

BRISTOL CITY COUNCIL

Licensing Committee

8 March 2021

Report of: Executive Director: Growth & Regeneration

Title: Sex Establishment Policy Consultation

Ward: Citywide

Officer Presenting Report: Nick Carter

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RECOMMENDATION

That the Licensing Committee agree to:

- (1) Approve the draft policy for full public consultation as set out in the report.
- (2) Consult on the draft policy for a twelve week period, dates to be determined, as set out in the report
- (3) Request officers to amend the draft policy (if required) following consultation and bring back to this committee for formal approval

Summary

1. The Local Government (Miscellaneous Provisions) Act 1982 allows the Council, as the Licensing Authority, to develop and implement a policy in respect of exercising its functions under the Act. The Council adopted additional provisions in respect of Sexual Entertainment Venues in 2011. The current policy covers only Sexual Entertainment Venues and has not been reviewed since 2011.

2. There is no statutory requirement to review a Sex Establishment Policy however it is good practice to review policy on a regular basis.

The significant issues in the report are:

- The policy proposes a change to the appropriate numbers in respect of Sexual Entertainment Venues for two of the three defined localities: City Centre locality, and Old Market/West Street locality.

- The proposed draft policy has been updated to take account of changes to legislation, and expanded to cover all forms of sex establishments, rather than just Sexual Entertainment Venues.
- Updated standard conditions are proposed for Sexual Entertainment Venues, Sex Shops and Sex Cinemas.

Policy

3. The Sex Establishment Policy must comply with the requirements of the Local Government (Miscellaneous Provisions) Act 1982 (the Act). The Act defines the type of activity which can be regulated, but does not specify a requirement for a policy or review of any such policy.
4. The Council adopted additional parts of the Local Government (Miscellaneous Provisions) Act 1982 in 2011 which gave it the ability to control and regulate Sexual Entertainment Venues. A policy was developed at that time which resulted in three sexual entertainment venues becoming licensed under the legislation, along with the five existing sex shops already covered by the same Act. It has not been reviewed since this date.
5. Currently there are two licensed sexual entertainment venues and four licensed sex shops within Bristol City Council's administrative area. There are currently no licensed sex cinemas.

Context

6. Decisions in respect of this policy are not an executive function, and are dealt with by the Licensing Committee.
7. A working group was set up in 2016 by the Licensing Committee to review the policy. The working group has met with stakeholders, and other interested parties and has reviewed a wide range of documentation in considering the draft policy.
8. Between October 2016 and February 2021 the working group met thirteen times. During these sessions they considered a wide range of information, and heard from various stakeholders including the Police & Crime Commissioner, Avon & Somerset Constabulary, a number of groups and individuals who oppose sexual entertainment venues, proprietors and performers and destination Bristol. They had a range of views, often with competing interests, and opinions. They also heard from officers regarding the legal framework under which the policy is created and maintained, and about decisions of other local authorities with regard to their policies.

9. A copy of the summary of other local authority decisions, which gives brief details about whether the local authorities have designated numbers, or has a nil cap, is attached at **Appendix C**.
10. The working group invited comments from a wide range of stakeholders and received seventeen responses. A copy of these responses is attached at **Appendix D**. One response was requested to not be disclosed publicly and is attached at **Appendix E** as a restricted document for the committee only to view. Four respondents did not provide permission to disclose their responses and therefore these are not included in the documents.
11. The working group invited the respondents to speak to them and nine attended. The working group additionally invited a performer and the Operations Director for the Bristol Improvement District to speak to them. A copy of the summary of the minutes from each respondent is attached at **Appendix F**. Two respondents did not provide permission to disclose the summaries and therefore these are not included in the documents.
12. In advance of a formal consultation on any revised policy a questionnaire was distributed online and was available to the public either online or in a paper format between 3 April 2018 and 31 May 2018. The questionnaire was publicised through media, social media and communications with the public including relevant responsible authorities, equalities groups, and stakeholders.
13. The questionnaire sought the views of a wide range of people on the types of venues regulated under the Act.
14. The questionnaire received 1430 responses, with 1279 (90%) of responses from members of the public. The full report of responses is attached at **Appendix G**.
15. In the questionnaire there were a number of questions where a large proportion of people neither agreed nor disagreed with the statement, indicating that there is not a definitive split between those who believe sex establishments should be permitted in Bristol and those who do not.
16. Following consideration of the questionnaire response a consultation on a draft policy which was similar to the previous policy, and

maintained the same proposed localities and numbers, was available to the public between 16 August 2019 and 10 November 2019. The consultation was publicised through media, social media and communications with the public including relevant responsible authorities, equalities groups, and stakeholders.

17. The consultation sought the views of a wide range of people on various aspects of the policy. It was also distributed to the Citizen Panel for comment. The Citizen Panel is made up of a range of people who reflect the demographics of the City and regularly respond to consultations across a range of issues.
18. The consultation received 1046 responses with 809 (77%) of responses from members of the public. Separately 425 responses were received from the Citizen Panel, representing 35% of their membership. Additional submissions were received outside of the questionnaire from a range of groups, as well as comments made alongside the questions within the consultation. The full report is available at **Appendix H**.
19. The draft EQIA was reviewed after the consultation results had been analysed and an updated draft EQIA is at **Appendix I**.
20. In the results of the consultation it can be seen that the majority of members of the public agreed with the proposed numbers for the localities in Old Market, City Centre and Bishopston/Redland/Cotham/Ashley areas, between 59% and 66%. However a significant proportion of people, between 21% and 33% did not agree with the proposed number. Strong representations were also received outside of the consultation questions from a number of groups who felt that to permit SEVs in particular undermined the public sector equality duty and the Council's commitment to ensuring the safety of women in public spaces.
21. A number of comments were made alongside consultation responses relating to the fear that some women experience when in proximity to these premises, whether objectively justified or not which is relevant when the committee consider whether to impose a particular policy.
22. During the course of the policy review a number of decisions have been taken by other local authorities in respect of either their licensed venues or their policies, most notably Sheffield City Council who were

the subject of two judicial reviews. One was in respect of an application to renew an SEV licence, and the other was in respect of their policy review. In particular in respect of the policy review the court found that Sheffield City Council had failed to have due regard to eliminate discrimination, harassment and victimisation, advance equality and foster good relations.

23. The council must in its decision making have due regard to the requirements under the Equalities Act 2010. This is not to say that it must come to one conclusion or another, but that it must weigh the evidence and give equality considerations the weight which is proportionate in the circumstances, given the potential impact of the policy on equality.
24. The questionnaire, consultation responses, information from other Licensing Authorities, and submissions from respondents assisted the working group in the formulation of the draft policy, EQIA and draft standard conditions. A copy of the draft policy, draft standard conditions and draft EQIA, are attached at **Appendix A, B, and I** respectively.
25. In consideration of the above, and taking into account the revised EQIA it is proposed that a revised policy is put out for consultation with revised numbers in the localities which are already defined.

Consultation

26. It is proposed that the public consultation is open for 12 weeks, in line with government guidance, at dates to be determined. These dates should be defined so that they don't result in the consultation being launched or the results being published during the pre-election period for elections currently scheduled for May 2021.
27. In light of the Covid-19 pandemic it is understood that the elections may be delayed. If this should happen officers request that the scheduling of dates for the consultation be delegated to the Licensing and Trading Standards Manager to agree in consultation with the Chair of the Licensing Committee.
28. There are no requirements as to who should be consulted in respect of a Sex Establishment Policy under the Act, however officers propose that the following persons or bodies are included in the consultation:
 - The Chief Officer of Police
 - The Police and Crime Commissioner
 - Avon Fire and Rescue

- Members of the Public
- Persons involved in the types of premises which are regulated
- Equalities Groups

29. Internal

It is proposed that the views and guidance of the following Council teams are sought:

- Children and Families Services
- Public Health
- Pollution Control

Proposal

30. The Act does not require the Council to produce a policy in respect of the premises regulated under it. The Council considers that it is appropriate to produce and review a policy relating to these types of premises to assist applicants and the public with both the process and the expectations of the Council in respect of applications, and regulation of licensed premises.

31. The proposed draft policy has been updated to take account of changes to legislation and information provided to the working group, in addition to the information provided, questionnaire and consultation results.

Other Options Considered

32. Do nothing: The policy could be left in place with no changes.

Risk Assessment

The risks associated with the implementation of the recommendations of the report							
No.	RISK	INHERENT RISK		RISK CONTROL MEASURES	CURRENT RISK		RISK OWNER
		Impact	Probability		Impact	Probability	
	Threat to achievement of the key objectives of the report	(Before controls)		Mitigation (ie controls) and Evaluation (ie effectiveness of mitigation).	(After controls)		
1	Any policy decision is open to challenge	Medium	Medium	Bristol City Council has followed a clear process in reviewing the policy, however this is a contentious issue and following a clear process may not be sufficient to	Low	Medium	

				mitigate against a challenge			
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The risks associated with <u>not</u> implementing the recommendations of the report							
No.	RISK Threat to achievement of the key objectives of the report	INHERENT RISK (Before controls)		RISK CONTROL MEASURES Mitigation (i.e. controls) and Evaluation (i.e. effectiveness of mitigation).	CURRENT RISK (After controls)		RISK OWNER
		Impact	Probability		Impact	Probability	
1	The Council could be criticised for not reviewing the policy and taking account of changes within the Council's administrative area.	Medium	Medium	Review of policy and consultation on proposals	Low	Low	

Public Sector Equality Duties

15a. 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.

15b. Officers have completed an Equalities Impact Assessment attached as Appendix D. The risks identified were moderate but the policy ensures that the Council is well placed to identify any adverse impact in respect of all protected groups when it is engaged in considering applications.

Legal and Resource Implications

Legal

The committee is not bound by a statutory procedure for formulating the policy or consulting in respect of Sex Establishments. The Government Guidance suggests the consultation exercise should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach. The Government Guidance recommends that the Consultation period should be 12 weeks.

Financial

This paper requests approval to undertake a 12 week consultation on draft revisions to the Council's current Sex Establishment policy. No financial costs, savings or income are expected to arise as a consequence of this recommended activity.

Personnel

No HR implications evident

Appendices:

Appendix A	Draft Policy for consultation
Appendix B	Proposed Standard Conditions
Appendix C	Local authority policy decisions
Appendix D	Responses to stakeholder invitation
Appendix E	Restricted response to stakeholder invitation
Appendix F	Summaries of responses to working group
Appendix G	Pre consultation responses
Appendix H	Consultation responses

Appendix I Equalities Impact Assessment

**LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985
Background Papers:**