

BRISTOL CITY COUNCIL

LICENSING COMMITTEE

10th June 2015

Report of: Strategic Director, Neighbourhoods

Title: Review of Sexual Entertainment Venue (SEV) Policy

Ward: Citywide

Officer Presenting Report: Nick Carter, Regulatory Services Manager

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RECOMMENDATION

The committee are recommended to:

- (1) Agree that the City Council's policy for the control of sexual entertainment venues should be reviewed having regard to the outcome of a public consultation exercise;
- (2) That consideration also be given to the suitability of the standard conditions generally imposed on every licence that is granted or renewed; and
- (3) Instruct the Director of Neighbourhoods to develop a work programme to carry out that consultation and review.

Summary

In 2011, after a thorough consultation process, the Licensing Committee made policy on behalf of the council for the regulation of venues that require a licence in order to operate as a sexual entertainment venue. At the same time the committee made regulations under which standard conditions are generally imposed when applications for such licences are granted or renewed. A copy of the policy is attached. A significant part of the policy deals with the complex transitional arrangements that had to apply following the council's decision to adopt the legislation. The rest of the policy sought to guide on the factors to consider when determining applications for new licences and renewals. Officers are of the view that it would be appropriate to review the policy bearing in mind that four years have passed since it was originally approved and the transitional period has ended.

The significant issues in the report are:

The council is not required to have a policy and nor is it required to consult prior to making it, but it does help in guiding decisions and regular review in consultation with interested parties is good practice.

Policy

In 2011 the City Council's Licensing Committee approved a policy for the licensing of Sexual Entertainment Venues (SEVs)

Consultation/Advice

1. Internal

Legal Services

2. External

None

3. Context

In 2011 the City Council approved a policy for the licensing of sexual entertainment venues (SEVs) in Bristol. The policy provides guidance to the Licensing Committee to assist them when considering applications for SEVs,

in particular in considering whether or not the council should rely upon any of the discretionary grounds for refusal when they are relevant to an application.

At the time the policy was made there were five venues known to be operating as SEVs in Bristol, all of whom benefited from statutory protection allowing them to continue to trade until key decisions had been made and (where relevant) appeals had been concluded. A key issue was that the adoption of the legislation allowed the Council to refuse an application on the ground “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”

Council’s differed in their approach to policy in relation to this ground. For example some Councils determined an appropriate number for all wards in their area whilst at the same time allowing existing premises to continue to trade even where that would result in the policy numbers being exceeded. In Bristol members identified the relevant locality by reference to the location of the applicant premises themselves and determined appropriate numbers as guided by the factors in the policy. In some Councils only SEVs were considered, however Bristol had existing policy for other types of sex establishments in the localities in which the applicant premises were situated and Bristol members therefore also conscientiously considered whether locality number should relate to sex establishments generally or to sex establishments of a particular kind.

Having taken this approach members did not find that any locality should be determined by reference to ward boundaries in the particular cases they considered and they further considered that appropriate numbers should relate to sex establishments of a particular kind. Having applied its policy the number of SEVs able to operate lawfully in Bristol (other than under a statutory exemption) was reduced to three: two in the city centre locality and one in the Old Market/West Street locality.

All three have since had their licences renewed on two occasions, although in one case the decision was finely balanced and the licence only renewed with imposition of special additional conditions following consideration of the refusal ground “that the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason”. Given the council’s early experience of a refusal ground arising in relation to an existing licensee the value of clear guidance to ensure good and consistent discretionary decision making is clear.

Officers are recommending that a review of the policy, including the standard conditions, should be undertaken as more than four years have passed since the policy was implemented. The need for a review has been widely supported. The Licensing Committee received a Public Forum statement from

the Women's Commission in November 2014 requesting a review, furthermore petitions for and against the current policy have also been received. The Licensing Sub Committees, who determine the annual renewal of individual SEV licences, have also indicated that a review is due, and have recommended that any review should include a refresh of the standard conditions. Bristol has worked hard to develop and maintain a well-managed night time economy evidenced by the reaccreditation of the Purple Flag award for the last four years. Central to the night time economy is the provision of a diverse and attractive offer for all residents and visitors. Effective regulatory policy is a key part of achieving that goal.

4. Decision Making Process

The Full Council has delegated the function of regulating SEVs to the Licensing Committee, which is therefore able to make policy to guide decisions in this area of work.

5. Proposal

Officers recommend that the Licensing Committee agree to undertake a review of the SEV Policy. If Committee are minded to carry out a review officers will develop a project plan for how the review could be undertaken.

6. Other Options Considered

The Licensing Committee could decide not to review the policy however it is clear that the policy is out of date as far as the transitional arrangements are concerned and it is considered that it would be prudent to assess whether the policy is still fit for purpose in the light of our experience over the last four years in administering this new aspect of the sex establishment regime. Furthermore it has become clear that there is support for a review of the policy.

7. Risk Assessment

The SEV regime has attracted interest both locally and nationally since licensing authorities have had the ability to develop policy in this area. As with any policy it is good practice to ensure that it remains fit for purpose. Therefore the recommendation to undertake a review would mitigate against the risk that decisions are being guided by a policy that no longer reflects the

Council's judgment of how to exercise its discretion in the best interests of the City.

Public Sector Equality Duties

- 8a) Before making a decision, section 149 Equality Act 2010 requires that each decision-maker considers the need to promote equality for persons with the following "protected characteristics": age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation. Each decision-maker must, therefore, have due regard to the need to:
- i) Eliminate discrimination, harassment, victimisation and any other conduct prohibited under the Equality Act 2010.
 - ii) Advance equality of opportunity between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to --
 - remove or minimise disadvantage suffered by persons who share a relevant protected characteristic;
 - take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of people who do not share it (in relation to disabled people, this includes, in particular, steps to take account of disabled persons' disabilities);
 - encourage persons who share a protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
 - iii) Foster good relations between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to –
 - tackle prejudice; and
 - promote understanding.
- 8b) If the Licensing Committee agree the recommendation any proposals will be subject of an impact assessment.

Legal and Resource Implications

Legal

Decision making powers and process

The legislation governing the licensing of sex establishments (that is, sexual entertainment venues, sex shops and sex cinemas) is all designated in law as not being the responsibility of a council's Executive (that is, in Bristol, the Elected Mayor and his cabinet). The job therefore falls to the Full Council to make decisions itself, or to delegate to a Committee, sub committee or officer (except for those things the statute specifically requires to go before a committee; the main example of this is the right to the applicant to be afforded a hearing before the council can make a decision to refuse their application) under local government legislation or to delegated related functions within the meaning of the Licensing Act 2003 to its Licensing Committee.

This Committee is accordingly empowered by Full Council to make decisions under or ancillary to the sex establishment legislation. Therefore the committee can decide to review its policy where this is calculated to facilitate, or is conducive or incidental to, decision making under the legislation that governs the licensing of sex establishments.

Although the recommendation concerns SEVs only, it will be noted from the current policy that in relation to the statutory ground concerning numbers the Committee made policy that affect all types of sex establishment as defined in the legislation (sex shop, sex cinema, sexual entertainment venue). If members agree the recommendation officers should consider if the new policy should cover decision making for all three types of establishment and develop their implementation proposals accordingly.

Advice provided by Pauline Powell
Team Leader Planning, Transport and Regulatory law
For Service Director – Legal Services

Financial

(a) Revenue

Regulatory Services have confirmed its intention to conduct the review within existing resources so there are no additional financial implications arising from the recommendation.

(b) Capital

Not applicabe

Land

Not applicable

Personnel

Not applicable

Appendices:

Appendix A – Current SEV Policy

LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985

Background Papers: None



BRISTOL CITY COUNCIL

Local Government (Miscellaneous Provisions) Act 1982

Control of Sexual Entertainment Venues

1. Introduction

The Local Government (Miscellaneous Provisions) Act 1982 introduced a regime for the control of sex establishments. The regime is adoptive and Bristol City Council has for many years been able to control the provision of sex shops and sex cinemas within its administrative area. The 1982 Act has recently been amended, enabling the control of “sexual entertainment venues”. The Council has adopted the amended Schedule. Once it is in force this will enable applicants to seek to obtain a licence to operate a sexual entertainment venue, or to secure a waiver.

The Act imposes a duty on the Council to refuse a licence in certain cases (for example if an individual applicant is under the age of 18 years) and confers powers on the Council to refuse to grant or refuse to renew a licence by reference to matters such as the maximum number of sex establishments which the Council considers appropriate for the locality of the premises, the premises that are subject of the application and the character of the locality.

The legislation may be viewed here:

<http://www.legislation.gov.uk/ukpga/1982/30>

Local Government (Miscellaneous Provisions) Act 1982 Chapter 30

<http://www.legislation.gov.uk/ukpga/2009/26/section/27>

Policing and Crime Act 2009 Part 2 Section 27 - Regulation of lap dancing and other sexual entertainment venues etc

2. Scope of this policy

This policy will guide the Council when determining applications made in connection with sexual entertainment venues. It will assist it in achieving the purpose of the legislation in a manner that is consistent with the body of case law that has developed since the regime was first enacted.

This policy applies to every type of sexual entertainment venue (as defined in the Act) unless an exemption applies. Reference should be made to the legislation itself for a full understanding of what might fall within the definition and when exemptions may apply, but in summary a sexual entertainment venue is:

- (a) **premises** (which includes traditional premises as well as vehicles, vessels and stalls etc. – but not private dwellings to which the public are not admitted) **at which**
- (b) **relevant entertainment** (i.e. either: (i) a live performance of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purposes of stimulating any member of the audience* whether by verbal or other means; or (ii) a live display of nudity* of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purposes of stimulating any member of the audience* whether by verbal or other means.
- (c) **Is provided** (i.e. provided or permitted to be provided by or on behalf of the organiser*)
- (d) **before a live audience**
- (e) **for the financial gain of the organiser or entertainer** (this can be direct or indirect)
- (f) **unless an exemption applies** (exemptions are detailed in par 2A of the third schedule – see link above)

*audience includes an audience of only one person

nudity is the exposure of the pubic area, genitals or anus and, in the case of women, their nipples

organiser the person who is responsible for the organisation or management of the entertainment itself or the premises

Licensing of sex cinemas and sex shops is outside the scope of this policy, which is directed at the new aspect of the regime under which sexual entertainment venues are regulated.

This policy is intended to be strictly applied, but will not operate inflexibly; the Council will take all relevant factors into consideration when determining applications and each and every case will be decided on its merits.

3. Decision making responsibility

By law all functions of the local authority concerning this regime, including the making of this policy and determination of applications, are matters that cannot be the responsibility of its Executive. As such the Full Council is the body that controls the way decisions are made. The Full Council exercised its powers under Section 7 of the Licensing Act 2003 to arrange for the Licensing Committee to be responsible for the Schedule 3 functions on behalf of the Council. By virtue of Section 10 the Licensing Act 2003 a licensing committee may arrange for the discharge of any functions exercisable by it:-

- (a) By a sub-committee established by it, or
- (b) (Subject to certain statutory restrictions) by an officer of the licensing authority.

The Licensing Committee has made such arrangements.

4. Transitional provisions

There are three appointed days under the transitional provisions that apply to the new provisions. These are called the first appointed day (FAD), the second appointed day (SAD) and the third appointed day (TAD).

The FAD in Bristol is the 31 January 2011. The SAD is the day six months after that and the

TAD is the day six months after the SAD. There are some 'grandfather rights' that apply to the following:-

- (a) Those with a licence for relevant entertainment under the Licensing Act 2003 who are using the premises as a sexual entertainment venue under that licence.
- (b) Those with a licence for relevant entertainment under the Licensing Act 2003 who are undertaking preparatory work to use the premises as a sexual entertainment venue under the 2003 Act Licence.

Both category of operator may continue to use their premises as a sexual entertainment venue until at least TAD, or, if they have made an application before TAD, until the determination of that application or the conclusion of any appeal against a refusal of it. In other words, these two groups can continue to trade for at least one year following the 31 January 2011 even if no licence or waiver has been granted to them, indeed even if they have not chosen to make an application.

There are three groups of applications in the transitional order :-

1. Round one applications:

From the FAD until on or before the SAD Round 1 applications can be made. All of these must be considered before any of them can be determined. In practice, therefore, the first time the Council is permitted to determine applications will be after the day following the second appointed day, i.e. six months plus one day from the 31 January 2011. When they are determined, any licences granted to applicants with "grandfather rights" will not take effect until the third appointed day. Any others that are granted will take effect straightaway.

2. Round two applications:

These second round applications may be made after the SAD and before the TAD.

It is important to note that none of these applications may be determined until all of the Round 1 applications have been determined.

As with the Round 1 applications, licences granted to applicants with "grandfather rights" whose applications are granted before the TAD will not take effect until the third appointed day; any others that are granted will take effect straightaway.

3. All other applications

Any applications made after the third appointed day TAD may not be determined until such time as all of the Round 1 applications (if any) have been dealt with.

5. Determining applications

The Council will determine every application on its own merits.

6. General obligations that apply to the discharge of all of the Council's powers and duties

There are a number of general obligations that apply whenever the Council is discharging any of its many functions. Those most likely to be relevant are highlighted in this part of the policy and must be borne in mind when considering any aspect of the regime including all of the things specifically addressed in the following paragraphs. For the avoidance of doubt, the Council has screened this policy statement to ensure it is compatible with those obligations and will, through its information gathering powers, seek to ensure that relevant information may come forward through the application process to enable all of its general obligations to be satisfied in the discharge of the function of determining applications for sexual entertainment venue licences. Material that is relevant to the achievement of these obligations will be properly taken into account.

There are many such general obligations applying to the work of a local authority, amongst which are (in no particular order of priority):-

- its fiduciary duties to the Council Tax and Rate payers of the City (protection of the public purse).
- its obligations to act compatibly with rights conferred under the European Convention of Human Rights
- its general and specific duties under Equalities Law
- its obligations under Crime and Disorder legislation

7. Considering applications and representations

Applications have to be made in writing and must contain the particulars specified in paragraphs 10.2 to 10.5 of the third schedule (see hyperlink above) and such particulars as the appropriate authority may reasonably require in addition. The Council's application form will be designed to elicit information that enables its decision making to be guided by this policy, including information that is relevant to enabling it to meet all of its general obligations such as those referred to in the preceding paragraph.

Public notice must be given of all applications and that notice shall be in the form that the Council may prescribe. The Council intends to prescribe a form of application that facilitates public representations, including, for example, requiring applicants to identify the brand name under which the premises are intended to operate and other material information.

The council will record that applications have been received on its licensing web pages. The council will also display additional notices in the area making use of street furniture and community notice boards. It also intends to notify Ward Members about applications made within their areas and the relevant Neighbourhood Forum co-ordinators.

Persons objecting to an application for the grant renewal or transfer of a licence must give notice in writing of their objection to the Council, stating in general terms the grounds of the objection not later than 28 days after the date of the application. Providing they comply with the statutory requirements their format of written objections is entirely a matter for the objector. However, to assist the public, the Council will make available a form for objectors to use if they so choose.

The Council will give an opportunity of appearing before and being heard by a committee or sub-committee:

- (a) before refusing to grant a licence, to the applicant;

- (b) before refusing to renew a licence, to the holder; and
- (c) before refusing to transfer a licence, to the holder and the person to whom he desires that it shall be transferred.

The Council will also usually permit objectors to address the Committee or sub committee in respect of the matters raised in their written objection (but no other matter)

The Council has arranged for hearings to take place before committees and sub-committees whose Members are accustomed to conducting such business in accordance with the rules of natural justice and other relevant obligations. Training has been made available to all Councillors concerned in the conduct of hearings and determination of such matters.

When considering applications the Councillors will usually enhance their existing local knowledge of the locality by use of maps and site visits. Applicants should be required to provide a location map and plan of the premises.

8. Grounds for refusal

Mandatory grounds

A licence shall not be granted where one of the mandatory refusal grounds applies, that is:-

- (a) to a person under the age of 18; or
- (b) to a person who is for the time being disqualified by virtue of revocation in the previous year;
- (c) to an individual applicant who has not been resident in the UK for the previous six months;
- (d) to a body corporate which is not incorporated in an EEA state;
- (e) to an applicant who has, within a period of 12 months immediately preceding the date when the application was made, been refused the grant or renewal of a licence for the premises, vehicle, vessel or stall in respect of which the application is made unless the refusal was reversed on appeal.

If the Council finds any of these grounds apply then it must refuse the application

Discretionary grounds for refusal

A licence may otherwise 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 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. (Nil may be an appropriate number for these purposes)
- (d) 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

If the Council finds any of these grounds apply then it may refuse the application

Factors for consideration

Discretionary grounds (a) and (b)

In considering the suitability of those persons referred to in (a) and (b) above the factors the Council may take into account include:

- relevant experience;
- relevant criminal convictions;
- whether the person has committed relevant offences;
- relevant observations or findings by public authorities, including licensing authorities, in connection with the conduct of the person or their ability to manage and control premises;
- relevant findings by courts and tribunals in connection with the treatment of protected groups (within the meaning of the Equalities Act 2010)
- information germane to the person's ability to, among other things:
 - ensure the safety and wellbeing of performers;
 - ensure the proper protection of the public;
 - ensure the suitability of employees, performers and others using the venue;
 - prevent performance by or for those who may thereby be harmed, including minors;
 - understand and adhere to conditions imposed on any licence granted and ensure they are observed by others on the premises;
 - engage constructively with the Council and other relevant regulators

Discretionary ground (c)

The Council is mindful of its power to determine an appropriate maximum number of sex establishments, or of sexual entertainment venues, in the relevant locality at the time of application is determined. The Council will adopt the same approach to this issue when determining applications for sexual entertainment venues as it has taken with respect to applications for sex shop licences. It will not seek to predetermine the localities that are comprised within the City of Bristol or predetermine the appropriate number for each such locality, but will consider this issue on a case by case basis. That is to say, it will decide what

is the relevant locality as a matter of fact in each particular application and not by drawing boundaries on a map or some other method.

Having established the relevant locality, in considering the issue in ground 'c' the Council will take into account all relevant considerations including:-

The character of the locality:

- residential
- leisure
- educational establishments

Other uses in the locality:

- faith / religious institutions
- churches
- family friendly facilities

Impact on regeneration

Impact on tourism, including considerations of the perception of the City at gateway locations

Impact on retail attraction

Risk of public nuisance

Whether the locality is subject of stress caused by a cumulative impact of premises authorised to provide licensable activities under the Licensing Act 2003;

Impact on crime and disorder

Public perception of the safety of the locality and impact on that perception, e.g. typical footfall at material times, level of street lighting, use by lone females

Existence of social problems in the locality and impact on any initiatives to tackle them, e.g. kerb crawling, prostitution.

Levels of recorded crime

Levels of anti social behaviour

Appendix A shall be maintained within this policy to record all decisions made to control the number of sex establishments under this provision.

Discretionary grounds (d)

For d(i)

Having regard to the character of the locality (see ground (c) above) the Council will consider whether the particular application is appropriate, taking into account:

The size and appearance of the premises

Their proximity to places where the public congregate for purposes other than use of the premises, such as bus stops and taxi ranks

The nature and style of the relevant entertainment that is proposed

The nature of the clientele it is likely to attract and their number

The duration of the proposed licence/activity

The manner in which the relevant entertainment is likely to be managed

The risk of nuisance to others engaged in legitimate activity

The proposed hours of operation.

For d(ii)

Whether premises in the vicinity are put to any of the following uses:

- residential, in particular homes occupied by families
- leisure
- educational establishments

- churches and other places of worship
- family friendly facilities
- other sex-oriented/adult premises (whether or not they are licensed/licensable)
- youth clubs
- womens refuges
- community centres
- parks and other open spaces
- swimming pools
- public transport

For d (iii)

In considering these factors the council will take into account information concerning:-

- whether the premises are fit for the purpose proposed
- their planning status
- the general appearance to others using the locality
- whether premises are self contained
- means of access and egress, whether shared with other building users (if any)
- accessibility
- sightlines
- 'hidden' areas and other places where effective monitoring may hampered
- standard of decoration and "fit –out"
- visibility from the street
- facilities for smokers
- facilities for performers (changing, washing, wc, smoking areas etc) and whether they are adequately separated from those provided for customers

9. Reasons

The Council will usually make available the reasons for its Committee and sub committee decisions on its web pages. Rarely publication of reasons may be deferred where there is good reason (for example where relevant information is sub judice or otherwise reasonably judged to be exempt from publication).

10. Waiver

In circumstances in which the Council reasonably judges that it would be unreasonable or inappropriate to require a licence for the sexual entertainment venue concerned it may waive the requirement for a licence. An applicant for a waiver must submit the information prescribed in the legislation and such other information as the council may reasonably require. There are no advertising or publicity provisions governing waivers.

If an application for waiver is allowed a waiver notice is given which can be for a specific period or open ended. When it is open ended the council, by giving at least 28 days Notice, can bring it to an end

The Council will consider each waiver application received on its own merits. It is unlikely a waiver will be granted for relevant entertainment that includes a performance of nudity.

APPENDIX A

RECORD OF DECISIONS TAKEN TO CONTROL THE NUMBER OF SEX ESTABLISHMENTS IN LOCALITIES IN BRISTOL

On 23rd November 2011 the Licensing Committee determined three localities in Bristol and specified the maximum number of Sex Shops, Sex Cinemas and Sexual Entertainment Venue within each locality.

Old Market / West Street Locality

2 Sex Shops, 0 Sex Cinemas, 1 Sexual Entertainment Venue

City Centre Locality (see map)

2 Sex Shops, 0 Sex Cinemas, 2 Sexual Entertainment Venues

Bishopston / Redland / Cotham / Ashley Locality

0 Sex Shops, 0 Sex Cinemas, 0 Sexual Entertainment Venues

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