

ITEM 7 Sex Establishment Licensing Policy and Procedures

Report of the Head of Legal and Democratic (Portfolio: Corporate)

Recommended to Council:

- 1. That the delegations to the Head of Legal and Democratic 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 Legal and Democratic in cases where no objections have been received.**

Recommended to Cabinet:

- 2. That the fee for the grant/transfer/renewal of a sex establishment licence shall be as follows:**
 - (a) £478 payable upon application; and**
 - (b) In the event that an objection/objections are received such that the application is required to be considered by the Licensing Committee, then a further £785 payable upon demand from the Council.**

SUMMARY:

- The Council is responsible for licensing sex establishments and currently licenses one sex shop.
- In 2014 the Council received a request to revise its policy and procedures regarding determination of applications so that uncontested applications do not need to be determined by the Licensing Committee. The Committee did not adopt such a revision.
- The Chairman has now requested that the Committee reconsider the matter.

1 Introduction

- 1.1 The Council adopted with effect from 1st 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 1st 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. It has also previously licensed one sexual entertainment venue in Andover. The sex shop licence was last renewed in December 2015 and in that case no objections to the application were received. The owner of the sex shop, Mr J Spencer, has previously 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 asked that the Council consider imposing a numerical limit on the number of sex establishments it licenses.
- 2.3 These matters were considered by this Committee at its meeting held in May 2014 and at that time the Committee determined to maintain the existing arrangements. Since that time the membership of the Committee has changed and the Chairman has requested that the matter of delegations be reconsidered by the Committee. This report does not address the other matter of setting a numerical limit on the number of sex establishments that may be licensed in the Borough as it is felt the current policy – that the Council consider applications on the merits of each individual case – is appropriate and does not warrant review.

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 many 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 Legal and Democratic.

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 Legal and Democratic and this is set out in Annex 2 to this report.
- 6.2 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.
- 6.3 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 6.2 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. 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 identified separately and only be charged if the matter goes before a Committee. Case law has made it clear that any licence fee must be set only at a level which is sufficient to cover the authority's costs and the Council must not make a profit from such fees.

- 7.2 Taking this into account and having reviewed the various elements of the licence fee, the fee for the grant/transfer/renewal of a sex establishment licence should be set at £478 assuming no objections are received and the application is determined by the Head of Legal and Democratic. If objections are received and a Committee must be held to determine the application then a further £785 will be payable. The fees charged by authorities differ widely and a range is shown in Annex 3.

8 Legal Implications

- 8.1 There are no direct legal implications as a result of the proposed recommendations. As mentioned in paragraph 7.1 above, the authority must take care when setting the licence fee for sex establishments and there are some specific points that apply as there have been legal challenges to authorities that have set excessive fees. The case of Manchester City Council v King established that fees must be reasonable and cannot be used as a means of raising revenue. The European Union Services Directive states that fees must be set at such a level as to be proportionate to the effective cost of the licensing procedure and must not be used as an economic deterrent or to raise funds. By way of an example, prior to 2010 the authority's sex establishment fee was set at £3000 which anecdotal evidence suggests was set at that level specifically to discourage applications. Such action if permitted now would lead the authority liable to a legal challenge which it would be unable to defend. More recently there has been the case in the Court of Appeal of Hemming v Westminster City Council which has sought to reinforce the principles established in King and the EU Services Directive.

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.

<u>Background Papers (Local Government Act 1972 Section 100D)</u> Report to Licensing Committee 28 th February 2006 Report to Licensing Committee 6 th May 2014			
<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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