



AGENDA ITEM: 7

**LICENSING & GAMBLING
COMMITTEE: 6 December 2011**

COUNCIL: 14 December 2011

Report of: Assistant Director Community Services

Relevant Managing Director: Managing Director (People and Places)

**Contact for further information: Paul Charlson (ext 5246)
(E-mail: paul.charlson@westlancs.gov.uk)**

SUBJECT: SEX ESTABLISHMENT LICENSING POLICY

Wards affected: Borough wide

1.0 PURPOSE OF REPORT

1.1 To take the necessary action to approve and adopt a Statement of Sex Establishment Licensing Policy.

2.0 RECOMMENDATIONS TO LICENSING AND GAMBLING COMMITTEE

2.1 That the draft Statement of Sex Establishment Licensing Policy attached at Appendix 2 to this report be endorsed.

3.0 RECOMMENDATIONS TO COUNCIL

3.1 That the Statement of Sex Establishment Licensing Policy attached at Appendix 2 to this report is approved taking into account the minute of the Licensing and Gambling Committee held on 6 December 2011 attached at Appendix 3 to this report.

3.2 That the power to approve, adopt and publish Statements of Sex Establishment Licensing Policy is added to the functions of the Licensing and Gambling Committee.

3.3 That delegated authority is given to the Assistant Director Community Services to prepare, publish and consult upon draft Statements of Sex Establishment Licensing Policy.

3.4 That delegated authority is given to the Assistant Director Community Services to make minor and inconsequential amendments to the Statement of Sex Establishment Licensing Policy.

4.0 BACKGROUND

- 4.1 Members will be aware that the licensing regime for Sex Establishments is contained in the Local Government (Miscellaneous Provisions) Act 1982 (the 1982 Act), as amended by Section 27 of the Policing and Crime Act 2009 (the 2009 Act). The amendment of the 1982 Act meant that for the first time, a national licensing scheme exists for the entire range of Sex Establishments. Legislation has responded to our changing society, where the public representation of sex has become more prevalent through advertising and popular culture. However, this change may also cause concern to many members of the public. Notwithstanding individual morality, many may take the view that the presence of such premises damages the character of an area, prevents further commercial potential or could lead to exploitation and reinforcement of damaging stereotypes.
- 4.2 The role of the Council as Licensing Authority is not to take a moral stance, but to assess these arguments in a local context, while aiming to ensure regulatory balance. Parliament has made it lawful to operate a Sex Establishment and such businesses are a legitimate part of the retail and leisure industries.
- 4.3 In contrast to other licensing legislation, the provisions of the 1982 Act are not mandatory, and therefore, the Council is not under an obligation to publish a policy for Sex Establishment licensing. However, the Council has previously taken the stance that it wanted to ensure that it was legislatively equipped to address the needs of the community. Members may therefore recall that the Council has long since adopted Schedule 3 to the 1982 Act (as amended by Section 27 of the 2009 Act), and more recently, the Council also passed a resolution to determine and licence Sexual Entertainment Venues. This resolution was passed on the 21st July 2010 and came into force on the 1st November 2010.
- 4.4 Having already adopted this legislation, the Council is able to licence Sex Shops, Sex Cinemas and Sexual Entertainment Venues in the Borough. Therefore, it is appropriate that the Council publish a Policy to clearly state its objectives when discharging these responsibilities. For Members' information, the definitions of the different types of Sex Establishment are contained in Section 2 of the draft Statement of Sex Establishment Licensing Policy (the Policy) attached as Appendix 1 to this report.

5.0 CURRENT POSITION

- 5.1 The adoption of a Policy for Sex Establishments is not a legal duty. However, by publishing the Policy, the Council can clearly state its objectives and the needs of the Borough. The Policy will also allow the Council to dictate where, and to what extent, Sex Establishments may be permitted, through a clearly explained licensing process.
- 5.2 Given the nature of the subject matter, it is proposed that the draft Policy will be subject to public consultation for a period of a minimum of 12 weeks, which is in line with good practice for similar licensing documents.

5.3 The delegations proposed in this report therefore allow the Assistant Director Community Services to prepare, publish and consult upon this (and future) draft versions of the Policy, before presenting a final version to Members for approval. Accordingly, this report also proposes that the power to approve, adopt and publish this (and future) versions of the Policy is added to the functions of the Licensing and Gambling Committee (the Committee). For Members' information, the power to licence Sex Establishments under the 1982 Act is already a function of the Committee (or Sub-Committee) and therefore it is appropriate that the Policy be approved by the same body.

6.0 ISSUES

6.1 If Council approves the Policy, the 1982 Act also allows the Council to stipulate the number and type of Sex Establishments, as well as the location within the Borough, that it considers "appropriate" – taking account of:

- The character of the "locality"
- Any other premises in the "vicinity"
- The nature of the proposed Sex Establishment.

Location of premises

6.2 The 1982 Act refers to the area in which Sex Establishments may be permitted as the "locality", but it does not further define this term. "Locality" can therefore be any predefined area i.e. individual Wards, Towns or the entire Borough.

6.3 To avoid the need to select specific areas of the Borough that would be predetermined as appropriate, or inappropriate, for a Sex Establishment, the Policy considers the entire Borough to be the "locality". This would allow each application to be considered on its merits and, depending upon the exact location of the proposed premises, the limitations contained in paragraph 8.4 of the Policy. Namely, that it would be inappropriate to grant or renew a Sex Establishment licence in any case where:

- The character of the locality is residential, or predominantly residential, in nature
- The character of the locality is historically important
- Premises in the vicinity are used for places of religious worship
- Premises in the vicinity are used for schools, children's nurseries, youth clubs, children's centres or similar establishments which children under 18 years of age may reasonably be expected to attend
- Premises in the vicinity are used for community facilities including, but not limited to, swimming pools, leisure centres, public parks, sheltered housing and accommodation for vulnerable people
- The application premises are of a permanent character and do not have the necessary planning permission in place to enable the licensed activities sought to occur lawfully.

6.4 The term "vicinity" is also not defined in the 1982 Act. Therefore, whether or not other premises / activities can be regarded as being "in the vicinity" of a

proposed licensed premises is a matter of fact to be decided by the Committee, and ultimately, the Courts in cases of dispute.

Number of premises

- 6.5 The number of each type of Sex Establishment within the given “locality” should also be stipulated and Members will need to determine the number of Sex Shops, Sex Cinema and Sexual Entertainment Venues that it considers appropriate for the Borough.
- 6.6 This number can be zero in all cases; however Members should be aware that the Council cannot reject any application without first considering it – even if it breaches these limits. The Council may, if it considers appropriate, deviate from the Policy and therefore, if an application breaches these limits, the Committee will initially consider whether there is justification to deviate from these limits. Only where sufficient evidence exists and the Committee is able to provide full substantiated and justified reasons why a deviation away from these limits is warranted, will the application be further determined. If the Committee considers there to be insufficient evidence to justify such a deviation, the application would be refused.
- 6.7 Outside of the aforementioned constraints on the location of a proposed Sex Establishment, no guidance is available to suggest how many of each type of Sex Establishment is appropriate. Whilst the Council has complete discretion in this regard, the following limits have been recommended in order to gauge opinion during the public consultation. Based on the responses to the consultation, Members will be able to amend these limits accordingly:
- Sex Shops = 1
 - Sex Cinemas = 1
 - Sexual Entertainment Venues = 1

7.0 PROPOSALS

- 7.1 Whilst not under a legal obligation, it is proposed that the Council adopt a policy for the licensing of Sex Establishments so it can state its objectives when discharging these responsibilities. It can also provide clear guidance to prospective applicants prior to submitting an application and incurring the £5450.00 licensing fee.
- 7.2 Given that the functions of the Licensing and Gambling Committee already contain the power to licence Sex Establishments, it is proposed that the Licensing and Gambling Committee approve future major amendments and reviews of the Policy.
- 7.3 However, it is proposed that any minor amendments should be delegated to the Assistant Director of Community Services, so as not to burden the Licensing and Gambling Committee with amendments of a purely administrative nature.

8.0 SUSTAINABILITY IMPLICATIONS/COMMUNITY STRATEGY

- 8.1 This legislation has the potential to impact upon the Community Strategy. The contents of the report has the following links with the Community Strategy: Community Safety (issues A and E); Economy and Employment (issue D).

9.0 FINANCIAL AND RESOURCE IMPLICATIONS

- 9.1 The contents of this report can be delivered within existing resources.

10.0 RISK ASSESSMENT

- 10.1 As detailed above, the Council is not under a legal obligation to publish a Statement of Sex Establishment Licensing Policy. However, given that it has already resolved to adopt the provisions of the 1982 Act (as amended by the 2009 Act), it is appropriate that a Policy is produced to provide clear guidance on the Council's requirements. If such a Policy were not adopted, the Council would still be required to determine legally submitted applications, but the Council's requirements would be ambiguous. This could lead to a lack of uniformity in decisions and potential increases in appeals against Council decisions.

11.0 CONCLUSIONS

- 11.1 By publishing the Policy for Sex Establishments, the Council can clearly state the needs of the Borough and dictate where, and to what extent, Sex Establishments may be permitted. The Council can also set out the controls designed to deter or enforce against rogue operators or to impose conditions on licensed operations to ensure they are run by the right people to the right standards. This will allow the Council to provide the means by which the arguments of commercial and individual freedom can be balanced against the protection of the character of the Borough and the sensibilities of those who live and work in West Lancashire.

Background Documents

There are no background documents (as defined in Section 100D (5) of the Local Government Act 1972) to this Report.

Equality Impact Assessment

There is a significant direct impact on members of the public, employees, elected members and / or stakeholders. Therefore an Equality Impact Assessment is required. A formal equality impact assessment is attached as an Appendix to this report, the results of which have been taken into account in the Recommendations contained within this report.

Appendices

1. Equality Impact Assessment
2. Draft Statement of Sex Establishment Licensing Policy 2011

3 Minute of the Licensing and Gambling Committee held on 6 December 2011
(Council Only)

Appendix 1

Equality Impact Assessment - process for services, policies, projects and strategies

1.	<p>Using information that you have gathered from service monitoring, surveys, consultation, and other sources such as anecdotal information fed back by members of staff, in your opinion, could your service/policy/strategy/decision (including decisions to cut or change a service or policy) disadvantage, or have a potentially disproportionately negative effect on, any of the following groups of people:</p> <p><i>People of different ages – including young and older people</i> <i>People with a disability;</i> <i>People of different races/ethnicities/nationalities;</i> <i>Men; Women;</i> <i>People of different religions/beliefs;</i> <i>People of different sexual orientations;</i> <i>People who are or have identified as transgender;</i> <i>People who are married or in a civil partnership;</i> <i>Women who are pregnant or on maternity leave or men whose partners are pregnant or on maternity leave;</i> <i>People living in areas of deprivation or who are financially disadvantaged.</i></p>	<p><i>No. Whilst the proposed policy applies equally to all activities and premises prescribed by the relevant legislation.</i></p>
2.	<p>What sources of information have you used to come to this decision?</p>	<p><i>The legislation requires that all relevant activities require a licence, without exception.</i></p>
3.	<p>How have you tried to involve people/groups in developing your service/policy/strategy or in making your decision (including decisions to cut or change a service or policy)?</p>	<p><i>The draft policy attached to this report will be subject to a period of public consultation, the results of which will be brought back to the Licensing and Gambling Committee for determination.</i></p>
4.	<p>Could your service/policy/strategy or decision (including decisions to cut or change a service or policy) help or hamper our ability to meet our duties under the Equality Act 2010? Duties are</p>	<p><i>No. The recommendations contained in this report apply equally to those activities required under relevant legislation.</i></p>

<p>to:-</p> <p><i>Eliminate discrimination, harassment and victimisation;</i></p> <p><i>Advance equality of opportunity (removing or minimising disadvantage, meeting the needs of people);</i></p> <p><i>Foster good relations between people who share a protected characteristic and those who do not share it.</i></p>	
<p>5. What actions will you take to address any issues raised in your answers above?</p>	<p><i>The draft policy attached to this report will be subject to a period of public consultation, the results of which will be brought back to the Licensing and Gambling Committee for determination.</i></p>