

Report to the Licensing Committee

Report Reference: LSC-010-2010/11

Date of meeting: 13th April 2011



**Epping Forest
District Council**

Portfolio: Safer and Greener

Subject: Sexual Entertainment Venues and Sex Establishment Licensing Policy

**Responsible Officer: Alison Mitchell
Assistant Director (Legal) (01992 564017)**

Democratic Services: Adrian Hendry (01992 564470)

Recommendation:

The Committee recommends to Council that:

- 1. it adopts the draft Sexual Entertainment Venues and Sex Establishment Licensing Policy attached to the Agenda with any appropriate amendments after consideration of representations received, and**
- 2. it agrees to the standard conditions set out in Policy being imposed on the relevant licences unless the Licensing Sub-committee agree that they may be waived or varied in whole or in part.**

Report:

1. At its last meeting on 13th October 2010, the Committee considered the draft policy for the regulation of sex cinemas, sex shops and sexual entertainment venues ('Sex Establishments') and agreed that the draft policy should go out to consultation. A list of the consultees is attached to the draft policy and a copy was placed upon the Council's website. Three replies were received which are attached.

Reasons for Proposed Decision:

2. The policy will assist applicants for a licence and any person wishing to make a representation with respect to an application to understand Authority's requirements and concerns and enable them to address these in their applications or representations.

3. If the Council approves the standard conditions they will be imposed on all licences granted under delegated authority and only amendments approved by the Sub-committee will be allowed.

Other Options for Action:

4. The Authority could decide that it will not have a Policy. The advantages of having a policy are that it guides both applicants and objectors as to the types of application that the Authority is likely to grant and what issues they should address.

5. Not to adopt any standard conditions and impose conditions as each case is decided, if necessary.

6. To recommend that the Licensing Sub-committee decides all applications for this type of licence.

Licensing Policy and Conditions

7. A draft policy The purpose of this policy to inform both applicants and objectors as to which establishments are required to be licensed, the application process, how objections should be made, the conduct of the hearing and some of the issues relating to locality that the Authority will take into account when reaching a decision.

8. The Local Government Miscellaneous Provisions) Act 1982 ('the Act') allows the Authority to adopt standard conditions that will apply to every licence granted unless expressly excluded.

9. Each Application must be decided on its own merits and there may be occasions when the policy or conditions may not be appropriate in whole or part. When considering the conditions to be imposed the Council must ensure that these are necessary, non-discriminatory and proportionate.

Definition of Sex Establishments – Paragraph 3 of the Policy

10. This paragraph sets out what is considered to be a Sex Shop, Sex Cinema and Sexual Entertainment Venue and require licensing under the 1982 Act (as amended). There are some exceptions which are stated in the policy. In particular premises where 'relevant entertainment' is provided on an infrequent basis are not required to have a Sexual Entertainment Licence. The policy gives more details.

Application and Consideration of the Applications – Paragraphs 4, 5 and 6. of the Policy

11 Paragraphs 4, 5 and 6 describe the application process and the obligation imposed on the applicant to carry out consultations. There are detailed time limits specified in the Act which are set out in the policy.

12. The Act also specifies time limits for the receipt of objections. Paragraph 7 sets out the reasons that the Authority must refuse a licence or has a discretion to refuse and it is only those issues that the Authority should consider when making its decision. The Authority does not have the right to refuse on moral grounds or values.

13. An application will be referred to the Licensing Sub-committee for determination if objections are received or officers consider that it would be appropriate.

Refusal of a Licence- paragraph 7 of the Policy

14. The policy sets out the statutory reasons when the Authority must refuse to grant a licence.

15. The policy next sets out the statutory reasons when the Authority has discretion as to whether it will refuse the licence application. One of these reasons the Authority is that the grant or renewal of the licence would be inappropriate, having regard—

- (i) to the character of the relevant locality; or
- (ii) to the use to which any premises in the vicinity are put; or
- (iii) to the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.

"the relevant locality" means —

- (a) in relation to premises, the locality where they are situated; and
- (b) in relation to a vehicle, vessel or stall, any locality where it is desired to use it as a sex establishment

Relevant Locality - Paragraph 8 of the Policy

16. Paragraph 8 of the Policy lists a number of areas where there would be a presumption against granting a licence and also the routes to and from these premises. However, each application will have to be considered on its own merit.

Appeals – paragraph 11 of the Policy

17. There are limited rights of appeal against the authority's decision to the magistrates' court. The alternative right of appeal would be by way of judicial review on the ground that the decision was not properly taken or that there was some procedural irregularity or breach of the rules of natural justice.

Enforcement – paragraph 12 of the Policy

18. This paragraph makes reference to the Council's enforcement policy

Licensing Conditions – standard for all Sex Establishments – Appendix 1.Part 1

19. These conditions apply to all premises and relate to the management, the requirement to display a licence and the requirement to enforce an age policy.

Licensing Conditions – standard for Sex Shops – Appendix 1 Part 2

20. The conditions seek to restrict the hours when the shops are permitted to be open and exclude Christmas Day and Good Friday.

21. The external appearance of the shops is regulated. The applicants for a licence will have to apply to the Council if they wish to have a window display. The interior of the shop must not be visible

22. There is a requirement for the shop to have close circuit television.

Licensing Conditions – standard for Sexual Entertainment Venues

23. The purpose of these conditions is to ensure that the staff are able to work in and the customers enjoy a safe environment.

Replies to the Consultation

24. Moreton, Bobbingworth & the Lavers Parish Council, Epping Town Council and Loughton Town Council replied to the consultation. Only Loughton Town Council suggested any amendments.

25. The first observation from the Town Council refers to the advertising requirements for the notice and the fact that it appears that a time limit has been omitted. In fact some additional words had been inserted and so paragraph 4.2 second sentence should read:
"The notice shall be displayed for a period of 21 days beginning with the date the application was made".

26. The Town Council has suggested an amendment to paragraph 8.1 of the policy so that the Authority when considering the application will not only look at the locality at the time of the application but should have regard to any outstanding/unexecuted planning application; for instance a for a school.

27. The Town Council have pointed out that paragraph 8.2 (c) and (f) are a duplication of the same point.

General

28. There are no specific conditions relating to Sex Cinemas.

29. The Sub-committee is asked to consider the policy and the consultation letters received and make any further amendments which members consider necessary and recommend to the Council that the policy is adopted.

Resource Implications:

Within existing budgets.

Legal and Governance Implications:

Local Government (Miscellaneous Provisions) Act 1982 Schedule 3 Section 27 of the Policing and Crime Act 2009.

Safer, Cleaner and Greener Implications:

To create safe communities in Epping Forest District

Consultation Undertaken:

None but consultation on the draft policy and conditions recommended.

Background Papers:

Local Government (Miscellaneous Provisions) Act 1982 Schedule 3 Section 27 of the Policing and Crime Act 2009.

Impact Assessments:

Risk Management

N/A

Equality and Diversity:

Did the initial assessment of the proposals contained in this report for relevance to the Council's general equality duties, reveal any potentially adverse equality implications? No

Where equality implications were identified through the initial assessment process, has a formal Equality Impact Assessment been undertaken? No

What equality implications were identified through the Equality Impact Assessment process?

No

How have the equality implications identified through the Equality Impact Assessment been addressed in this report in order to avoid discrimination against any particular group?

None