

## **ITEM 7 Sex Establishment Licensing Policy and Procedures**

Report of the Head of Administration (Portfolio: Corporate)

### **Recommended to Cabinet:**

- 1. That the fee for the grant/transfer/renewal of a sex establishment licence be set at £1460 where objections are received and the application is determined by the Licensing Committee and at £399 where no objections are received and the application is determined by the Head of Administration.**

### **Recommended to Council:**

- 2. That the delegations to the Head of Administration are amended as set out in italics in Annex 2 to the report so that applications for the grant/transfer/renewal of a sex establishment licence are determined by the Head of Administration in cases where no objections have been received.**
- 3. That the Council not set a limit on the number of sex establishments that may be licensed in the Borough and that the Council continue to consider applications on the merits of each individual case.**

#### **SUMMARY:**

- The Council is responsible for licensing sex establishments and currently licenses one sex shop and one sexual entertainment venue.
- The Council has received a request to revise its current policy and procedures regarding determination of applications so that uncontested applications do not need to be determined by the Licensing Committee.
- The request also suggests that the Council should set a numerical limit upon the number of licensed premises.

### **1 Introduction**

- 1.1** The Council adopted with effect from 1<sup>st</sup> June 1989 Schedule 2 of the Local Government (Miscellaneous Provisions) Act 1982 which meant that it was able to license premises to be used as a Sex Shop or Sex Cinema. This provision was readopted on 1 April 2011 when the Council adopted an amendment to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 extending the existing legislation used to license a Sex Shop or Sex Cinema to also include Sexual Entertainment Venues. There is currently no delegated power for sex establishment licence applications to be determined by officers so all applications must come before this Committee for determination.

## **2 Background**

- 2.1 Applicants for a sex establishment licence are required to display a public notice at the premises and in addition, publish a notice in a local newspaper advising that an application has been submitted and inviting written objections. Only objections received within 28 days of the date of the notice may be considered by the Council. The names and addresses of objectors must be kept confidential unless the objectors indicate otherwise.
- 2.2 The Council currently licenses one sex shop at 2 The Broadway, Andover and one sexual entertainment venue at 43 London Street, Andover. Both licences have been renewed in recent months and in both cases no objections were received. The owner of the sex shop, Mr J Spencer, has submitted a request (see Annex 1 to this report) asking that the scheme of delegation be revised so that in cases where no objections are received, applications are determined by officers without the need for the matter to go before the Licensing Committee. The request further asks that the Council consider imposing a numerical limit on the number of sex establishments it will license.

## **3 Corporate Objectives and Priorities**

- 3.1 None; the licensing of sex establishments is a statutory function of the Council and thus does not relate directly to any of the corporate objectives or priorities.

## **4 Consultations/Communications**

- 4.1 No specific consultations have been conducted on this matter. Officers have consulted colleagues in other local authorities and in the majority of cases their procedures reflect the recommendations in this report.

## **5 Options**

- 5.1 In relation to the determination of applications, the options are either to continue as at present – with all applications being determined by the Licensing Committee – or adopt a scheme of delegation such that applications for the grant/renewal/transfer of applications where no objections are received, will be determined by the Head of Administration.
- 5.2 In relation to the policy of setting a numerical limit, the options are either to continue as at present – with no such limit and each application being judged on its own merits – or adopt a numerical limit which once reached would preclude the licensing of any further premises.

## **6 Option Appraisal**

- 6.1 Although the Council adopted the necessary legislation to license sex establishments in 1989, it did not receive its first application until 2005. The present policy of all applications being determined by this Committee is the same as that first adopted back in 1989 and in the view of officers would benefit from a review. As mentioned in paragraph 4.1 above,

the majority of local authorities – both those locally e.g. Southampton and Rushmoor and those further afield e.g. Cheltenham and Sedgemoor – have a scheme of delegation whereby non-contentious applications are determined by officers and applications that have attracted objections are determined by a Committee. Such a policy would bring the Council in line with many other local authorities and mean that the determination of sex establishment licences would be on the same basis as applications submitted under the Licensing Act and Gambling Act. It would also speed up the decision making process and remove the need for the Committee to meet with the associated savings in both officer and member time. Such a change will require a revision to the current scheme of delegation to the Head of Administration and this is set out in Annex 2 to this report.

- 6.2 The request from Mr Spencer for the Council to consider imposing a numerical limit on the number of premises it will license suggests that such a policy will restrict further premises from opening when the economic climate improves. It is suggested that this policy has worked in other towns and prevents unlicensed sex shops from opening. When the Council received its first such application back in 2005 this Committee was advised that the legislation allowed the Council to set a maximum number of premises, the practical implication being that once a maximum is reached then the Council can refuse any further licence applications and the applicant is unable to appeal against this decision. As a result the Committee convened a Panel to consider this specific matter.
- 6.3 Whilst there are some benefits to fixing a maximum number of premises that should be licensed, the Panel was concerned that by introducing such a figure this may lead to an increase in applications by potential applicants wishing to obtain a licence before the limit was reached. It was felt that market forces would influence the actual number of applications received and a limit was thus unnecessary. It was also noted that a sex shop licence would be needed for any premises in the Borough operating a mail order business. By imposing a limit, the Council could prevent such a business from being established. The Council does have policies encouraging the establishment of small businesses within the Borough and so the adoption of a numerical limit would conflict with this. The Panel felt that this was a further reason for not imposing a limit upon the number of premises to be licensed. It is the view of officers that all of these comments remain currently valid and there has been no material change in circumstances to warrant the adoption of a limit.
- 6.4 In determining applications for Sex Shop and Sex Cinema licences the Council has adopted a policy that it will consider the appropriateness of the location of the premises. In determining what is appropriate, it is normal to consider what other premises are in the vicinity of the proposed premises and the approach set out in Annex 4 attached to this report is used in deciding whether or not a licence should be granted. This list is not to be regarded as definitive and is provided to assist the Committee in determining applications.

As an example, if there were a school or church in the vicinity of the road in which the licensed premises is located or an adjacent road then it is generally accepted that this would provide the Council with sufficient grounds for refusing the application.

- 6.5 For determining Sexual Entertainment Venue licence applications the Council has adopted a policy statement that “Test Valley Borough Council will treat each case on its own merits but is unlikely to approve applications for a Sexual Entertainment Venue in areas that are predominantly residential or close to ‘sensitive premises’ such as schools, places of religious worship or places of education and learning”. In essence this is the same approach as that for Sex Shops and Sex Cinemas as set out in paragraph 6.4 above. Irrespective of the type of premises for which a licence is being sought, it is felt that these policies are more appropriate as they allow for applications to be judged on their own merits.

## **7 Resource Implications**

- 7.1 The current fee for the grant, renewal or transfer of a sex establishment licence is £1460. An analysis of how this fee has been calculated is attached as Annex 3 to this report. As mentioned in paragraph 6.1 above, if non-contentious applications are determined by officers there will be a saving in that it will not be necessary to convene a meeting of this Committee. Thus those matters related to the determination of an application by the Committee should be removed from the fee calculation as the fee must be set only at a level which is sufficient to cover the authority’s costs; the Council must not make a profit from such fees. This will mean that the fee for the grant/transfer/renewal of a sex establishment licence will reduce to £399 where no objections are received and the application is determined by the Head of Administration.

## **8 Legal Implications**

- 8.1 There are no direct legal implications as a result of the proposed recommendations. By not setting a maximum number of sex establishments that it is prepared to license, the Council will be unable to automatically refuse any applications. However, the process of determining each application should ensure that inappropriately located premises are not licensed.

## **9 Equality Issues**

- 9.1 A revised Equalities Impact Assessment has not been undertaken as the proposed changes do not impact upon the original Assessment.

## **10 Other Issues**

- 10.1 Community Safety – none.
- 10.2 Environmental Health/Sustainability Issues – none.
- 10.3 Property Issues – none.

- 10.4 Wards/Communities Affected – potentially the whole Borough but most likely Andover and Romsey town centres.

## 11 Conclusion

- 11.1 The policy and procedures for determining sex establishment licences have been in place for some time. A revision to allow non-contentious applications to be delegated to officers would save time and resources bringing the Council into line with other authorities. Setting a maximum number of licensed premises is considered inappropriate as it could prevent businesses from being established and ultimately other factors are likely to determine the number of applications received.

<u>Background Papers (Local Government Act 1972 Section 100D)</u> Report to Licensing Committee 28 <sup>th</sup> February 2006			
<u>Confidentiality</u> It is considered that this report does not contain exempt information within the meaning of Schedule 12A of the Local Government Act 1972, as amended, and can be made public.			
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