

Cheltenham Borough Council

Licensing Committee – 5 September 2014

Sexual Entertainment Venues in Cheltenham

Report of the Licensing & Business Support Team Leader

1. Executive Summary

- 1.1 Cheltenham Borough Council is consulting on whether it should limit the number of Sexual Entertainment Venues (“SEV”) it will license in the borough.
- 1.2 Under the council’s constitutional arrangements, the Licensing Committee acts as consultee to Cabinet/Lead Member on recommendations/responses for the adoption and review of the licensing policy.
- 1.3 In this capacity, the Committee should consider the relevant facts and put forward a view for consideration by Cabinet.

2. Recommendation

2.1 The Committee is recommended to:

2.1.2 Note the contents of this report; and

2.1.2 Formulate a response for consideration by Cabinet.

Implications

How does the Decision contribute to the Council’s Corporate Priorities?	Communities feel safe and are safe. Our residents enjoy a strong sense of community and involved in resolving local issues.
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3. Statutory Context

- 3.1 Section 27 of the Police and Crime Act 2009 (“2009 Act”) amended schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (“1982 Act”) to introduce a new type of sex establishment known as a sexual entertainment venue.
- 3.2 Any premises that want to offer “relevant entertainment” can only do so by obtaining a SEV licence.
- 3.3 Relevant entertainment is defined as 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).

- 3.4 Under the 2009 Act, a premises can provide relevant entertainment on an infrequent basis without the need for a SEV licence. Infrequent relevant entertainment is defined as relevant entertainment offered for no longer than 24 hours on no more than 11 occasions a year. Any premises that want to offer relevant entertainment more frequently is required to apply for a SEV licence.
- 3.5 This report and the council's policy are concerned with the regulation of frequent sexual entertainment.
- 3.6 The relevant legislation does not require the council to adopt a policy in relation to SEVs but it is considered good practice because it sets out guidance to potential applicants, the public and Members in terms of how the Council intends to discharge its functions under the relevant legislation.

4. Policy – Current Position

- 4.1 The council's current policy statement was adopted on the 4th of February 2011.
- 4.2 The current policy does not set a limit on the number of SEVs the council will license in the borough. Instead, it deals with each application on a case to case basis. The rationale for this is that, up to recently, there have been no SEVs licensed in Cheltenham to warrant a limit.

Policy – Consultation

- 4.3 Following the recent grant of a SEV licence that attracted significant local opposition, the Council deemed it appropriate to undertake consultation on whether it would be appropriate to limit the number of licensed SEVs in the borough.
- 4.4 A public consultation has already been undertaken to gather the views of mainly the town's local residents. Attached at **appendix A** is a summary breakdown of the responses for the information of the committee.

Petition

- 4.5 Members must also be mindful of the petition that was submitted to the council calling for it to adopt a zero limit. The petitioner has requested that the petition be submitted as their, and the signatories', response to the consultation. The petition was debated in Council on the 21st of July 2014 where Members resolved to refer the matter to Cabinet for consideration.
- 4.6 The petitioner submitted a number of points to Council and it may be helpful for the Committee to consider these. A copy of the submission is attached for Members' information.
- 4.7 Whilst the points raised are generally relevant, officers urge caution in attaching too much weight to them. This is primarily because there is no evidence that the points raised are relevant locally but also there are a lot of external factors that have an influence on their prevalence elsewhere which may not be relevant to Cheltenham.
- 4.8 Against the background of the policy review and the points raised by the petitioner, officers have sought feedback from Gloucestershire Constabulary on the subject. Jaine Simner, Force Licensing Manager, said:

"I don't believe we or any other force have statistics that suggest that SEVs are responsible for or increase the likelihood of sexual offences. It is my opinion that SEVs if well run like any other licensed premises cause us very little problem and are not known for crime and disorder."

- 4.9 Reference the comments relating to Westminster's policy, Members are to note that it relates to the Licensing Act 2003. At the time, it was the primary legislation for regulating sexual entertainment. However, it was widely accepted that the Licensing Act was unable to properly regulate this form of entertainment and consequently in 2009 the Government enacted changes in law to regulate and control sexual entertainment under different legislation. The Licensing Act is no longer used to license sexual entertainment and as a consequence officers do not consider this point to be relevant.
- 4.10 Also relevant to the point above, it clearly relates to issues in London which is vastly different from Cheltenham.

Policy – Setting a Limit & Relevant Locality

- 4.11 The Council is empowered by schedule 3 paragraph 12(4) of the Local Government (Miscellaneous Provisions) Act 1982 (as amended) to set a limit on the number of licensed SEVs permitted in the relevant locality, with zero being an option.
- 4.12 It is important to note that the power to set a limit relates to the relevant locality and it is therefore necessary for the council to decide how it defines the relevant locality.
- 4.13 For information, relevant locality is defined in the current policy as the ward in which an application for a SEV licence has been made.
- 4.14 The Committee may recommend that continuing to define the relevant locality by ward is unsustainable and it should be redefined.
- 4.15 The relevant legislation does not define "relevant locality" apart from saying that it is the locality in which premises are based. It leaves it to local authorities to define because they have the appropriate local knowledge to properly define where it would be appropriate to licence SEVs.
- 4.16 The lack of a statutory definition and/or guidance implies that a relevant locality does not necessarily have to be a predefined area. Notwithstanding, any adopted "relevant locality" should be an area that is clearly defined so to avoid confusion.
- 4.17 Finally, the borough as a whole is too large to be defined as the relevant locality (R v Cheltenham Borough Council, ex parte Quietlynn Ltd (1985) 83 LGR 461).

5. Options

- 5.1 There are several policy options for the committee to consider.
- 5.1.1 **No change to the current policy** – The committee can form a view that the current policy is adequate and should remain unchanged.
- 5.1.2 **Change policy** – The committee can form a view that it would be appropriate to set a limit on the number of permitted SEVs in the borough. If the committee is minded to form a view that the policy should be changed, it must also consider:
- What the appropriate limit should be; and
 - Where a limit should apply (i.e. continue to define it by ward and set a limit for each ward or propose to redefine "relevant locality" and set the limit in accordance with this.)
- 5.2 The committee should also put forward comprehensive reasons for its conclusions.

6. Process

- 6.1 Members may wish to follow the following process in formulating a view.
 - 6.1.1 The Committee should have a discussion taking into account all the relevant information and facts.
 - 6.1.2 The Committee should then decide whether it will recommend to Cabinet 1) that the policy should remain unchanged or 2) that the policy should be changed.
 - 6.1.3 If the recommendation is the latter (i.e. the policy should be changed), the Committee should then decide whether they recommend that 1) “relevant locality” should continue to be defined by ward or 2) whether it should be redefined (bearing in mind that it cannot simply be the borough).
 - 6.1.4 If the Committee recommends that the “relevant locality” should continue to be defined by ward, it must make a recommendation on the limit for each ward taking into account the nature and character of each ward taking into account the points raised in paragraphs 4.11 – 4.17 above.
 - 6.1.5 If however, the Committee recommends to redefine “relevant locality”, it must decide how it should be redefined and, in accordance with the new definition, what the appropriate limit should be taking into account the points raised in paragraphs 4.11 – 4.17 above.
 - 6.1.6 Any recommendation put forward for consideration should be properly reasoned.

Background Papers

Service records.

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