

EXETER CITY COUNCIL

LICENSING COMMITTEE 23 JULY 2013

LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982 POLICY IN RELATION TO THE LICENSING OF SEX ESTABLISHMENTS

1. PURPOSE OF REPORT

- 1.1 The purpose of this report is to seek the Licensing Committee's approval of the draft Exeter City Council Sex Establishment policy (attached at Appendix A).
- 1.2 The matter has been given consideration at the Licensing Committees held on 24 July 2012 and 12 February 2013 and the issue has been the subject of a widespread public consultation. Further, the Licensing Committee currently has an interim policy relating to the licensing of Sex Establishments adopted on 24 July 2012 and regard has also been had to the terms of that policy.

2. BACKGROUND

- 2.1 New provisions under the Local Government (Miscellaneous Provisions) Act 1982 were adopted in July 2012 giving the Council more powers to regulate Sex Entertainment Venues (SEVs) as Sex Establishments alongside Sex Shops and Sex Cinemas.
- 2.2 The amended legislation provides for local authorities to formulate policies on how it will deal with applications for Sex Establishment licences, including limits on the number of Sex Establishments of any type according to what is considered appropriate within Exeter.

3. CONSULTATION

- 3.1 The consultation revealed that most respondents supported the adoption of a policy in relation to Sex Establishments. Most respondents felt that there were no localities within Exeter that were appropriate for SEVs and Sex Cinemas and almost as few felt that there were no localities within Exeter that were appropriate for Sex Shops. Large majorities considered that Sex Establishments were unsuitable near specific types of premises such as schools and places of worship. An analysis of the consultation is contained in Appendix B.

4. DRAFT POLICY AND LIMIT ON NUMBERS

- 4.1 The draft policy has been prepared on the basis of the results of the consultation, official guidance and other relevant Council strategies.
- 4.2 In particular, the draft policy states that there is no place within Exeter which it could be said is situated in a locality where it would be appropriate to licence SEVs which is referred to as a nil policy.

- 4.3 The draft policy takes in to account the character and culture of Exeter as an historic regional capital and the Council's duty to preserve Exeter's reputation as such as well as the need for Exeter as a whole to promote gender equality.

5. LEGAL IMPLICATIONS

- 5.1 The law, statutory guidance and other Exeter City Council policies were taken into account in drafting the proposed Sex Establishment Policy and are outlined in Sections 2 and 3 of the draft policy.
- 5.2 There is no statutory requirement for public consultation on the draft policy but Exeter City Council has followed best practice in undertaking a consultation exercise.
- 5.3 The evidence obtained from the consultation exercise coupled with existing data fully supports the recommended policy including the statement that there is no place within Exeter which, it could be said, is situated in a locality where it would be appropriate to licence an SEV.
- 5.4 Provided the Licensing Committee's decision in adopting the draft policy is reasonable and rational, then the likelihood of successful challenge by way of judicial review is minimised.
- 5.5 An equalities impact assessment has been undertaken for the draft policy and is attached at Appendix C.
- 5.6 In essence, the draft policy provides guidance to Members, Applicants and Objectors as to how the Council will seek to exercise its statutory discretion in determining applications. The statutory discretions arise in relation to the grounds for refusal of Sex Establishment licences. The discretion of the Council can not be fettered in so far as no policy can be absolute and every case must be decided on its merits.

6. GROUNDS FOR REFUSAL OF A SEX ESTABLISHMENT LICENCE

- 6.1 There are 5 mandatory grounds and four discretionary grounds for refusal of a sex establishment licence.
- 6.2 The five mandatory grounds for refusal of an application are that the applicant:
- (a) is under the age of 18;
 - (b) is for the time being disqualified from holding a sex establishment licence;
 - (c) is not a body corporate, and is not resident or has not been resident in an EAA state for six months immediately preceding the date of the application;
 - (d) is a body corporate which is not incorporated in an EAA state;
 - (e) has in the period of 12 months preceding the date of the application been refused the grant or renewal of a licence for the premises, vehicle, vessel or stall in respect of which the application is made, unless the refusal has been reversed on appeal.
- 6.3 In respect of these the aim of the policy is to set out how the legislative objectives will be furthered by the Council.
- 6.4 The four discretionary grounds for refusal of an application are that;

- (a) the applicant is unsuitable to hold a licence by reason of having been convicted of an offence or for any other reason;
- (b) if the licence were to be granted, the business to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant of such a licence if he made the application himself;
- (c) the number of sex establishments, or sex establishments of a particular kind, 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;
- (d) the grant would be inappropriate having regard –
 - (i) to the character of the relevant locality;
 - (ii) to the use to which any premises in the vicinity are put;
 - (iii) to the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.

6.5 In respect of these the influence of the Council's policy will be pivotal.

7. NUMBER OF SEX ESTABLISHMENTS

7.1 This provision enables the Council to impose numerical control on the number of sex establishments in a particular locality. The control can also apply to the number of each kind as well. The provision gives the Council a high degree of control on particular types of sex establishment and there is no right of appeal against a refusal on this ground.

7.2 The draft policy states that the Council has been unable to identify an appropriate locality for either SEVs or Sex Cinemas. It remains open to any applicant to demonstrate to the Council that there is an appropriate locality which has not been previously identified by the draft policy. While the draft policy is closed in some aspects it will be incumbent upon any Licensing Committee determining an application to keep an open mind.

8. REGULATIONS

8.1 The legislation allows for the Council to make standard conditions in the form of regulations, regulating the operation of Sex Establishments. The proposed standard conditions are set out in Appendix 4 to the draft policy. This does not preclude the making of further bespoke conditions where necessary in relation to individual application.

9. RECOMMENDATION

9.1 It is recommended that the Licensing Committee adopts the Sex Establishment Licensing Policy as set out in Appendix A.

Assistant Director Environment

ENVIRONMENT DIRECTORATE

Local Government (Access to Information) Act 1985 (as amended)

Background papers used in compiling this report:

None.

