

## SEX ESTABLISHMENTS POLICY

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### 1. Summary

- 1.1 The Council currently has a Sexual Entertainment Venues policy (adopted in September 2010) and it is now considered appropriate to revise the scope of this policy to encompass sexual entertainment venues, sex cinemas and sex shops (referred to collectively as sex establishments) and to make it clear to all stakeholders the manner by which the Council intends to exercise its functions in respect of these types of establishments.
- 1.2 Following the decision made by the Portfolio Holder for Business Growth and Commissioning (North) on 19 September 2013 and Cabinet's recommendations on the 15 January 2014, this report sets out the proposed Sex Establishments Policy that will take effect from 1 April 2014.
- 1.3 In addition, officer delegations are addressed insofar as they relate to individual sex establishment licence applications and the power to reject objections where they are not deemed to be on relevant grounds under the provisions of the Local Government (Miscellaneous Provisions) Act 1982 and for the purposes of determining applications where no valid objections are submitted.

## **2. Recommendations**

- 2.1** That the Council agrees, with any necessary modifications, the Sex Establishments Policy as set out in **Appendix A** and that the policy is adopted with effect from 1 April 2014 (Hard copy of Appendix A is in the Members Library and has been circulated electronically to members).
- 2.2** That the Council delegates to Public Protection Officers (Specialist) the power to reject objections to sex establishment licence applications that are not relevant to the grounds set out in Schedule 3 Paragraph 12 of the Local Government (Miscellaneous Provisions) Act 1982 or are frivolous or vexatious or which relate to moral grounds.
- 2.3** That the Council delegates the power to determine applications for sex establishment licences, where there are no valid objections submitted during the representation period, to the Head of Public Protection, Public Protection Service Managers and the Team Manager with responsibility for the licensing function.

## **REPORT**

### **3. Risk Assessment and Opportunities Appraisal**

- 3.1** Although there is no legal duty to prepare and publish a policy relating to sex establishments, it is good practice to do so as the Council may be challenged when exercising its functions under the Act through a number of routes, e.g. service complaints to the Local Government Ombudsman and judicial review. Conversely, by preparing and publishing the policy, the Council is demonstrating its commitment to regulatory openness and transparency, it creates a defined framework within which to exercise its functions and it makes it clear to all stakeholders the manner by which the Council intends to exercise its functions in respect of the licensing of sex establishments.
- 3.2** It is unlikely that the proposed policy will have an adverse impact on equalities as it is in line with the requirements of the Local Government (Miscellaneous Provisions)

Act 1982, as amended by section 27 of the Policing and Crime Act 2009 and with guidance issued by the Home Office. However, an Equalities Impact Needs Assessment (EINA) has been undertaken and the overall equalities impact was assessed as low. This is on the basis that the policy is largely legislation led and, on balance, no *significant* positive or negative impact equalities issues were identified as a result of the consultation; consequently, at this time, only a Part 1 EINA has been completed.

- 3.3** There is no anticipated environmental impact associated with the recommendation in this report.
- 3.4** The recommendations are not at variance with the Human Rights Act 1998 and are unlikely to result in any adverse Human Rights Act implications. The recommendations apply due legal process that is prescribed in other similar licensing laws and complies with relevant guidance issued by the Home Office.
- 3.5** There is no statutory duty to consult prior to adopting a policy relating to sex establishments. However, consultation was undertaken between 23 September 2013 and 15 December 2013. The proposed policy was advertised in the local press, on the Council's website and made available at Council offices. The current sex establishment licensees and West Mercia Police were directly consulted.
- 3.6** In order to facilitate the licensing process for the benefit of applicants, it is appropriate to delegate powers to specific officers to allow them to reject objections that are not relevant and to allow them to determine those applications where there are no valid objections submitted in the representation period. This reduces the time taken to process applications and allows the Licensing Act Sub-Committee to focus its attention on those applications where there are valid objections that require further consideration.
- 3.7** In the event that an applicant is not satisfied with a decision taken by any officer or the Licensing Act Sub-Committee, the Local Government (Miscellaneous Provisions) Act 1982 provides a statutory appeal mechanism to the Magistrates' Court and from there to the Crown Court; the decision of the Crown Court is final. There are a number of specific grounds, detailed in the Local Government

(Miscellaneous Provisions) Act 1982, upon which an applicant cannot appeal in this manner. In such cases, the applicant has the right to seek judicial review.

#### **4. Financial Implications**

- 4.1** The financial implications associated with the recommendations relate to staff resources to prepare the policy, carry out the consultation and to bring the proposed policy before Cabinet and the Council for adoption, together with the costs associated with publishing details of the policy in the local press and dealing with the application process for individual applications.
- 4.2** The Act states that an application for the grant, variation, renewal or transfer of a sex establishment licence shall pay a reasonable fee determined by the appropriate authority; but does not expand on what would be considered to be reasonable.
- 4.3** Officers consider that the costs associated with the application process and the process by which the policy is prepared, consulted upon, published and adopted would form part of the reasonable fee that would be determined by the Council. This is in line with the Local Government Association's current draft guidance on locally set fees.

#### **5. Background**

- 5.1** Shropshire Council adopted Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982, as amended by section 27 of the Policing and Crime Act 2009 (herein referred to as 'the Act') to enable it to licence sex establishments (sexual entertainment venues, sex cinemas and sex shops) within the Shropshire Council area on the 1 September 2010.
- 5.2** The Council is not legally required to publish a licensing policy relating to sex establishments but it may produce a different policy or criteria for different types of sex establishments. This might be appropriate to reflect distinctions between the operating requirements of different sex establishments or the fact that the location deemed appropriate for a sex shop may be different to that of a sexual

entertainment venue. The intention with the proposed policy is to have a single policy to cover all types of sex establishments.

- 5.3** As there is no statutory requirement to consult with stakeholders prior to the adoption of a sex establishments policy, there are no prescriptive rules about how the Council ought to consult. In addition, there are no statutory procedures that the Council must follow before the policy takes effect. However, officers consider that it is good practice to follow the rules and procedures laid down in other similar licensing laws.
- 5.4** The Council's intention to adopt a Sex Establishments Policy was published through the Council's 'Have your say' webpage, by way of a press release on the Council's Newsroom webpage on the 23 September 2013 and by means of a notice in the Shropshire Star on the 24 September 2013. Details of the 'Have your say' webpage, a copy of the press release, as it appeared on the website, together with a copy of the newspaper notice and a report from the Shropshire Star covering the consultation process are all included at **Appendix B** (hard copy of Appendix B is in the Members Library and has been circulated electronically to members). The draft policy was made available via the website and at the Council's offices at the Shirehall in Shrewsbury. It was also provided directly to current sex establishment licensees and to West Mercia Police. Any persons wishing to comment on the draft policy were invited to do so between the 23 September 2013 and 15 December 2013; the comments received are set out in **Appendix C** (hard copy of Appendix C is in the Members Library and has been circulated electronically to members).
- 5.5** The proposed officer delegations are in line with the Council's Constitution and the scheme of delegation of functions to officers.
- 5.6** There are currently two licenced sex establishments within the Council's area; both of which are in located in Shrewsbury.

## **6. Additional Information**

- 6.1** There are no legal requirements placed on the Council to review the policy within a set period of time. Consequently, the effectiveness of the policy will be monitored

on an on-going basis to ensure it remains fit for purpose. In the event that it becomes unfit, appropriate steps will be taken to revise the policy accordingly.

**List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)**

- Local Government (Miscellaneous Provisions) Act 1982, as amended by section 27 of the Policing and Crime Act 2009
- Shropshire Council's Current Sexual Entertainment Venue Policy
- Home Office Sexual Entertainment Venues Guidance for England and Wales (March 2010)
- Portfolio Holder for Business Growth & Commissioning (North) Decision: Sex Establishments Policy Report – 19 September 2013
- LGA Draft guidance on locally set fees (consultation ended on 29 November 2013)

**Cabinet Member (Portfolio Holder)**

Councillor Steve Charmley

**Local Member**

Not applicable

**Appendices – A hard copy of all Appendices have been placed in the Members Library and circulated electronically to members.**

**Appendix A** – Proposed Sex Establishments Policy

**Appendix B** – Documents evidencing consultation process

**Appendix C** – Comments received during consultation period