

TONBRIDGE & MALLING BOROUGH COUNCIL

LICENSING AND APPEALS COMMITTEE

30 NOVEMBER 2011

Report of the Chief Solicitor

Part 1- Public

1 SEXUAL ENTERTAINMENT VENUES

Summary

This report advises the Committee of the results of the public consultation on the proposed adoption of the sexual entertainment licensing provisions introduced by the Policing and Crime Act 2009.

1.1 Introduction

1.1.1 On 15 June 2011 the Committee resolved to consult local residents and businesses on whether the Council should adopt the new powers to regulate sexual entertainment venues contained in Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 (as amended by the Policing and Crime Act 2009). The preferred view of the Committee was that the new powers should be adopted.

1.1.2 A sexual entertainment venue is defined in the Policing and Crime Act as 'any premises at which relevant entertainment is provided before a live audience for financial gain of the organiser or the entertainer'. It is expected that the definition of 'relevant entertainment' would apply to lap dancing, pole dancing, table dancing, strip shows, peep shows and live sex shows.

1.1.3 For the assistance of Members, a copy of my previous report to Committee, setting out full details of the proposed changes, is attached as **Annex 1**.

1.1.4 This report sets out the results of the consultation exercise and asks Members to recommend to Cabinet that the relevant provisions be adopted.

1.2 Consultation

1.2.1 The consultation (which ran from 1 September to 14 October) took the following form –

- (a) A letter was sent to all responsible authorities and all holders of premises licences / club premises certificates within the Borough explaining the background to the consultation, and the preferred view of the Committee. Respondents were invited to comment on the proposed adoption;

- (b) All Parish Councils were notified of the consultation, which was also reported to the Parish Partnership Panel;
 - (c) Details of the consultation were placed on the Council's website
- 1.2.2 A schedule of responses to the consultation exercise is attached at **Annex 2**. In total 50 responses were received.
- 1.2.3 Members will note that the majority view of respondents (60%) was that the Council should adopt the new provisions relating to sexual entertainment. 17 respondents believed that the consultation was seeking views on whether the Harp public house in East Peckham (the only premises within the Borough that currently provides entertainment of a sexual nature) should be granted a licence for sexual entertainment, and all 17 expressed a view that any licence should be refused. As an existing provider, the Harp would be entitled to operate during the transitional period following adoption of the new provisions, but they would not automatically be entitled to the grant of a licence to continue to operate as a sexual entertainment venue.

1.3 Transitional provisions

- 1.3.1 If adopted, there will be a transitional 12 month period starting on the date when the provisions come into force ('the 1st appointed day'). The first appointed day must be not less than 1 month after the resolution to adopt the new provisions is passed.
- 1.3.2 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 2nd appointed day') the Council must consider all of the applications, and cannot grant any licences until all have been considered.
- 1.3.3 Applications by existing operators will not become operative until the end of the 12 month period ('the 3rd appointed day'). Other licences granted will become effective immediately.

1.4 Policy on sexual entertainment venues

- 1.4.1 It is proposed to submit a draft policy for approval by Members at the next meeting of this Committee in March 2012. Whilst there is no legal requirement to set a policy, it is suggested that the development of a policy will aid transparency and promote consistency in the decision making process.
- 1.4.2 It is proposed that the draft policy would be subject to public consultation, with a view to adoption by the Committee in May 2012. For this reason it is proposed that the 1st appointed day shall be 1st June 2012, in order to ensure that the policy will have been approved prior to the receipt of any applications for new licences.

1.5 Financial and Value for Money Considerations

- 1.5.1 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.
- 1.5.2 The current fee for a sex establishment licence within Tonbridge and Malling is £6000. It is proposed to adopt the same fee for sexual entertainment venues.

1.6 Legal Implications

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

1.7 Risk Assessment

- 1.7.1 Failure to carry out the required consultation exercise could have resulted in a legal challenge by an aggrieved party. There are no other risks arising at this stage.

1.8 Conclusions and Recommendations

- 1.8.1 Members are asked to **RECOMMEND** to Cabinet that

- (1) the Council should adopt the sexual entertainment licensing provisions contained in Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 (as amended);
- (2) the 1st appointed day be endorsed as 1 June 2012.

Background papers: None

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Screening for equality impacts:		
Question	Answer	Explanation of impacts
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.

Screening for equality impacts:		
Question	Answer	Explanation of impacts
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.