

BIRMINGHAM CITY COUNCIL

REPORT OF THE ACTING DIRECTOR OF REGULATION AND ENFORCEMENT TO THE LICENSING AND PUBLIC PROTECTION COMMITTEE

13 SEPTEMBER 2017
ALL WARDS

SEX ESTABLISHMENTS POLICY

1. Summary

- 1.1 In 1982 Birmingham City Council resolved to adopt Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, which concerns the regulation of Sex Establishments (namely Sex Shops and Sex Cinemas).
- 1.2 In 2010 Birmingham City Council resolved to adopt Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended by Section 27 of the Policing and Crime Act 2009 so that the provisions for the control of sexual entertainment venues would apply to the whole of Birmingham.
- 1.3 The current Sexual Entertainment Venue (SEV) Policy has been in effect since 2014 and is required by that policy to be regularly reviewed.
- 1.4 In June 2017 officers commenced the Primary Consultation process, seeking comments on a proposal to integrate all Sex Establishments into one overarching policy, and inviting comments in general on the existing licence regime, including conditions.
- 1.5 The purpose of this report is to inform the Committee of both the results of this consultation and subsequent suggested amendments to the policy.

2. Recommendations

- 2.1 That the proposed policy for licensing sex establishments, including associated conditions and scheme of delegations, be considered by the Committee and that any agreed amendments be incorporated therein.
- 2.2 That the agreed new policy will be subject to public consultation, with the results reported back to a future Committee.

Contact Officer: Emma Rohomon, Licensing Manager
Telephone: 0121 303 9780
Email: emma.rohomon@birmingham.gov.uk

3. Background

- 3.1 In 1982 Birmingham City Council resolved to adopt Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, which concerns the regulation of Sex Establishments (namely Sex Shops and Sex Cinemas).
- 3.2 In 2010 Birmingham City Council resolved to adopt Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended by Section 27 of the Policing and Crime Act 2009 so that the provisions for the control of sexual entertainment venues would apply to the whole of Birmingham.
- 3.3 The current version of the Sexual Entertainment Venue (SEV) Policy has been in effect since 2014 and it is a requirement of that policy to be regularly reviewed.
- 3.4 The majority of the Sexual Entertainment Venue Policy consists of procedural matters regarding the application stage and other matters which may arise through the term of the licence, e.g. variation, revocation, renewal etc. These matters are applicable to all types of Sex Establishment.
- 3.5 There are currently eight SEV licences in operation across the City, seven of which are situated within the ring road (A4540). (Two licences have been revoked by your Committee but, at the time of writing this report, are still within the appeal period)
- 3.6 A map indicating the location of all current Sex Establishments is attached at Appendix 1.
- 3.7 Members are invited to consider the proposed Sex Establishments Policy attached at Appendix 2.
- 3.8 Independent legal advice was sought from Counsel in the preparation of this report, and for guidance on the proposed revisions to the Policy.

4. Amendments arising from the Consultation

- 4.1 The following matters arising from the consultation have been incorporated into the revised Policy document:
 - Integration of all Sex Establishments into a single overarching Policy.
 - More detailed explanation of revocation procedure.
 - Introduction of an SEV Operating Manual requirement - to incorporate:
 - Codes Of Conduct For Customers and Performers (including minimum requirements for what the Rules should address).
 - Welfare Policy (to include performers/patrons).
 - Plan (including location of CCTV cameras).
 - Price List requirements (Location and font size).
 - Clearer definition of what constitutes Sexual Entertainment (inc Burlesque).

- Removal of the 'cap' on numbers (see Paragraph 5).
 - Removal of standard restrictions on opening hours /days for Sex Shops and Cinemas – replaced with proposals upon application (consistent with SEV policy).
 - Clarification of 'Touting' section to cover all promotion activities.
 - Clarification of fees (Application and licence).
 - Removal of requirement for applicant to demonstrate compliance with business rates – placing the onus on Business Rates or other agencies to object if they feel it appropriate.
- 4.2 Officers have also had regard to the circumstances surrounding the revocation of two SEV licences within the City. There were a number of issues relating to the enforceability of some conditions and the clarity of some of the requirements. These areas have been tightened, however, it must be noted that where issues involved allegations of organised crime and or people trafficking and slavery – these are issues which, whilst abhorrent – do not sit within the remit of this licence regime. They must be dealt with, first and foremost, by the appropriate enforcement agency, which will then be in a position to raise concerns with the Licensing Authority for consideration of licence revocation where appropriate.
- 4.3 There were a number of responses calling for the inclusion of controls to prevent modern day slavery. Modern Slavery involves people being trafficked into or around the UK and being forced to illegally work against their will.
- 4.4 This is a complicated area, which is difficult to address appropriately through policy or conditions. Modern Day Slavery is a crime, and as such must be addressed through the Criminal Justice System. The same principles apply to organised crime.
- 4.5 A request was received from Trading Standards to consider imposing an age restriction of 21 on customers at Sexual Entertainment Venues. Such a restriction could constitute discrimination on grounds of age, and officers were unable to ascertain any persuasive reason to impose such a restriction.
- 4.6 A request has been received from a number of SEV licence holders to be permitted to advertise their business by way of business cards displaying the logo of the business.
- 4.7 Should Members be minded to concede to this proposal, the following condition is suggested for consideration as an addendum to Condition 66:
- 66: *"The licensee shall not permit any person whilst on a public thoroughfare to solicit any other person to visit the SEV premises by any means.*
- 66A: *Save for the distribution of business cards – the format, design and distribution of which must be approved in advance by the Licensing Authority (.ie. applicant must specify how they intend to distribute their promotional material.) The approval of such material does NOT supersede any restrictions on the distribution of free literature within the City.*

4.8 Any confirmed breaches of the approved form/content or method of distribution would be considered a breach of condition.

5. Cap on Number of Premises

5.1 In March 2010, the Home Office produced Guidance for local authorities carrying out their functions under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended). A link to this guidance can be found at bit.ly/HomeOfficeSEVGuidance

5.2 In September 2013 Leeds City Council revised its SEV Policy to limit the number of SEV premises in the City to four. Of the six premises who applied to renew their licences, Leeds Licensing Committee refused to renew two existing premises on the grounds they were close to buildings with 'sensitive uses', with a third being granted a limited renewal until June 2014.

5.3 The two premises refused renewal applied for a Judicial Review. The decision was published at the end of March 2014. In the case of *Bean Leisure Trading A Ltd, R (On the Application Of) v Leeds City Council* [2014] the High Court rejected the challenge from the two premises and found that Leeds' decisions to refuse the two applications were rational and proportionate and in accordance with its published policy.

5.4 Previously Members have expressed a desire to impose limits in various areas of the City. However, it is important to note, there is no requirement for a cap or limit to be expressly stated in any Policy document before a decision can be made with regard to the number of SEVs in a relevant locality.

5.5 Every application for a Sexual Entertainment Venue Licence must be considered on its own merits, having regard for the specific circumstances of the premises and its relevant locality at the time the application is determined by the local authority.

5.6 In the case of *R v Peterborough City Council, ex parte Quietlynn* (1987) 85 LGR 249 the Court of Appeal held, the relevant locality of a premises is a question of fact which must be determined by the facts of an individual application at the time the application is determined by the local authority.

5.7 In *Quietlynn*, the Court also determined that the entire administrative area of an authority was too large to be considered as a 'relevant locality' for the purposes of the Act.

5.8 The current policy sets a limit of eight SEV licences within the ring road (A4540). At the time of writing this report, there were eight licences legally in effect within that specified area. However, two have been revoked by the Committee, and, should no appeal be lodged, the number will reduce to 6. The existence of the specified number risks the perception of there being a 'target number'.

- 5.9 Whilst it is acknowledged that Members, and indeed a number of respondents to the consultation expressed a desire to either maintain or reduce such a limit, this must be considered with caution. Every case must be considered on its own merits, and no application could be rejected purely on the grounds that a cap exists.
- 5.10 If there were no specific cap on the number of premises of a particular type, this would in no way prohibit Members from determining that the number of sex establishments in a particular locality is inappropriate.
- 5.11 It is, therefore, proposed that the limit set within the existing policy be removed.

6. Consultation and Responses

- 6.1 The current Policy was subject to consultation with stakeholders before being implemented in 2014. A revised version of Conditions was introduced with effect from 1st February 2012 following consultation with existing licence holders.
- 6.2 The consultation for this latest review began on 22 June 2017 and closed on 26 July 2017(midnight). We advertised the consultation through the Licensing Twitter account and wrote to the following people and organisations to tell them that the consultation was taking place:
- Existing Licence Holders
 - Licensing Committee (LPPC)
 - Other elected Members
 - Licensing Officers
 - Police (Licensing and PPU/Sex crimes)
 - Trading Standards
 - Environmental Health
 - Children's services
 - Fire Service
 - WMAS
 - Public Health
 - Planning
 - Revenues (Business Rates)
 - Business Improvement Districts (11)
 - Trade Associations
 - Charity /Interest Groups – e.g. Umbrella , SAFE, HGL
 - Institute of Licensing
- 6.3 A copy of the letter is attached at Appendix.3.
- 6.4 Licensing officers asked West Midlands Police to produce an analysis of crime statistics for violent and sexual offences that have taken place in close proximity to Sex Establishments or that were linked to Sex Establishments

over a 12 month period. This is attached at Appendix 6 and does not support the allegations that premises of this kind 'attract crime'.

- 6.5 Appendix 4 is a table containing suggestions or proposals made by respondents. The table only includes those responses which propose or challenge policies or conditions, rather than those generally acknowledging the consultation.
- 6.6 Commentary addressing any points of law or other matters arising from people's written views has been included in Appendix 4 where appropriate.

7. Implications for Resources

- 7.1 The cost of devising and maintaining this Policy is included within the existing Licence fee structure.
- 7.2 The cost of the consultation exercise and Counsel's advice have been met by utilising existing resources.

8. Implications for Policy Priorities

- 8.1 The issues addressed in this report relate to the City Council priorities associated with creating a cleaner, greener and safer city and providing excellent services.

9. Public Sector Equality Duty

- 9.1 The benefit of an agreed Policy is to ensure a consistent approach in respect of all aspects relating to the application process and in the operation of licences when granted.
- 9.2 The Government carried out an equality impact assessment of the legislation which found that no unintended or disproportionate impact is likely. It is not anticipated any amendments to be made as a result of this review would require an Equality Impact Assessment.

ACTING DIRECTOR OF REGULATION AND ENFORCEMENT

Background Papers: Nil