

CHESHIRE EAST COUNCIL

REPORT TO: LICENSING COMMITTEE

Date of Meeting: 13th September 2010
Report of: Licensing Manager
Subject/Title: Sexual Entertainment Venues - Schedule 3 Local Government (Miscellaneous Provisions) Act 1982 (as amended)

1.0 Report Summary

- 1.1 The report provides background information in relation to the amendments to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 made by section 27 of the Policing and Crime Act 2009. The report sets out the statutory provisions in relation to the adoption of the power to regulate 'sexual entertainment venues' within the amended Schedule and requests authority from the Licensing Committee to carry out a consultation exercise in relation to both the proposed adoption of the legislation and a draft policy.

2.0 Recommendations

- 2.1 Licensing Committee is requested to authorise the Licensing Manager:
- 2.1.1 to carry out a consultation exercise, as set out within the report, in relation to the proposed adoption of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, as amended by section 27 of the Policing and Crime Act 2009, within the Borough of Cheshire East; and
- 2.1.2 without prejudice to any decision in relation to adoption of the legislation, to carry out a consultation exercise, as set out within the report, in relation to (i) the draft policy on the licensing of sexual entertainment venues (including a set of draft conditions) set out within the appendix to the report; and (ii) the relevant fee levels.

3.0 Reasons for Recommendations

- 3.1 The Licensing Committee has the delegated authority to consider this matter.

4.0 Wards Affected

- 4.1 All

5.0 Local Ward Members

- 5.1 All

**6.0 Policy Implications including - Climate change
- Health**

- 6.1 The report requests that authorisation is given to the Licensing Manager to carry out a consultation exercise in relation to a draft policy

7.0 Financial Implications for Transition Costs (Authorised by the Borough Treasurer)

- 7.1 None

8.0 Financial Implications 2009/10 and beyond (Authorised by the Borough Treasurer)

- 8.1 There will be a cost implication relating to the proposed consultation exercise on a draft policy. The consultation costs would be met from existing budget provision within the Licensing Section.

9.0 Legal Implications (Authorised by the Borough Solicitor)

- 9.1 Section 27 of the Policing and Crime Act 2009, which came into force on 6th April 2010, amended Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 in order to provide local authorities with the power to regulate 'sexual entertainment venues.' Further details about the statutory definition of 'sexual entertainment venues' are provided within paragraph 11 of the report.
- 9.2 If a local authority wishes to exercise the 'new' powers within Schedule 3 of the 1982 Act it must formally resolve that the provisions are to have effect in its area. The procedure for adoption is set out within section 2 of the 1982, which provides that the local authority must pass a resolution specifying that the amendments made by section 27 of the 2009 Act to Schedule 3 shall apply to its area and must specify the date on which the resolution shall come into force. The specified day must be more than one month after the date on which the resolution was passed. The local authority is also required to publish notice that a resolution has been made for two consecutive weeks in a local newspaper circulating in the area. The first publication may not be later than twenty-eight days before the date specified in the resolution for the provisions to come into force.
- 9.3 Paragraph 13 of Schedule 3 provides the authority for the Council to "make regulations prescribing standard conditions applicable to licences for sex establishments, that is to say, terms, conditions and restrictions on or subject to which licences under this Schedule are in general to be granted, renewed or transferred.." Paragraph 13(1A) states that no standard condition may be prescribed in so far it "relates to any matter in relation to which requirements or prohibitions are or could be imposed under the Regulatory Reform (Fire Safety) Order 2005." Paragraph 13(3) provides that regulations may prescribe conditions regulating – (a) the hours of opening and closing of sex

establishments; (b) displays or advertisements on or in such establishments; (c) the visibility of the interior of sex establishments to passers-by; and (d) any change from one kind of sex establishment mentioned in sub-paragraph 2(a) above to another kind of sex establishment so mentioned. Where the authority has made standard conditions every licence granted, renewed or transferred is presumed to have been granted, renewed or transferred subject to the standard conditions unless they have been expressly excluded or varied.

- 9.4 Paragraph 12 of Schedule 3 sets out the grounds for refusal of an application. Certain grounds, for example that the applicant is under 18 years old or is disqualified, are mandatory grounds for refusal. Other grounds, including those relating to the appropriate number of such establishments in the 'relevant locality,' are discretionary grounds. Further information in relation to the grounds for refusal is set out within the body of the report.
- 9.5 Paragraph 19 of Schedule 3 provides that the applicant for the grant, renewal or transfer of a licence shall pay 'a reasonable fee determined by the appropriate authority.'
- 9.6 Schedule 3 of the 1982 Act constitutes an authorisation scheme for the purposes of the EU Services Directive 2006 and the Council must comply with the Provision of Services Regulations 2009 when applying the licensing provisions in Schedule 3.

10.0 Risk Management

- 10.1 Full and thorough consideration of any consultation responses received would be required to reduce any risk of challenge to any subsequent decisions. It is suggested that any consultation responses received will be referred to a subsequent meeting of the Licensing Committee.

11.0 Background and Options

- 11.1 Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 makes provision for the regulation of 'sex establishments.' Prior to the enactment of the Policing and Crime Act 2009, the definition of 'sex establishments' was limited to sex shops and sex cinemas. Section 27 of the Policing and Crime Act 2009, which came into force on 6 April 2010, extends the definition of 'sex establishment' to include 'sexual entertainment venues.'
- 11.2 A 'sexual entertainment venue' for the purposes of the 1982 Act is "any premises at which relevant entertainment is provided before an audience for the financial gain of the organiser or the entertainer." 'Relevant entertainment' means "any live performance or any live display of nudity which is of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience (whether by verbal or other means)."
- 11.3 If a local authority has resolved before 6 April 2010 that Schedule 3 of the 1982 Act is to apply within its area, then the amendments in relation to sexual

entertainment venues within the 2009 Act do not apply to the area of the local authority; however, the local authority may resolve that Schedule 3 of the 1982 Act, as amended by section 27 of the 2009 Act, is to apply to its area.

- 11.4 Each of the three predecessor district Councils made resolutions to adopt the original provisions of Schedule 3 of the 1982 Act. Crewe and Nantwich Borough Council resolved on 2 February 1983 that the provisions of Schedule 3 would come into force in its area on 1st April 1983. Macclesfield Borough Council resolved on 21st April 1983 that the provisions would come into force on 1st June 1983. Congleton Borough Council resolved on 3rd February 1983 that the provisions would come into force in its area on 1st April 1983. These resolutions have been preserved, and apply to Cheshire East, on the basis of regulation 4 of the Local Government (Structural changes) (Transitional Arrangements) (No 2) Regulations 2008.
- 11.5 If the Council does not make a resolution to adopt the amended Schedule 3 of the 1982 Act within one year of the legislation coming into force (i.e. by 6 April 2011) then 'as soon as reasonably practicable' it must consult local people about the adoption of the legislation. Whilst it is not a statutory requirement to consult if adopting the legislation prior to April 2011, paragraph 3.8 of the Home Office Guidance "Sexual Entertainment Venues – Guidance for England and Wales" states:

While there is no statutory duty to do so, prior to deciding whether to pass a resolution, local authorities may, as a matter of good practice, wish to seek the views of local people and businesses.

The report therefore seeks authorisation from the Licensing Committee to carry out a consultation exercise in relation to the adoption of the amendments to Schedule 3 of the 1982 Act. The alternative options would be either (a) to recommend that the amended provisions are adopted without a consultation exercise or (b) to recommend that the provisions are not adopted at this time.

- 11.6 Similarly, there is no statutory requirement for a local authority to adopt a policy on the licensing of sex establishments, however, it is suggested that it would be best practice to consider such a policy. Attached as an appendix to the report is a draft policy in relation to the licensing of sexual entertainment venues. It is suggested that such a policy would provide guidance to prospective applicants and members of the public and would assist with consistency of decision-making. The report requests, without prejudice to any decision in relation to adoption, the authority to consult in relation to a draft policy. The alternative option would be not to progress such a policy or to make amendments to the draft policy prior to consultation.
- 11.7 As set out within paragraph 9 above, paragraph 12 of Schedule 3 provides both mandatory and discretionary grounds for refusal. The grounds for refusal are set out within the policy appended to the report. Members will note that one of the discretionary grounds for refusal is "*that the number of sex establishments in the relevant locality at the time the application is made is equal to or exceeds the number which the authority consider is appropriate for that locality;*" The

proposed policy, as currently drafted, does not seek to place a figure on the number of sexual entertainment venues which it considers appropriate in any locality within the Council's administrative area but rather states (i) that each application will be determined on its own merits; and (ii) that consideration will be given to the locality in each case and to the number of Sexual Entertainment Venues suitable for that particular locality. A further discretionary ground within paragraph 12 is on the basis that: *"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.*

Whilst recognising the each application would be determined on its own individual merits, the policy sets out certain factors (such as the existence of 'sensitive uses' such as worship and education in the relevant locality) which would generally render the grant or renewal of a licence inappropriate.

11.8 The alternative to the policy position outlined within the draft policy at present would be as follows:

11.8.1 to seek to identify specific localities within the Borough and to identify a number of establishments which are appropriate for each of these localities; and

11.8.2 to add, remove or amend the factors which are stated as being relevant when considering whether the grant or renewal of a licence would be appropriate, having regard to the character of the relevant locality or the use to which premises in the vicinity are put.

11.9 In addition to setting out the proposed policy relating to the factors relevant to the determination of an application, the policy document sets out the application process to be adopted by the Council together with a set of proposed standard conditions. The provisions of paragraph 12 of Schedule 3 in relation to standard conditions are detailed within paragraph 9.3 above. The proposed standard conditions within the attached policy deal with matters including: hours of opening, conduct of the premises, signs doors and window displays, and the employment of persons on the premises and are based on the conditions which were previously endorsed on Public Entertainment Licences (issued under the 1982 Act).

11.10 The issue of Sexual Entertainment Venue falls within the scope of Provision of Services Regulations 2009. As a result, the Council is required to determine whether 'tacit authorisation' is to apply; i.e. whether, if an application is not determined within a pre-defined timeframe, subject to the ability to extend the period for a limited period if the applicant is notified of this prior to the expiry date, the application would be deemed granted. In this case the policy proposes that tacit authorisation is not to apply. This decision is based on the public interest inherent in ensuring that applications are fully considered before a licence is granted, taking into consideration the potential significant adverse impact on local communities of inappropriately located or inadequately managed premises. The alternative approach would be to set a timeframe for

determination of applications to which tacit authorisation would apply (i.e. applications would be deemed granted if not determined within the timeframe).

11.10 As set out within the legal implications at paragraph 9.5 above, the council is able to determine a 'reasonable fee' in relation to the grant, renewal or transfer of a sex establishment licence. Members will recall that in December 2008 the Licensing Committee set the fee levels to apply to the grant and renewal of sex shop licences (also issued under the provisions of Schedule 3 of the 1982 Act). In setting these fees Members were aware that fees must be limited to covering the Council's costs in carrying out the function under the Act. The costs to the authority include administration of applications (including hearings), inspection and enforcement and include direct costs and indirect costs. The procedure relating to the processing of an application for a Sexual Entertainment Venue Licence is the same as that in relation to an application for a Sex Shop Licence. It is therefore suggested that the fee levels in relation to a Sexual Entertainment Venue Licence should mirror those in relation to Sex Shops, i.e.

New application: £2,260

Renewal: £1,130

In addition, it is suggested that the fee level in relation to a transfer application should be set as £500.

11.11 It is proposed that any consultation exercise authorised by the Committee would take place over a period of twelve weeks and would include:

- direct correspondence with the Police, Parish Councils and known sexual entertainment venues;
- publication of details of the consultation exercise on the Council's website (www.cheshireeast.gov.uk)
- issue of a press release to local media

11.12 It should be noted that if adopted, the legislation makes provision for a transitional twelve month period (beginning with the date on which a resolution to adopt, if any, is made). Under the transitional arrangements any premises providing 'relevant entertainment' would be required to apply for a Sexual Entertainment Venue licence without the benefit of 'grandfather rights.'

12.0 Overview of Year One and Term One Issues

12.1 None

13.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writer:

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