

CANNOCK CHASE COUNCIL**COUNCIL****16 FEBRUARY 2011****REPORT OF THE DIRECTOR OF SERVICE IMPROVEMENT****RESPONSIBLE PORTFOLIO LEADER: ENVIRONMENT****LICENSING OF SEXUAL ENTERTAINMENT VENUES****KEY DECISION – YES****1. Purpose of Report**

- 1.1 To seek approval for the adoption of the amendments to Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 made by Section 27 of the Policing and Crime Act 2009, which relate to the licensing of sexual entertainment venues (SEV's).

2. Recommendations

- 2.1 That the Council adopt the provisions of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 (as amended by Section 27 of the Policing and Crime Act 2009) in relation to the licensing of sexual entertainment venues.
- 2.2 That the Council delegate the determination of sexual entertainment venues to the Licensing and Public Protection Committee where there are relevant objections or otherwise to the Corporate Director or nominee(s) including all related enforcement matters.
- 2.3 That the Council approve the following fees and charges for sexual entertainment venue licences from April 2011 and that these to be subject to annual review by the Corporate Director or nominee(s).
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|-------|--|--------|
| (i) | application for the grant of licence | £2,480 |
| (ii) | fee on grant of licence by Licensing & Public Protection Committee | £350 |
| (iii) | renewal of licence | £2,480 |
| (iv) | major variation to licence | £1,240 |
| (v) | minor variation to licence | £600 |
| (vi) | transfer of licence | £600 |
- 2.4 That the Council undertake the statutory advertising of the Resolution to adopt the amendments to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 made by Section 27 of the Policing and Crime Act 2009 with a commencement date of 4 April 2011.

3. Summary (inc. brief overview of relevant background history)

- 3.1 New powers have been introduced nationally for lap dancing and other sexual entertainment venues to be licensed in the same way as licensed sex shops and cinemas rather than as pubs

and clubs. This gives local Councils greater scope and discretion as to how those venues are controlled within their area.

- 3.2 These powers are discretionary and must be adopted by full Council before the relevant provisions can be implemented.
- 3.3 This proposal to adopt the provisions received the support of the Licensing & Public Protection Committee at its meeting on 27 January 2011.
- 3.4 If adopted, a Policy on how such venues will be controlled will need to be prepared and consulted upon before being approved and adopted by full Council.

4. Key Issues and Implications

- 4.1 The Policing and Crime Act 2009 created a new category of sex establishment called a sexual entertainment venue in Schedule 3 to the Local Government (Miscellaneous Provisions) Act, 1982. This brings the licensing of lap dancing and pole dancing clubs and other similar venues under the regime set out in the 1982 Act (currently used to regulate establishments such as sex shops and sex cinemas) rather than under the Licensing Act 2003 (LA03).
- 4.2 A sexual entertainment venue is defined as “any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer.” The meaning of ‘relevant entertainment’ is defined as “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 an audience, whether by verbal or other means.” An audience can consist of just one person, therefore will include where the entertainment takes place in private booths.
- 4.3 Guidance issued by the Home Office indicates that whilst local authorities should judge each case on its own merits, it would be expected that the definition of relevant entertainment would apply to the following forms of entertainment as they are commonly understood:
 - Lap dancing
 - Pole dancing
 - Table dancing
 - Strip shows
 - Peep shows
 - Live sex shows
- 4.4 Although the definition of “relevant entertainment” makes reference to a ‘live display of nudity’, the Guidance indicates that the mere fact that there is a display of nudity does not mean that a sex establishment licence will necessarily be required. For example, if the display forms part of a drama or dance performance in a theatre, in most cases it cannot reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience. ‘Display of nudity’ is also defined in the Act.
- 4.5 The relevant entertainment must be provided for the financial gain of the organiser or entertainer. The organiser means any person who is responsible for the organisation or management of the relevant entertainment or the premises at which the relevant entertainment is provided. The Home Office Guidance states that in most circumstances, this will refer to the

manager of the premises, but could also refer to someone who is responsible for organising the relevant entertainment on behalf of the persons responsible for the management of the premises.

- 4.6 The Guidance indicates that the organiser must be someone who is in a position of responsibility over the provision of the relevant entertainment and should not be interpreted to mean a member of staff who is merely employed to work during the provision of relevant entertainment. It is only necessary for one person to hold a sexual entertainment venue licence for the premises, even if there is more than one person who is responsible for the organisation or management of the relevant entertainment or the premises.
- 4.7 The following are not sexual entertainment venues for the purpose of the 1982 Act:
- (a) sex shops and sex cinemas;
 - (b) any premises that at the time in question:
 - (i) has not provided relevant entertainment on more than 11 occasions within the previous 12 months;
 - (ii) no such occasion has begun within the period of one month beginning with the end of any previous occasion;
 - (iii) no such occasion has lasted for more than 24 hours; or,
 - (c) premises specified or described in an order made by the relevant national authority.
- 4.8 Premises which provide relevant entertainment on an infrequent basis (para 4.7(b) above) will continue to be regulated under the LA03, insofar as they are providing regulated entertainment under that Act. Any premises that provide relevant entertainment on more occasions, more frequently or for a longer period of time than is permitted under the exemption will be operating as a sexual entertainment venue and will have committed an offence unless they hold a sexual entertainment venue licence or the local authority has waived the requirement for such a licence.
- 4.9 An applicant can apply for a waiver either as part of the application for a licence or separately. The local authority can grant a waiver if they consider that to require a licence would be unreasonable or inappropriate and the waiver may last for such a period that they think fit, but it can be terminated at any time with 28 days notice.
- 4.10 The new powers to regulate sexual entertainment venues are not mandatory and will only apply where they have been adopted. Where adopted, the new powers will allow the Authority to refuse an application on potentially wider grounds than is permitted under the LA03 and will give local people a greater say over the regulation of lap dancing in pubs and similar venues in their area by allowing for objections on wider grounds.
- 4.11 If the Council does adopt the amendment to Schedule 3, then they must publish notice that they have passed the resolution for two consecutive weeks in a local newspaper. The first publication must not be later than 28 days before the day specified in the resolution as the date when the provisions come into force. The Notice should state the general effect of the adoption.
- 4.12 If the Council has not adopted the provisions by 6th April 2011 the legislation requires that it will be necessary to consult local people (people who live or work in the district) about whether the local authority should make such a resolution.

5. Applications

5.1 In general the Authority has discretion whether or not to grant a licence for the use of any premises, vehicle, vessel or stall to be used as a class of sex establishment.

5.2 A Licence cannot, however, be granted to:

- a person under 18;
- a person who has held a licence but has had it revoked within 12 months preceding the date of application;
- to a person, other than a body corporate, who is not resident in an EEA state or was not so resident throughout the period of six months immediately preceding the date when the application was made;
- to a body corporate which is not incorporated in an EEA State; or
- a person who has within the last 12 months preceding the date of the application been refused a licence in respect of the same premises.

5.3 Paragraph 10 (15) of Schedule 3 of the 1982 Act gives a statutory right to any person to object to an application.

5.4 If objections are received then details of the objections must be provided to the applicant, although names and addresses may not be divulged without the objector's consent.

5.5 An applicant must be given the opportunity of appearing before the body making the decision before an application is refused.

5.6 An application for the grant or renewal of a licence may be refused on one or more of the following grounds:

(a) that the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason;

(b) that if the licence were to be granted, renewed or transferred the business to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant, renewal or transfer of such a licence if he made the application himself;

(c) that the number of sex establishments, or of 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;

(d) that the grant or renewal of the licence would be inappropriate, having regard to:

(i) the character of the relevant locality; or

(ii) the use to which any premises in the vicinity are put; or

(iii) the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.

- 5.7 An applicant whose application for the grant or renewal of a licence is refused, or whose licence is revoked, on any ground specified in paragraph 5.2 above does not have a right of appeal unless the applicant seeks to show that the ground did not apply to him.
- 5.8 Similarly, an applicant whose application for the grant or renewal of a licence is refused on either ground specified in paragraph 5.6 (c) or (d) above does not have the right to appeal the decision. In such cases the applicant can only challenge the refusal by way of judicial review.
- 5.9 The Council can prescribe Standard Conditions to be applied to licences for sex establishments, i.e. terms, conditions and restrictions on or subject to which the licences are in general to be granted, renewed or transferred.
- 5.10 These Conditions may regulate:
- the hours of opening and closing;
 - displays or advertisements on or in such establishments;
 - the visibility of the interior to passers-by; and,
 - any change from one kind of sex establishment to another kind of sex establishment.
- 5.11 Different provisions may be made for sexual entertainment venues, sex cinemas and sex shops, and as well as for different kinds of sexual entertainment venues, sex cinemas and sex shops.
- 5.12 Where these Conditions have been made every Licence granted, renewed or transferred by the Authority will be presumed to have been done so subject to the relevant Standard Conditions.

6. Transitional Arrangements

- 6.1 The transitional period will last for 12 months beginning with the date that the local authority resolves that the new provisions will come into force in their area (the 1st appointed day). Six months following the 1st appointed day will be known as the 2nd appointed day and the day on which the transitional period ends will be known as the 3rd appointed day.
- 6.2 Under these arrangements any existing lap dancing clubs or similar venues who wish to continue to provide relevant entertainment will be required to apply for a new sexual entertainment venue licence without the benefit of grandfather rights.
- 6.4 It should be noted that there is currently one premises within the district providing relevant entertainment that would need to convert under the transitional arrangements.
- 6.5 Between the 1st and 2nd appointed days, applicants would be able to submit applications to be considered by the authority. At the end of this period, all applications received during this period would be considered together and no licences would be granted until all the applications had been considered. Consequently any applications received after the 2nd appointed day would be considered individually.

7. Fees

- 7.1 The 1982 Act states, with regard to fees for this function, that the applicant for the grant, renewal or transfer of a licence under this Schedule shall pay a reasonable fee determined by the appropriate authority.
- 7.2 Fees for Sex Establishment (Sex Shop) Licences, under the 1982 Act, are set to recover the costs of carrying out the function under the Act and would therefore be cost neutral to the Authority. Under the Act the process for the Renewal of a Licence is the same as that followed for the Grant of a Licence hence the fees for both functions are identical.
- 7.3 In order to allow variations to be made to a SEV Licence, rather than to require the Licence holder to apply for a new licence should changes be proposed, it is considered appropriate to introduce fees for major and minor variations of £1,240 and £600 respectively.
- 7.4 Due to similarities between the licensing of sex shops and SEV's, amendments will be made to the fees and charges in respect of sex shops to bring them in line with effect from 1 April 2011.

8. Conclusion(s) and Reason(s) for the Recommendation(s)

- 8.1 The adoption of the amendments to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 will allow greater control over lap dancing and other sexual entertainment venues than is currently possible using the Premises Licence conditions.
- 8.2 Failure to adopt the provisions by 6 April 2011 will require the Council to undertake a district-wide consultation exercise on whether adoption should take place.
- 8.3 Once adopted, a Policy will be prepared and consulted upon which will provide a framework for determining applications for sexual entertainment venues.
- 8.4 The level of fees and charges recommended is considered appropriate for full cost recovery of this new licensing regime.

9. Other Options Considered

- 9.1 The only other option would be not to adopt these provisions. If the Council chose not to adopt by 6 April 2011, then the legislation requires that a consultation exercise is undertaken, district-wide, about whether the Council should or should not adopt.
- 9.2 In consequence, the adoption of the provisions before 6 April 2011 is a less onerous task.

10. Report Author Details

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SCHEDULE OF ADDITIONAL INFORMATION

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Section 1

Contribution to Council Priorities (i.e. CHASE, Corporate Priorities)

Adoption of the new provisions will enable the Council to control sexual entertainment venues across the district. It will allow partnership working and will contribute to public safety.

Section 2

Contribution to Promoting Community Engagement

Once the provisions have been adopted, a Policy will be prepared on how such venues will be controlled. This will be consulted upon before approval and adoption of the final version by full Council.

Section 3

Financial Implications

There will be minor advertising costs of adopting these provisions which could be met from existing budgets. It is anticipated that the cost of implementing the provisions will be fully recovered from the fees and charges set. The level of fees and charges will be reviewed annually. If the licence application is refused, the applicant can only challenge the refusal by way of judicial review and this may incur additional costs to the Council.

Section 4

Legal Implications

There are legal implications if the recommended adoption is approved by the Council.

The legislation relating to the powers of the Council are outlined in Section 1 of the report and also contained in the main body of the same.

The procedure for premises requiring a licence for a sexual entertainment venue is similar to the procedure required for a licence for a sex shop.

In summary the act allows the Council to consider any objections raised by the residents and object to the use of a property. The legislation allows the Council to grant licences subject to conditions and the licences are subject to an annual review.

The act allows the Council to set a limit on the number of sexual entertainment venues in an area.

If the Council resolve to adopt Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended by Section 27 of the Policing and Crime Act 2009, the Council will have to follow the procedural requirements, then the Local Authority Resolution must specify the day when the provisions are to come into effect. The date must not be earlier than one month from the date of the resolution.

The Local Authority must publish a notice in a local newspaper in two consecutive weeks stating that the resolution has been passed. This must include the general effects of the resolution.

Section 5

Human Resource Implications

Administration and enforcement can be accommodated within existing resources.

Section 6

Section 17 (Crime Prevention)

Sexual entertainment venues are likely to be also licensed under the Licensing Act 2003. Additional controls will strengthen the Licensing Objectives, one of which is the prevention of crime and disorder.

Section 7

Human Rights Act Implications

All applications will be considered on their merits, having regard to the Council's Policy and Home Office Guidance.

Section 8

Data Protection Act Implications

None identified.

Section 9

Risk Management Implications

Failure to adopt these provisions by 6 April 2011 would mean a requirement to undertake a district-wide consultation process.

Section 10

Equality and Diversity Implications

All applications will be considered on their merits, having regard to the Council's Policy and Home Office Guidance.

Section 11

List of Background Papers

Policing and Crime Act 2009

Sexual Entertainment Venues: Guidance for England and Wales (Home Office, March 2010)

Section 12

Report History

DMT – 14 December 2010

Licensing & Public Protection Committee – 27 January 2011

Annexes

None.