

Cheltenham Borough Council
Council – 13 October 2014
Policy on Sexual Entertainment Venues

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| Accountable member | Councillor Andrew McKinlay, Cabinet Member Development and Safety |
| Accountable officer | Mike Redman, Director of Environmental & Regulatory Services |
| Ward(s) affected | All |
| Key Decision | No |
| Executive summary | <p>Sexual Entertainment Venues are regulated under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended by Section 27 of the Policing and Crime Act 2009.</p> <p>The amended provisions were adopted by Council on the 11th of October 2010 and the current policy statement was adopted by the Licensing Committee on the 4th of February 2011.</p> <p>On the 16th of September 2014 Cabinet considered the consultation feedback and approved amendments to the current policy as outlined in section 7 of this report.</p> <p>Council is now asked to consider these for adoption.</p> |
| Recommendations | <p>Council is recommended to:</p> <ol style="list-style-type: none"> 1. Note the consultation feedback; 2. Note the Cabinet recommendation to adopt the draft amended policy; and 3. Adopt the amendments to the policy as outlined in the draft policy attached at appendix 4. |
| Financial implications | <p>There are no financial impacts arising from this report.</p> <p>Contact officer: Sarah Didcote, sarah.didcote@cheltenham.gov.uk, 01242 264125</p> |

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| Legal implications | <p>The currently policy determines each application on its own individual merits</p> <p>There is an implied power in Schedule 3 paragraph 12(4) of the 1982 Act (as amended) for the Council to set a limit on the number of licensed SEVs permitted in the relevant locality, of which zero is appropriate.</p> <p>Members should note that it is not unlawful for the council to set a limit that is in effect a zero limit for the borough. What may be declared unlawful is how the council goes about limiting SEVs in the borough.</p> <p>It has already been established that the council cannot define one relevant locality for (or as) the whole borough and set a zero limit in accordance because the borough as a whole is simply too big to do so (i.e. different parts of the borough have different characteristics).</p> <p>If the council is minded to adopt a zero limit for the whole borough, it can do so but through smaller “relevant localities” because the characteristic(s) of the relevant localities must be taken into account to determine whether there are any that are such that it may be acceptable to license SEVs. Clearly assessing the suitability of the character of relevant localities is not possible if the whole borough is taken as a whole due to its diversity.</p> <p>Contact officer: Vikki Fennell, Vikki.fennell@tewkesbury.gov.uk, 01684 272015</p> |
| HR implications (including learning and organisational development) | <p>There are no HR implications as a result of this report.</p> <p>Contact officer: Richard Hall, Richard.hall@cheltenham.gov.uk, 01242 774972</p> |
| Key risks | <p>As identified in Appendix 1</p> |
| Corporate and community plan Implications | <p>Communities feel safe and are safe.</p> <p>Our residents enjoy a strong sense of community and are involved in resolving local issues.</p> |
| Environmental and climate change implications | <p>None</p> |
| Property/Asset Implications | <p>None</p> <p>Contact officer: David Roberts@cheltenham.gov.uk</p> |

1. Background

- 1.1 Sexual Entertainment Venues (“SEVs”) are regulated under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (“1982 Act”) as amended by Section 27 of the Policing and Crime Act 2009 (“2009 Act”).
- 1.2 The amended provisions were adopted by Council on the 11th of October 2010 when it also approved a draft policy statement for consultation.
- 1.3 The current policy statement was adopted by the Licensing Committee on the 4th of February 2011.
- 1.4 On the 18th of March 2014, Cabinet considered a report on proposed changes to the current SEV policy. At that meeting, Cabinet approved further consultation on whether it is appropriate for the Council to limit the number of SEVs it should license in the borough.
- 1.5 On the 16th of September 2014 Cabinet considered the consultation feedback and approved amendments to the current policy as outlined in section 7 of this report.
- 1.6 Council is now asked to consider these for adoption.

2. Statutory Context

- 2.1 Section 27 of the 2009 Act amended schedule 3 of the 1982 Act to introduce a new type of sex establishment known as a sexual entertainment venue.
- 2.2 Any premises that want to offer “relevant entertainment” can only do so by obtaining a SEV licence.
- 2.3 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).
- 2.4 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 consecutive hours on no more than 11 occasions a year. Any premises that want to offer relevant entertainment more frequently are required to apply for a SEV licence.
- 2.5 This report and the Council’s policy are concerned with the regulation of frequent sexual entertainment.
- 2.6 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.

3. Current Policy

- 3.1 The Council’s current policy statement was adopted on the 4th of February 2011.
- 3.2 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. Prior to the Bath Road application, the last SEV application received was in 2011 for the Blue Room on St. Margarets Road.

4. Consultation

- 4.1 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.
- 4.2 A public consultation has already been undertaken to gather the views of mainly the town's local residents. Attached at **Appendix 2** is a summary breakdown of the responses.
- 4.3 The Licensing Committee met on the 5th of September 2014 to consider its response to the consultation. The Committee, acting as lead consultee to the relevant Cabinet Member, resolved by majority vote that "it be recommended to Cabinet that a zero limit applies to the number of SEVs outside the town centre, however applications for SEVs within the town centre should continue to be assessed on their individual merits without numerical limit. The town centre to be defined as the cleansing area of the town."
- 4.4 For Members' benefit, a copy of the cleansing area is attached at **Appendix 3** of this report. Members are however to note that Cabinet has recommended that the definition of the town centre instead be defined as the adopted central shopping area.

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 his, and the signatories', response to the consultation.
- 4.6 The petition was debated in Council on the 21st of July 2014 where Members resolved to refer the matter to Cabinet for consideration.
- 4.7 The petitioner submitted a number of points to Council.
- 4.8 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 there are also several external factors that have an influence on their prevalence elsewhere which are not relevant to Cheltenham based on the evidence.
- 4.9 In relation to the three reports cited by the petitioner, Members must note that these date to between 2003 and 2006. This is relevant because prior to 2009 there was simply no adequate legislation in place to properly regulate sexual entertainment. In recognition of this, the Government introduced the 2009 Act that, for the first time, created legislation specifically aimed at the regulation of SEVs.
- 4.10 The 2009 Act substantially changed the regulatory landscape. The new legislation gave local authorities and the police substantial new powers to regulate this form of entertainment in their local areas, including powers to impose conditions, limit the number of SEVs and new enforcement powers.
- 4.11 Furthermore, against the background of the comments made by Devon & Cornwall Constabulary, officers have also sought advice from Gloucestershire Constabulary.
- 4.12 PC Jaine Simner, Force Licensing Manager, stated in her response "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 SEV's if well run like any other licensed premises cause us very little problem and are not known for crime and disorder."

5. Setting a Limit & Relevant Locality

- 5.1 There is an implied power in Schedule 3 paragraph 12(4) of the 1982 Act (as amended) for the Council to set a limit on the number of licensed SEVs permitted in the relevant locality, of which zero is appropriate.
- 5.2 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.
- 5.3 Relevant locality is defined in the current policy as the ward in which an application for a SEV licence has been made.
- 5.4 The legislation does not define relevant locality apart from saying that it is the locality in which a premises is based. It leaves it to local authorities to define because they have the appropriate local knowledge to properly decide where it would be appropriate to licence SEVs.
- 5.5 However, Members are to note that the borough as a whole is too large an area to be defined as the relevant locality as determined by case law (R v Cheltenham Borough Council, ex parte Quietlynn Ltd (1985) 83 LGR 461).

6. Policy Options

- 6.1 There are several policy options for Council to consider.
- 6.2 **No change to the current policy** – Council can form a view that the current policy is adequate and should remain unchanged, in other words, that the Council will not impose a limit on licensed SEVs and that each application will be determined on its individual merits.
- 6.3 **Change policy** – Council can form a view that it would be appropriate to set a limit on the number of permitted SEVs in the borough. In this case, it must also consider:
 - 6.3.1 What the appropriate limit should be; and
 - 6.3.2 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.)

7. Proposed Amendments to Policy

- 7.1 Taking into account the matters above, it is proposed that the Council does change its policy. It is proposed that the status quo be maintained for the town centre, but that the Council adopt a zero limit for the rest of the borough which is predominantly residential in nature.
- 7.2 The Council has already resolved that it is inappropriate to licence SEVs in or in the vicinity of, amongst others, residential areas, so a zero limit would be consistent with that approach.
- 7.3 The Council recognise however that the town centre offers a more unique situation in as much as it has a much wider mix on offer, particularly in the night time economy and it may therefore be appropriate to consider applications for SEVs in the town centre. To this extent, the Council is not proposing a limit on the number of SEVs in the town centre. Instead, applications will be considered on their individual merits against policy restrictions and guidelines. It is proposed that the town centre be defined as the adopted Central Shopping Area.
- 7.4 The proposed amendments to the policy will in effect redefine relevant locality as the central shopping area as one locality and the rest of the borough as the other.
- 7.5 Members must bear in mind that any change in policy does not change the fact that the Council must always retain some measure of discretion. Therefore, whilst the changes to the amended

policy may create a presumption against the grant of an SEV licence, the Council will still be obligated to determine applications even if these are in areas in which the policy restricts the number of SEVs.

7.6 A copy of the amended policy is attached at **Appendix 4** for the information of Members.

8. Reasons for recommendations

8.1 To ensure the Council is able to properly discharge its statutory functions in relation to the regulation of sexual entertainment in the borough.

9. Consultation and feedback

9.1 Public consultation feedback is attached at **Appendix 2**.

9.2 Members must also be mindful of the comments made in Council when the SEV petition was subject to debate and referred to Cabinet for further consultation.

10. Performance management – monitoring and review

10.1 The performance of this policy will be monitored by the Licensing Committee in terms of the decisions they make in promoting this policy.

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| Report author | Contact officer: Louis Krog, louis.krog@cheltenham.gov.uk, 01242 774217 |
| Appendices | <ol style="list-style-type: none"> 1. Risk Assessment 2. Consultation Feedback 3. Map – Central Cleansing Area 4. Draft Amended Policy |
| Background information | <ol style="list-style-type: none"> 1. Officer report and minutes of Full Council meeting on Monday, 21st July 2014. 2. Current adopted Sexual Entertainment Venue Policy Statement (Adopted 4 February 2011). 3. Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982. 4. Section 27 & schedule 3 of the Police & Crime Act 2009. 5. Other consultation comments submitted. |

| The risk | | | | Original risk score (impact x likelihood) | | | Managing risk | | | | |
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| Risk ref. | Risk description | Risk Owner | Date raised | Impact 1-5 | Likelihood 1-6 | Score | Control | Action | Deadline | Responsible officer | Transferred to risk register |
| | If Council fails to approve necessary amendments to the policy there is a risk that it will become out of date and irrelevant. This may result in the Council being unable to effectively discharge its functions which could have an adverse affect on public protection. | Licensing & Business Support Team Leader | 16/09/14 | 2 | 3 | 6 | Reduce | Consider report and associated recommendations | 13/10/14 | Licensing & Business Support Team Leader | |
| | If Cabinet fails to give due regard to the consultation feedback, it has the potential to undermine confidence in the local democratic process. | Licensing & Business Support Team Leader | 16/09/14 | 2 | 4 | 8 | Reduce | Consider report and associated recommendations | 13/10./14 | Licensing & Business Support Team Leader | |
| <p>Explanatory notes</p> <p>Impact – an assessment of the impact if the risk occurs on a scale of 1-5 (1 being least impact and 5 being major or critical)</p> <p>Likelihood – how likely is it that the risk will occur on a scale of 1-6 (1 being almost impossible, 2 is very low, 3 is low, 4 significant, 5 high and 6 a very high probability)</p> <p>Control - Either: Reduce / Accept / Transfer to 3rd party / Close</p> | | | | | | | | | | | |