

Forest Heath District Council

(This report is a key decision. This report has been subject to appropriate notice of publication under the Council's Access to Information Rules)

Report of the Portfolio Holder for Environment and Waste

CABINET

9 APRIL 2013

CAB13/078

REVIEW OF THE SEX ESTABLISHMENT LICENSING POLICY (Key Decision Reference: DEC12/01)

1. Summary and reasons for recommendation(s)

- 1.1 The introduction of section 27 of the Policing and Crime Act 2009 provided adoptive provisions to allow local authorities to regulate lap dancing clubs and similar venues under the same regime as sex shops and sex cinemas. Council at its meeting of the 14 December 2011 adopted a sex establishment licensing policy following wide public consultation and full consideration of the feedback received.
- 1.2 An additional resolution made at Council in December 2011 was that the "The Licensing Committee undertake a review of the Sex Establishment Policy in twelve months time.". With the introduction of the Cabinet Structure to Forest Heath the matter of policy reviews now falls directly to Cabinet for consideration.
- 1.3 This report seeks Cabinet approval for a revised policy (Appendix 1) to be submitted to Council for adoption.

2. Recommendation(s)

- 2.1 Cabinet are requested to:
 - a) To endorse the amendments and revisions to Sex Establishment Licensing Policy, and
 - b) Authorise the Head of Service in consultation with the Cabinet Member for Environment and Waste to make any necessary amendments to the appendices as may be required during its life for operational reasons.

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3. How will the recommendations help us meet our strategic priorities?

- 3.1 The Sex Establishment Licensing Policy forms the basis of decisions when dispensing the Licensing Authority's functions in respect of sex shops, cinemas and sex entertainment venues (lap dancing clubs).

4. Background

- 4.1 On the 21 November 2011, the Licensing Committee reviewed a proposed Sex Establishment Licensing Policy following the results of a public consultation on the same. The policy that was approved for adoption as a result of this meeting, incorporating accepted consultation amendments, included the decision not to set any maximum on the number of sex establishments in the District, nor set any minimum distance from areas or premises such as those listed in paragraph 6.3 of the policy. It was felt at the time that each application should be considered individually on its own merits, taking into account paragraph 6.3 of the policy and any representations that may have been made. This approach was supported by the consultation feedback. Licensing Committee resolved to endorse the proposed policy for presentation at Council where it was approved and adopted on the 14 December 2011. An extract of the Council minutes can be seen at Appendix 2.
- 4.2 One of the resolutions at Council was to conduct a review of the policy twelve months after its implementation
- 4.3 On the 9 October 2012 a letter was received from Newmarket Town Council who being mindful of the 12 month policy review has reiterated their comments from 2011 and this is attached at Appendix 3.

5 Key issues

- 5.1 The current policy does indicate the types of premises that are considered inappropriate for a sex establishment of any type to be near. At paragraph 6.3 of the policy it states that "Each application will be treated on its own merits, the Council will not be minded to licence premises that are in close proximity to:
- a) a residential area;
 - b) a school, nursery or any other premises substantially used by or for children under 16 years of age;
 - c) a park or other recreational area used by or for children under 16 years of age;
 - d) a church or other place of religious worship;
 - e) a gateway to an identifiable locality."
- 5.2 No distance was included and no detail on how this would be measured was incorporated.

Legal Advice

- 5.3 When considering a particular application, case law has indicated that the relevant locality does not have to be a clearly pre-defined area nor are local

authorities required to define precise boundaries. Whilst it is reasonable to have policies and guidance, each case must be decided on its own facts. Case law indicates that, for example, an entire town or local authority area cannot be a 'relevant locality' for the purposes of excluding sex establishments.

5.4 To impose a measured boundary creates the risk of undermining the importance of the other criteria. For example, a sex shop that is 260 metres from a school but with easy pedestrian access could be less acceptable than one that is only 200m away but is separated by a busy road and is among other premises with a mainly adult clientele. Applicants for licences would be likely to seek out premises beyond the 250m boundary and use that distance to create a presumption in favour of grant, which would be difficult to overturn.

5.5 To provide additional clarification paragraph 6.3 of the revised policy (attached as Appendix 1) now reads as follows:

"6.3 The Council will not normally grant a licence where any premises within the vicinity are used for the following:

- (a) school;
- (b) place of worship;
- (c) family leisure;
- (d) domestic residential buildings;
- (e) important historic buildings;
- (f) youth facilities;
- (g) important cultural facilities.

6.3.1 In other instances, the Council will consider this ground of refusal on the merits of the individual case.

6.3.2 The precise extent of vicinity will be determined in the light of the precise location of any application and any representations made in response thereto.

6.3.3 In deciding whether such premises are in the vicinity of the application site, the Council will not use a pre-determined distance, but will consider each case on its individual merits, and will take account of its local knowledge where appropriate. In determining the issue, it will take account of:

- (a) distance,
- (b) intervisibility,
- (c) linkages between them, including whether the premises and application site are connected by well-used walking routes;
- (d) any visual or physical barriers between them.

6.3.4 In considering the application of this policy to domestic residential buildings, the Council will take into account the number of such buildings, their density, their primary use, the number of dwelling units they comprise and their distance from the application site."

5.6 This provides additional clarification while avoiding the legal pitfalls of introducing a presumption based on distance, other factors which have greater bearing on the acceptability or otherwise of the premises are given more

weight. Furthermore it supports the original resolution of Licensing Committee and that of the law which enables application to be considered on its merits regardless of the policy.

- 5.7 Public consultation took place during September and October 2011 prior to adoption of the policy. The proposed amendments and changes to the policy are not regarded significant and no further public consultation is deemed necessary.

6. Crime and disorder impact

- 6.1 Suffolk Constabulary are a statutory consultee and they are able to comment upon applications if necessary. The application process also requires the completion of criminal records checks.

7 Diversity and equality impact

- 7.1 Local authorities are allowed to refuse applications, whether they are from existing operators or new applicants, on one or more grounds set out in Appendix F of the policy (Refers to Schedule 3, paragraph 12 of the Local Government (Miscellaneous Provisions) Act 1982). When making such decisions, local authorities must take into account any rights the existing operators may have under Article 1, Protocol 1 of the European Convention on Human Rights (which entitles every person to the peaceful enjoyment of their possessions) and Article 10 (freedom of expression).

- 7.2 Of those who used the online consultation and completed the personal information sections :

- Over 80% of respondents were female
- All were aged over 25
- All were from a white background
- The majority had a Christian background
- Over 87% had no long standing illness, disability or infirmity.
- The majority of respondents were heterosexual

8 Sustainability impact

- 8.1 No issues identified.

9 Other impact

- 9.1 No other impact identified outside of the policy.

10 Consultation

- 10.1 Public consultation took place during September and October 2011 prior to adoption of the policy. The proposed amendments and changes to the policy are not regarded significant and no further public consultation is deemed necessary.

11 Financial and resource implications

- 11.1 Budgetary provision for any work in connection with the applications for sex establishments has already been incorporated into the agreed licence and renewal fees.

12. Risk/opportunity assessment

Risk area	Inherent level of risk (before controls)	Controls	Residual risk (after controls)
	High/Medium/Low		High/Medium/Low
Failure to adopt the policy will mean that the Authority will be unable to adequately control and determine any issues in relation to such establishments and consequently will be unable to exercise its licensing function properly.	High	Process of policy re-adoption in progress. The policy and conditions will strengthen the Council's decision making, particularly in terms of applications; leaving the Council less open to legal challenge.	Low

13. Legal and policy implications

- 13.1 These are included within the body of the report.

14. Ward(s) affected

- 14.1 All

15. Background papers

- 15.1 None

16. Documents attached

- Appendix 1 – Revised Sex Establishment Licensing Policy
Appendix 2 - Extract from the Council minutes of 14 December 2011
Appendix 3 – Letter from Newmarket Town Council date