

**MAIDSTONE BOROUGH COUNCIL**

**LICENSING COMMITTEE**

**17 FEBRUARY 2011**

**REPORT OF HEAD OF DEMOCRATIC SERVICES**

**Report prepared by Neil Harris**

**1. LICENSING SEXUAL ENTERTAINMENT VENUES AND DRAFT POLICY FOR SEX ESTABLISHMENTS**

1.1 Issue for Decision

1.1.1 To consider the result of the consultation on the draft policy for sex establishments and the adoption of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended.

1.2 Recommendation of Head of Democratic Services

1.2.1 That Council be recommended to adopt Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended by section 27 of the Policing and Crime Act 2009 relating to sex establishments to take effect from 1 May 2011 which will be the first appointed day as set out in the legislation.

1.2.2 That the Policy for Sex Establishments, including Sex Shops, Sex Cinemas and Sexual Entertainment Venues attached at Appendix A be adopted with effect from 1 May 2011.

1.2.3 That the fee for an application for the grant, renewal variation or transfer of a sex establishment licence be set at £4000.

1.3 Reasons for Recommendation

1.3.1 At your last meeting the committee received and considered a detailed report on the changes to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 made by section 27 of the Policing and Crime Act 2009 which extended the provisions of that schedule to cover sexual entertainment venues as well as sex shops and other adult entertainment. The committee agreed that it was minded to adopt the amended schedule and also agreed to adopt for consultation purposes a policy which incorporated the extension to cover sexual entertainment venues.

- 1.3.2 In accordance with the wishes of the committee the consultation was undertaken for 8 weeks ending on 26 January and done as widely as possible by using the consultees on the Statement of Licensing Policy which includes licensing act licensees, all licensing act sexual entertainment venues, additional solicitors etc and to whom were added a number of local churches. The consultation document is set out at Appendix B and the results of the consultation together with officer comments at Appendix C.
- 1.3.3 In accordance with your decision the consultees were the same as with the Statement of Licensing Policy (over 460) and there were 9 responses received of which 3 made no comments, 5 agreed with the adoption of these provisions and 4 agreed with the approach of no numbers being set at this stage.
- 1.3.4 There are various comments on disabled issues which cover access and distance condition effect on visual impairment. Currently building control and equalities legislation is in place. Additionally members will have to consider layout, character and condition of the premises as part of their decision on individual applications. In respect of the distance condition consideration also has to be given to the conditions for performers and safety in the premises and a balance reached. This condition is currently used in such premises.
- 1.3.5 In respect of the comment on policing these premises have not been an issue in Maidstone and no comments on the consultation have been raised by the police. The police will also be consulted on all applications.
- 1.3.6 Mr Thomas, representing an existing operator, has raised a number of issues regarding the automatic granting of licenses to existing premises and that no new licenses for Sexual Entertainment Venues should be granted. The government considered whether there should be rights for existing premises and made provision that those licences will continue until at least 12 months after the effective date of adoption of the new legislation. Each application will be considered on its merits and previous history of the licensee and the premises will obviously form part of the overall decision. Each application being considered on its merits also means that applications for new premises will be considered in relation to the circumstances at the time of the decision and having regard to the adopted policy. It is not recommended that presumptions are made a part of policy as they could not bind a future committee in any event.
- 1.3.7 Two separate comments have raised the issues of locating in rural areas and in main streets. I would suggest that this view detracts from the policy and the need for transparency on how decision is made

rather than setting criteria before an application is received. Each application will be considered on its merits at the time of the decision.

1.3.8 In the light of these comments received to the consultation no amendments have been made to the policy agreed by the committee.

1.4 Alternative Action and why not Recommended

1.4.1 The Council does not need to adopt a policy but with the response from the consultees being supportive and it being best practice to adopt such a policy it would seem inappropriate not to do so.

1.5 Impact on Corporate Objectives

1.5.1 The decision will have an impact on the Council's priorities for Maidstone to be:

A place that has strong, healthy and safe communities – (see community safety implications (1.10.4) and carrying out a consultation involves the community in the policy making process;

A place to live and enjoy – this is a licensing objective for all licensing policies.

1.6 Risk Management

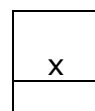
1.6.1 Whilst each individual application will be judged on its own merits a policy would ensure a transparent and consistent approach to licensing that would reduce the opportunity for challenge through the courts. Challenges to a particular decision are more likely to fail if we can demonstrate that we have adhered to our published policy and there is no justifiable reason to depart from it. Any departure from the policy will be based on material evidence and documented giving clear and compelling reasons for doing so.

1.6.2 The legislation may create the impression there are issues regarding this part of licensing in all areas. This is not the case in Maidstone where there has been no history of complaint or enforcement. It is not anticipated that adopting the legislation will lead to a rise in applications. However, this report sets out the reasons for adopting this more comprehensive regime.

1.7 Other Implications

1.7.1

1. Financial
2. Staffing



3. Legal	X
4. Equality Impact Needs Assessment	X
5. Environmental/Sustainable Development	
6. Community Safety	X
7. Human Rights Act	X
8. Procurement	
9. Asset Management	

1.7.2 Finance – The council will need to set fees for applications for licences and in determining a fee the council should follow the Home Office Guidance. The Guidance states that any fee set should be reasonable and advises that you follow the LACOR’s model. In addition the Council in setting any fee has to take into account the EU Services Directive and the guidance given by the Department for Business, Innovation and Skills which indicates that fees need to proportionate to the effective cost of the procedure. It is proposed that having used the LACOR’s model that the fee level for a new application should be £4000 and for a renewal application £2000 replacing the current fee structure of £4265 for a new application and £1602 for renewals and transfers. All first applications under this legislation will be treated as new applications.

1.7.3 Legal – the legal implications are dealt within the body of the report.

1.7.4 Equality Impact Needs Assessment – An equality impact needs assessment has been undertaken and has highlighted no negative impact arising from the introduction of this policy.

1.7.5 Community Safety – The introduction of a new licensing regime under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 gives the Council new powers to tackle any issues of concern to communities around sex establishments.

1.7.6 Human Rights – The committee in taking a decision needs to take account of the rights in Article 10 and Article 1 of the First Protocol when making a decision. However the human rights considerations do not prevent a decision being made in the wider public interest because a) a government minister has made the appropriate statement in accordance with the human rights legislation, b) weight accorded to

these rights is low level as supported by judicial comment, c) as long as any decision proportionately takes into account human rights of individuals and the public interest.

## 1.8 Relevant Documents

### 1.8.1 Appendices

1.8.2 Appendix A – Draft Maidstone policy and conditions  
Appendix B – Consultation Document  
Appendix C – Summary of Responses received

### 1.8.3 Background Documents

1.8.4 Home Office Guidance on Sexual Entertainment Venues