members are asked to **approve** the proposed consultation set out at paragraph 1.3 of this report, to determine whether the Council should adopt the sexual entertainment licensing provisions contained in Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 (as amended)

Background papers:

contact: Adrian Stanfield  
Chief Solicitor

Julie Beilby  
Central Services Director

<b>Screening for equality impacts:</b>		
<b>Question</b>	<b>Answer</b>	<b>Explanation of impacts</b>
a. Does the decision being made or recommended through this paper have potential to cause adverse impact or discriminate against different groups in the community?	No	The government has carried out an equality impact assessment of the changes to the 1982 Act, which has found that no unintended or disproportionate impact is likely.
b. Does the decision being made or recommended through this paper make a positive contribution to promoting equality?	N/A	
c. What steps are you taking to mitigate, reduce, avoid or minimise the impacts identified above?		

*In submitting this report, the Chief Officer doing so is confirming that they have given due regard to the equality impacts of the decision being considered, as noted in the table above.*