

# **TONBRIDGE & MALLING BOROUGH COUNCIL**

## **LICENSING & APPEALS COMMITTEE**

**15 September 2020**

**Report of the Director of Central Services and Monitoring Officer**

### **Part 1- Public**

#### **Matters for Recommendation to Council**

#### **1 SEX ESTABLISHMENTS AND SEXUAL ENTERTAINMENT VENUES - POLICY FOR 2020 - 2023**

##### **1.1 Background**

- 1.1.1 The current Policy on Licensing Sex Shops, Sex Cinemas and Sexual Entertainment Venues was published in 2017 and has a life span of three years.
- 1.1.2 Tonbridge & Malling Borough Council currently has one licensed Sex Shop called VibeZ, trading in Aylesford. There are no sexual entertainment venues currently operating within the Borough.
- 1.1.3 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.
- 1.1.4 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
- 1.1.5 Whilst licences can be subject to review procedures, they otherwise continue in force for the life of the business concerned
- 1.1.6 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.

- 1.1.7 These concerns were addressed by amending Schedule 3 to the 1982 Act through Section 27 of the Policing and Crime Act 2009. A new class of licensed sex establishment – Sexual Entertainment Venues – was created which required lap dancing venues and similar premises to be licensed under the more flexible 1982 Act rather than under the Licensing Act 2003.
- 1.1.8 In 2011 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 to the Local Government (Miscellaneous Provisions) Act 1982.
- 1.1.9 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. These adopted provisions came into effect on 1 June 2012.
- 1.1.10 The decision to adopt the new provision only related to relevant adult entertainment. Any other licensable activity at a venue such as alcohol sales and late night refreshment remains licensable under the Licensing Act 2003.
- 1.1.11 The provisions of Schedule 3 to the 1982 Act 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. An objection cannot however be made on purely moral or religious grounds.
  - Local authorities 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 current 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 draft policy is attached as **Appendix A** to this report. Members will note that the policy includes a Model Pool of Conditions (**Appendix B**) 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.
- 1.2.5 The policy provides that each application will 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.

### **Consultation**

The proposed timetable for consultation in respect of the policy was:

- Licensing and Appeals Committee – 10<sup>th</sup> March 2020
- Public Consultation – 23<sup>rd</sup> March 2020 – 21<sup>st</sup> June 2020
- Licensing and Appeals Committee 15<sup>th</sup> September 2020
- Full Council – 27<sup>th</sup> October 2020
- New policy comes into force – 4 January 2021

- 1.2.6 We have received no return from the consultation.

### **1.3 Legal Implications**

- 1.3.1 There is no statutory requirement to have a licensing policy for sex establishments. However, it is considered best practice and also 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. This will include the principles to be applied when considering applications for sex establishments, the application process itself and the grounds for objection, refusal, the hearings procedure and the grounds for appeal.
- 1.3.2 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.

## 1.4 Financial and Value for Money Considerations

- 1.4.1 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.
- 1.4.2 The current licence fee for a sexual entertainment venue is £2,000.

## 1.5 Risk Assessment

- 1.5.1 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.

## 1.6 Equality Impact Assessment

- 1.6.1 The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

## 1.7 Recommendations

- 1.7.1 Members are **RECOMMENDED:**

That the draft Statement of consultation, attached as **Annex A** be commended to Council for adoption.

Background papers:

contact: Anthony Garnett

Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982  
Licensing Act 2003

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