

Report to Council

27 OCTOBER 2010

LEADER

Councillor Stephen Greenhalgh

TITLE: Sexual Establishment Venues and Sex Establishment Policy

WARDS
All

SUMMARY

In April 2010, section 27 of the Policing and Crime Act 2009, amended Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, by introducing a new type of sex establishment called a 'sexual entertainment venue'.

The new legislation offers the Council and local residents greater power to control the number and location of lap dancing clubs and similar venues in the borough. If the Council wishes to adopt the powers offered by the legislation it needs to resolve to do so.

A draft Sex Establishment Policy was sent out for a 12 week consultation which began on the 9th June 2010 and ended on the 30th August 2010.

This report seeks the approval to exercise these powers and also upon the proposal to adopt a policy to reflect and set out the Council's position.

CONTRIBUTORS

Environment Services

Finance and Corporate Services

Legal and Democratic Services

RECOMMENDATION:

1. That Full Council resolve that Schedule 3 (as amended) of the Local Government (Miscellaneous Provisions) Act 1982 shall apply to its area and shall come into force on 1 April 2011.
2. That Full Council adopt the levels of the appropriate maximum number of sex establishments within specified areas of the borough as set out at section 6 of the final draft Sex Establishment Policy.
3. That Full Council make regulations prescribing the standard conditions applicable to sex establishments.
4. That Full Council adopt the final draft Sex Establishment Policy.

1. INTRODUCTION

1.1 The amendments to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, made by section 27 of the Policing and Crime Act 2009 give the Council greater powers to control “sexual entertainment venues”. Currently a sex establishment licence is not required for such a venue where regulated entertainment (of an adult nature) is authorised by a premises licence issued under the Licensing Act 2003.

1.2 If the Council wishes to have the revised Schedule 3 apply to its area, it needs to make a resolution to that effect. If adopted, the revised legislation would offer the Council and local residents greater power to control the number and location of lap dancing clubs and similar venues in their local area.

1.3 Sex establishments are defined as:

- **Sex Cinemas:** Cinemas that are used a significant degree for the exhibition of moving pictures, which are concerned, relate or deal primarily with the portrayal of, or are intended to stimulate or encourage sexual activity; or acts of force or restraint which are associated with sexual activity or genital organs or urinary or excretory functions, but does not include a dwelling-house to which the public is not admitted.
- **Sex Shops:** Businesses which consists to a significant degree of selling, hiring, exchanging, lending, displaying or demonstrating sex articles or other things intended for use in connection with, or for the purpose of stimulating or encouraging: sexual activity and acts of force or restraint which are associated with sexual activity.
- **Sexual Entertainment Venues:** Any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser of the entertainer.

1.4 Relevant entertainment is ‘any live performance or 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 an audience (whether by verbal or other means)’.

1.5 The definition of relevant entertainment would apply to the following forms of entertainment as they are commonly understood:

- Lap dancing
- Pole dancing
- Table dancing
- Strip shows
- Peep shows
- Live sex shows

- 1.6 Currently the borough has 3 businesses that are currently operating as a sex establishment, as detailed below:

Name	Address	Description
Secrets	62 Glenthorne Road, London, W6 0LR	Lap Dancing Club
Simply Pleasure	123 Hammersmith Road, London, W14 0QL	Adult Sex Shop
Olympia	Olympia Exhibition Centre, Hammersmith Road, London, W14 8UX	Occasional Licence for Annual Erotica Exhibition

- 1.7 Once a resolution has been made that Schedule 3 applies to the borough, the Council can determine appropriate numbers of sex establishment venues for particular areas. It can also make regulations that certain standard conditions be applied to any licence.

2. REPORT

2.1 Resolution to adopt Schedule 3 (as amended) of the Local Government (Miscellaneous Provisions) Act 1982

- 2.1.1 If the proposals in this report are adopted by the Council for sexual entertainment venues, these provisions would allow the Council to refuse an application on wider grounds than is permitted under the Licensing Act 2003 and will give local people a greater say over the regulation of lap dancing and similar venues in the borough.
- 2.1.2 Grounds for refusal under the new legislation include the character of the relevant locality and the use to which any premises are put in the vicinity of the application site.
- 2.1.3 Some premises are currently licensed under the Licensing Act 2003 as “regulated entertainment” whereby local people can only object on the grounds of the four licensing objections, namely prevention of crime and disorder, public safety, prevention of public nuisance and the protection of children from harm.
- 2.1.4 Licence holders, licensed under the new provisions, will also be required to renew their licence at least every year, at which point local people will have the opportunity to raise objections.
- 2.1.5 There will be exemptions for premises where the relevant entertainment is provided infrequently, i.e. not more than eleven occasions in a twelve-month period, they must be greater than one month apart and must not last for more than 24 hours. These premises will still be regulated under the Licensing Act 2003 and would need to apply for a Temporary Events Notice (TEN).

- 2.1.6 Existing operators who hold a premises licence or club premises certificate under the Licensing Act 2003 will not be given preferential treatment or be automatically granted licences under the provisions of Schedule 3 of the 1982 Act. However they will be able to continue to operate over a 12-month transitional period starting from when the new provisions are adopted.
- 2.1.7 During the first six months of the transitional period existing and new operators can apply for a new licence. At the end of this period the licensing authority must consider all applications together and cannot grant any licences until all the applications have been considered. The number of licences may be limited by Council policy so it would be unfair to consider on a first come first served basis. Once considered the licensing authority can grant as many licences as it sees fit in accordance with the policy. After the first six months licences can still be applied for and each application must be considered individually on its own merit.
- 2.1.8 Any condition on an existing Premise Licence which relates exclusively to the relevant entertainment will be deemed to have been deleted from the premises licence at the end of the 12 month transitional period. Essentially, the condition will still appear upon the licence but will have no force. The relevant entertainment will be regulated by the conditions upon the new relevant entertainment licence. The conditions on the Premises Licence will continue to regulate the other licensable activities, such as alcohol sales or late night refreshment, (etc).

2.2 Sex Establishment Policy

- 2.2.1 Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 allows local authorities to refuse applications on the basis of 'relevant locality'. One of the powers given to a local authority is to prescribe the number of sex establishments, or the number of sex establishments of a particular kind within a "relevant" locality. It is proposed that the Council resolve to set the appropriate levels as contained at paragraph 6 of the draft Sex Establishment Policy attached at Appendix 1.
- 2.2.2 Once a sex establishment licence is granted the Council is able to impose terms, conditions and restrictions on a licence. The Council has the power to make regulations prescribing standard conditions applicable to sex establishment licences. It is proposed that the Council make such regulations, as set out at Appendix 7.

2.3 Consultation Process

- 2.3.1 The guidance issued relating to sex establishments does not stipulate that a consultation must be carried out before adopting Schedule 3 (as amended) of the Local Government (Miscellaneous Provisions) Act 1982. However, the Policing and Crime Act 2009, which amended Schedule 3, requires that if Schedule 3 (as amended) is not adopted within one year of it coming into force (by 6th April 2011) then the Council must, as soon as possible consult local residents about making such a resolution.

2.3.2 To avoid unnecessary duplication, the consultation was combined with the review of the Council's Statement of Licensing Policy. The 12 week consultation took place between 9th June 2010 and 30th August 2010. The draft Sex Establishment Licensing Policy at Appendix 1, the consultation letter at Appendix 2 together with the consultation questionnaire at Appendix 3 were sent to over 2000 stakeholders, advertised in h&f News and on the council website and placed on the council's consultation portal.

2.3.3 A number of bodies were consulted, including:

- Residents;
- H&F Council Trading Standards Team;
- H&F Council Environment Protection Team;
- H&F Council Commercial Services Team;
- H&F Council Planning Division;
- Councillors;
- Metropolitan Police;
- London Fire, Emergency and Planning Authority;
- Representatives of holders of premises licences in the borough;
- Representatives of holders of club premises certificates in the borough;
- Representatives of holders of personal licences in the borough;
- Representatives of residents and businesses in the area, including resident groups, tenants associations and societies;
- The Area Child Protection Committee; Health service including PCT, Accident and Emergency and the London Ambulance service;
- Neighbouring authorities;
- Chamber of Commerce;
- Drug and alcohol action team;
- Crime and Disorder Reduction Partnership; and
- Trade unions.

2.4 Summary of responses received from the consultation

2.4.1 The responses received between 9th June 2010 to 30th August 2010 from the consultation can be seen at Appendix 4. A total of 83 responses were received, 9 were from Responsible Authorities (as defined by the Licensing Act 2003), 5 from Councillors and 3 from representative bodies.

2.4.2 The majority of respondents agreed that the Council should adopt Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 and should include the following information in the draft Sex Establishment Licensing Policy:

- a 'relevant locality' policy to seek to limit the number and type of establishments in each ward.
- the fact that it would be inappropriate to issue a licence near residential accommodation, schools or nurseries and youth clubs.

- the fact that it would be inappropriate to issue a licence near a place of worship, community centres and swimming pools.
- how to make objections.
- details of the application and hearing process for new, renewal, transfers and variation applications.
- a schedule of standard conditions.
- suitability of premises.
- fit and proper applicants.
- consultees and responsible authorities.

In particular it was noted:

- that relevant locality required clarity given that most of the borough is residential and on a school route.
- that Secrets is well run and since it opened in 1986 there have been few incidents of fights and scuffles or complaints received by the Division.
- that 37% of respondents agree that the proposal to charge an application fee of £16,688 was reasonable and the same percentage disagree. A comment was received from Simply Pleasure who consider that the fee of over £16K is unacceptable and outrageous, as it is suppose to be a not for profit making fee.
- Further additional comments/summary of responses are at Appendix 4

2.5 Fees

2.5.1 The proposed fee for a new application takes into account the likelihood of a large number of objections and the impact that a contentious type of application would have on the Council's resources.

2.5.2 The amount charged when administering fees and in particular the process for charging fees must comply with the requirements of the EC Services Directive. In particular fees should be non discriminatory, justified, proportionate, clear, objective, made public in advance, transparent and accessible.

2.5.3 When setting fees, consideration can only be given to the following:

- Administration
- Initial visit(s)
- Third party costs
- Management costs; and
- Local democracy costs

2.5.5 LACORS guidance on how the EC Services Directive impacts on councils setting and administering fees within the service sector has been attached at Appendix 6.

2.5.6 In view of this guidance it is considered that a reduced fee would be appropriate for renewal, transfer and variation applications, which will be agreed at the council's next annual review of fees and charges.

2.6 The Environment and Residents Services Select Committee

2.6.1 A report was presented on the Sexual Establishment Venues and Sex Establishment Licensing Policy to The Environment and Residents Services Select Committee, on the 7th September 2010. The Committee resolved that the adoption of Section 27 of the Policing and Crime Act 2009 and the content of the draft Sex Establishment Policy be endorsed.

2.7 The Licensing Committee

2.7.1 This report is scheduled to be presented on the 12th October 2010.

2.8 Next steps

2.8.1 The 'transitional period' will last for 12 months beginning with the date that the Council resolves that Schedule 3 as amended by the 2009 Act will come into force (known as 'the 1st appointed day'). Six months following the 1st appointed day will be known as 'the 2nd appointed day' and the day on which the transitional period ends will be known as 'the 3rd appointed day' which is six months after the 2nd appointed day.

2.8.2 Existing Operators:

To allow time to comply with the new regime, existing operators, who immediately before the 1st appointed day, have a 2003 Act licence and who lawfully use premises as a sexual entertainment venue under that licence will be allowed to continue to provide relevant entertainment until the 3rd appointed day or the determination of any application they have submitted before that time (including any appeal against the refusal to grant a licence), whichever is later.

2.8.3 New Applicants:

Applicants will be able to submit their application from the 1st appointed day onwards. No applications will be determined before the 2nd appointed day. After this day if a new applicant is granted a licence it will take immediate effect. If an existing operator is granted a licence it will not take effect until after the 3rd appointed day up to which point they can continue to operate under their existing premises licence or club premises licence.

3. RISK MANAGEMENT IMPLICATIONS

3.1 The adoption of Schedule 3 (as amended) is optional and is not mandatory. The Council could continue to licence lap dancing clubs and similar premises under the Licensing Act 2003. Similarly local authorities are not required to have a Sex Establishment Policy. The Council could adopt Schedule 3 and choose not to approve the draft Sex Establishment Policy.

However, if the Council has not adopted Schedule 3 (as amended) by April 2011 (a year after section 27 came into force) the Council would have to consult local people about whether such a resolution should be made.

- 3.2 A local authority can adopt a Sex Establishment Policy for the determination of applications, provided that the policy does not preclude the individual consideration of an application. The policy may also specify areas where applications are more or less likely to succeed and/or establish location criteria relating to the character of a locality. This was referred to in the Court of Appeal case of R-v-Birmingham City Council ex parte Quietlynn Ltd.
- 3.3 The provisions contained in Schedule 3 of the 1982 Act are adoptive and there are prescribed procedures to be followed for adoption to be successful.
- 3.4 The Council must pass a resolution, adopting Schedule 3, specifying the day the provisions are to come into effect (this day can be no earlier than one month after the date of the resolution).
- 3.5 The Council must then publish a notice in a local newspaper in two consecutive weeks stating that they have passed such a resolution and its general effect. (The first notice must appear no later than 28 days before the date the provisions come into force).
- 3.6 Failure to follow the correct procedures could result in challenge against any subsequent decisions on enforcement action.

4. CONCLUSION

- 4.1 Adoption of Schedule 3 of the 1982 Act will mean that operators of premises providing “relevant entertainment”, such as lap dancing clubs will have to apply for a separate Sexual Entertainment Venue licence.
- 4.2 Careful consideration has been given to all consultation responses that have been made in response to the consultation exercise and amendments have been made to the Sex Establishment Policy.
- 4.3 The final draft Sex Establishment Licensing Policy attached at Appendix 5 includes all the changes made following the consultation responses.

5. COMMENTS OF THE DIRECTOR OF FINANCE AND CORPORATE SERVICES

- 5.1 Currently the borough has a lap dancing club, a sex shop and an occasional licence for adult entertainment. This makes up a small contribution to the overall licensing income received by the Council. The adoption of schedule 3 (as amended) to the Local Government (Miscellaneous Provisions) Act 1982 will provide more flexibility in raising licence fees for such activities in the future.

5.2 The initial application fee reflects the high costs associated with the work involved in processing an abnormally high level of responses. A reduced renewal/variation fee would be consistent with other neighbouring boroughs.

6. COMMENTS OF THE ASSISTANT DIRECTOR (LEGAL AND DEMOCRATIC) SERVICES

6.1 The Council's powers and responsibilities in connection with sex establishments including sexual entertainment venues are contained in the Local Government (Miscellaneous Provisions) Act 1982 as amended by section 27, Policing and Crime Act 2009.

6.2 If the council chooses to adopt schedule 3 (as amended), it must publish a notice in a local newspaper for two consecutive weeks stating that it has passed the resolution, the first one being at least 28 days before the resolution comes into effect.

6.3 Under schedule 3 to the 1982 Act, the council may also:

- a. resolve to set the levels of the appropriate maximum number of sex establishments within specified areas; and
- b. resolve to make regulations prescribing standard conditions applicable to licences for sex establishments (See Appendix 7).

LOCAL GOVERNMENT ACT 2000 LIST OF BACKGROUND PAPERS

No.	Description of Background Papers	Name/Ext of holder of file/copy	Department/ Location
1	List of consultees	Sanju Manji Ext 3392	PPS/ENV
2	Home Office Sexual Entertainment Venues Guidance for England and Wales	Stephanie Needham Ext 4932	PPS/ENV
3	R-v-Birmingham ex parte Quietlynn Limited	Stephanie Needham Ext 4932	PPS/ENV
CONTACT OFFICER: Stephanie Needham		EXT : 020 8753 4932	

APPENDICES

- Appendix 1 Draft Sex Establishment Licensing Policy
- Appendix 2 Consultation Letter
- Appendix 3 Consultation Questionnaire
- Appendix 4 Response to Consultation to between 9th June 2010 to 30th August 2010
- Appendix 5 Final draft Sex Establishment Licensing Policy
- Appendix 6 LACORS guidance on how the EC Services Directive impacts on councils setting and administrating fees within the service sector
- Appendix 7 Draft Regulations, prescribing standard conditions applicable to licences for sex establishments