

TONBRIDGE & MALLING BOROUGH COUNCIL

LICENSING & APPEALS COMMITTEE

24 May 2012

Report of the Chief Solicitor

Part 1- Public

Delegated

1 SEX ESTABLISHMENTS AND SEXUAL ENTERTAINMENT VENUES

1.1 Background

1.1.1 Since November 2005, the Licensing Act 2003 has required a wide range of regulated entertainment to be licensed by the Council acting as the Licensing Authority. This includes live and recorded music as well as dancing and dance performances.

1.1.2 The definition of regulated entertainment in the 2003 Act led in part to a national increase in the number of lap dancing and similar venues licensed under the Act although Members will note that there is only one establishment currently within the borough of Tonbridge and Malling (The Harp at East Peckham).

1.1.3 Members will be familiar with the restrictions in the 2003 Act, which mean that any representation against a Premises licence and Club Premises Certificate can only be based on the four licensing objectives namely:

- The prevention of crime and disorder
- The prevention of public nuisance
- The protection of public safety
- The protection of children from harm

Whilst licences can be subject to review procedures, they otherwise continue in force for the life of the business concerned

1.1.4 Sex shops and sex cinemas, in contrast, are licensed under the Local Government (Miscellaneous Provisions) Act 1982. This regime gives the Licensing Authority a wider discretion in determining whether to grant or refuse licences (including the statutory grounds for refusal), a power to set a limit on the number of premises that may be suitable for a particular locality, greater flexibility on applying licence conditions and the ability to accept representations from a

wider scope of the community. Sex shop licences are only valid for a year at a time, meaning there is scope for regular review.

- 1.1.5 These concerns have now been addressed by amending Schedule 3 to the 1982 Act through Section 27 of the Policing and Crime Act 1009. A new class of licensed sex establishment – Sexual Entertainment Venues – has been created which will require lap dancing venues and similar premises to be licensed under the more flexible 1982 Act rather than under the Licensing Act 2003.
- 1.1.6 Tonbridge and Malling Borough Council consulted local residents and businesses on whether the Council should adopt the new powers to regulate sexual entertainment venues contained in Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 between the 1 September 2011 and 14 October 2011.
- 1.1.7 The overwhelming view of respondents was that the Council should adopt the new provisions. Accordingly, on 23 February 2012 Council resolved to adopt the sexual entertainment licensing provisions contained in Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982, with the first appointed day set as 1 July 2012.
- 1.1.8 The decision to adopt the new provision only relates to relevant adult entertainment. Any other licensable activity at a venue such as alcohol sales and late night refreshment will remain licensable under the Licensing Act 2003.
- 1.1.9 The amendments to Schedule 3 of the 1982 Act will, in particular
- Allow local people to oppose an application for a sexual entertainment venue if they have legitimate concerns that it would be inappropriate given the character of an area, for example, if the area was primarily a residential area. Interestingly however, an objection cannot be made on purely moral or religious grounds.
 - Allow a local authority to decide whether or not to set a limit on the number of sex establishments of a particular type in a locality, as well as the number of sex establishment generally. The limit for a particular locality may be set as nil, but it is however unlikely that a local authority could set the limit as nil for the whole of its area without running the risk of judicial review.

1.2 Development of the Statement of Licensing Policy

- 1.2.1 The Tonbridge and Malling Borough Council's Statement of Licensing Policy was developed in close conjunction with the other local authorities in Kent. This was achieved via the mechanism of the Kent and Medway Regulatory Licensing Steering Group.

- 1.2.2 The policy has been developed taking full account of the requirements of the legislation and guidance so as to minimise the prospect of future judicial review.
- 1.2.3 The aim of the joint working group was to promote consistency to the benefit of Licensees, potential licensees, businesses, residents and to regulatory agencies such as the police.
- 1.2.4 The common policy skeleton produced by the Kent-wide group has now been 'personalised' to Tonbridge and Malling and is attached as **Annex A** to this report. Members will note that the policy includes a Model Pool of Conditions which, whilst not exhaustive, will, it is hoped, guide both applicants and the public regarding what would generally be expected from anyone seeking a sex establishment licence from this authority. A copy is attached as **Annex B** to this report.

1.3 Consultation of Sexual Entertainment Venues Policy

- 1.3.1 The Tonbridge and Malling Borough Council's Statement of Licensing Policy was sent out for consultation between the 21 March 2012 and the 4 May 2012.
- 1.3.2 Five responses were received from the following bodies/ persons. These are shown in **Annex C**, together with the officer response to each.
- Tonbridge Civic Society
 - Brian Luker
 - Vivian Branson
 - Ann Kemp
 - Sara Alam (on behalf of Platform 51?)
- 1.3.3 Members are specifically requested to consider whether the Council should adopt a 'nil' policy towards the licensing of sexual entertainment venues, as requested by Sara Alam/ Platform 51. In this regard, Members are advised that the other Kent local authorities are proposing setting no numerical limits for Sexual Entertainments Venues within their respective District or Borough. Instead the proposed policy is that each application would be judged on its own merits but taking into account the various criteria laid out within the policy document. In this way each application will be considered as to whether it is suitable given the nature of the particular locality in question.

1.4 Conclusions

- 1.4.1 There is no statutory requirement to have a licensing policy for sex establishments, and the Council has not previously done so. However it is considered best practice and also that a modern, effective policy document will ensure that the trade and public alike will have a document that fully explains the

elements of the regulatory process which includes the principles to be applied when considering applications for sex establishments, the application process itself and the grounds for objection, refusal, the hearing procedure and the grounds for appeal.

1.5 Legal Implications

- 1.5.1 Any criteria applicable to applications for sex establishments must meet the requirements of the Provision of Services Regulations 2009. It is considered that the draft policy complies with these regulations.

1.6 Financial and Value for Money Considerations

- 1.6.1 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. At the meeting of this Committee on 30 November 2011 it was proposed to adopt the same fee level for sexual entertainment venues as currently charged for sex shops and sex cinemas i.e. £6000.
- 1.6.2 The Licensing Services Manager is currently undertaking a full review of all licensing fees and charges. Should there be any proposed changes to the above fee level this will be reported to Members in due course.

1.7 Risk Assessment

- 1.7.1 The introduction of a policy should provide a transparent and consistent basis for decision making. This in turn should reduce the risks of decisions being challenged in the Courts.

1.8 Recommendations

- 1.8.1 Members are **RECOMMENDED** to approve the policy for recommendation to Full Council after full appraisal of the feedback from the consultation.

Background papers:none

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Anthony Garnett
Licensing Manager

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	<p>A full equality impact assessment has been carried out.</p> <p>The implementation of a policy will provide consistency of approach and a transparent basis for decision making under the Act.</p> <p>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.</p>
b. Does the decision being made or recommended through this paper make a positive contribution to promoting equality?	No	
c. What steps are you taking to mitigate, reduce, avoid or minimise the impacts identified above?		