



Portfolio Holder Decision
Making Session and date/time

19 September 2013

3 pm

Item

2

Public

Sex Establishments Policy

Responsible Officer Paul McGreary - Head of Public Protection
Email: paul.mcgreary@shropshire.gov.uk Tel: 01743 253868

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** This report sets out the proposed Sex Establishments Policy.

2. Recommendation

- 2.1** That the Portfolio Holder for Business Growth and Commissioning (North) agrees, with any necessary amendments, to the publication in a local newspaper and on the council's website the proposed Sex Establishments Policy as detailed in **Appendix A** and requires the Head of Public Protection to consult with whomever he considers appropriate on the proposed policy and to bring the policy before Cabinet to enable consideration of any consultation responses prior to recommending that the Council adopts the policy with effect from the 1 April 2014.

Reason for decision:

To permit the Council to commence a consultation process that will lead to the adoption of a Sex Establishments Policy.

REPORT

3. Risk Assessment and Opportunities Appraisal

- 3.1** No statutory duty is placed on the Council to prepare and publish a policy. However, it is considered good working practice to do so and in line with national guidance. The policy will inform applicants how their application will be considered.
- 3.2** In 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.
- 3.3** Officers consider that the proposed policy is compliant with its Equalities duties 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 (the Act) and with guidance issued by the Home Office. Nevertheless, an Equalities Impact Needs Assessment will be undertaken during the consultation period to ensure that the Council's Equalities duties are fully considered and addressed.
- 3.4** The recommendation is not at variance with the Human Rights Act 1998 and is unlikely to result in any adverse Human Rights Act implications. When making decisions under the Act the Council must take into account any rights 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). Interference with these rights can be justified if such interference is proportionate for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others or, in the case of Article 1 Protocol 1, can be justified in the general interest. The recommendation applies due legal process that is prescribed in other similar licensing laws, complies with relevant guidance issued by the Home Office and is not a disproportionate restriction on convention rights.
- 3.5** There is no anticipated environmental impact associated with the recommendation in this report.

3.6 There is no statutory duty to consult prior to adopting a sex establishment policy. However, it is considered good working practice to do so. Any consultation exercise carried out should be fair and meaningful. The Council should seek to make any relevant information available to stakeholders in order to inform their understanding and publish the outcomes of the consultation. Consequently, a period of consultation forms the basis of the recommendation in this report. It is intended that the consultation will take place over a 12 week period from 23 September 2013 to 15 December 2013.

4. Financial Implications

4.1 The financial implications associated with the recommendation relate to staff resources to prepare the policy, carry out the consultation and to bring the proposed policy back to Cabinet and to the Council for adoption, together with any costs associated with publishing details of the policy in the local press.

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 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. Consequently, it is within the power of the Council to recover these costs providing applications for sex establishment licences are received; full cost recovery is not compulsory. Specific fees are considered and determined by the Strategic Licensing Committee in accordance with delegated powers.

5. Background

5.1 Prior to Local Government Reorganisation in 2009, the District and Borough Councils had previously adopted the relevant provisions of the Local Government (Miscellaneous Provisions) Act 1982. However, an amendment to the legislation was made adding sexual entertainment venues to the category of sex establishments; consequently, Shropshire Council re-adopted Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982, as amended by section 27 of the Policing and Crime Act 2009 to enable it to license sexual entertainment venues in addition to sex cinemas and sex shops within the Shropshire Council area as from the 1 September 2010. This is also when the present policy concerning sexual entertainment venues was adopted.

- 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** 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.

7. Conclusions

- 7.1** There is no statutory duty placed on the Council to prepare, publish or consult prior to adopting a Sex Establishments Policy. However, it is clearly good practice and beneficial to the Council and its stakeholders. The recommendation is not at variance with the Human Rights Act 1998 and is unlikely to result in any adverse Human Rights implications. There is no anticipated environmental impact associated with the recommendation and the financial implications are limited. The purpose of the recommendation is to commence a 12 week consultation period and ultimately to allow the Council to adopt the final version of the policy with effect from 1 April 2014.

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

<ul style="list-style-type: none"> 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)
<p>Key Decision: Yes</p> <p>Included within Forward Plan: Yes</p> <p>If a Key Decision and not included in the Forward Plan have the General Exception or Special Urgency Procedures been complied with: N/A</p>
<p>Name and Portfolio of Executive Member responsible for this area of responsibility: Councillor Steve Charmley</p>
<p>Local Member: Not applicable</p>
<p>Appendices: Appendix A – Proposed Sex Establishments Policy</p>

Declaration of Interest

- I have no interest to declare in respect of this report

Signed Date

NAME:

PORTFOLIO HOLDER FOR:

- I have to declare an interest in respect of this report

Signed Date

NAME:

PORTFOLIO HOLDER FOR:

(Note: If you have an interest you should seek advice as to whether it is appropriate to make a decision in relation to this matter.)

For the reasons set out in the report, I agree the recommendation(s) in the report entitled "Sex Establishments Policy"

Signed

Portfolio Holder for Business Growth and Commissioning (North)

Date

If you have any additional comment which you would want actioned in connection with your decision you should discuss this with the report author and then set out your comment below before the report and pro-forma is returned to Democratic Services for processing.

Additional comment :
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Note: If you do not wish to approve the recommendations, or wish to make an alternative decision, it is important that you consult the report author, Head of Legal and Democratic Services, Chief Executive and the Head of Finance, Governance and Assurance (S151 Officer) and, if there are staffing implications the Head of Human Resources (or their representatives) so that (1) you can be made aware of any further relevant considerations that you should take into account before making the decision and (2) your reasons for the decision can be properly identified and recorded, as required by law.

Note to Portfolio Holder: Your decision will now be published and communicated to all Members of Council. If the decision falls within the criteria for call-in, it will not be implemented until five working days have elapsed from publication.