

North Tyneside Council Report to Cabinet Date: 13 February 2017

ITEM
Title: Review of North
Tyneside Council
Statement of
Licensing Policy
(Sex
Establishments)

Portfolio: Housing and Transport

Cabinet Member: Councillor John Harrison

Report from Service Area: Environment, Housing and Leisure

Responsible Officers: Phil Scott (Tel: 643 7295)
Head of Environment, Housing and Leisure

Wards affected: All

PART 1

1.1 Executive Summary:

This report seeks Cabinet's approval to adoption North Tyneside Council's Statement of Licensing Policy (Sex Establishments). The initial Policy was adopted in 2011.

1.2 Recommendation(s):

It is recommended that Cabinet

(a) Approve the adoption the North Tyneside Council Statement of Licensing Policy (Sex Establishments) as attached at **Appendix 1**.

1.3 Forward Plan:

This report was listed on the weekly version of the Forward Plan published on 19 December 2016.

1.4 Council plan and policy framework:

This report relates to the following priorities in the 2015-18 "Our North Tyneside" Plan:

Our Places will:

- Be great places to live, and attract others to visit or work here
- Provide a clean, green, healthy, attractive and safe environment

Our people will:

- Be healthy and well – with the information, skills and opportunities to maintain and improve their health, wellbeing and independence.

1.5 Information:

1.5.1 Background

North Tyneside Council's Statement of Licensing Policy (Sex Establishments) was adopted on 20 January 2011 following the formal adoption by the Authority of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982.

In 2010 the Local Government (Miscellaneous Provisions) Act 1982 (the '1982 Act') was amended to include a new category of sex establishment, namely a sexual entertainment venue. The Council adopted Schedule 3 of the 1982 Act in 2011 to enable the Authority to license sex entertainment venues as well as the existing categories of sex establishments, namely sex shops and sex cinemas.

Although there is no statutory requirement to have a policy concerning the licensing of sex establishments, it has been long established that it is good practice for Licensing Authorities to have a Policy that assists in the promotion of decision making and the promotion consistency in decision making. It also informs the licensing trade and the public of the approach of the Licensing Authority to such licensing in its area.

The existing policy includes a numerical limit on the number of sexual entertainment venues within a specified area of Whitley Bay, namely the area bordered by Whitley Road, Park Avenue, the Promenade and the Esplanade. That limit has been set as nil. That limit does not preclude an application for a licence being made within the specified area that would take the number of licences in the area above the set limit. However, in such a situation the presumption will be to refuse such an application and the applicant will have to make their case as to why the licence should be granted in any particular location contrary to the policy which has set the limit in that area as nil.

Since Schedule 3 was adopted by the Authority, there have been no applications received for a sexual entertainment venue licence. There is currently one licence issued in relation to a sex shop.

There are some statutory exceptions for the need for sexual entertainment to be licensed. For example if sexual entertainment takes place in a premises that has the benefit of a Premises Licence issued under the Licensing Act 2003 then on no more than 11 occasions in a 12 month period, no sexual entertainment licence is required by such premises.

1.5.2 Review of Policy

A draft Policy has been prepared and is attached at **Appendix 1**. The Policy has been updated to include references to local plans and data. The numerical limit of nil for the specified area of Whitley Bay has been retained for the purposes of the draft policy and consultees have been specifically asked to comment on this aspect of the Policy.

1.5.3 Consultation

Consultation took place over a period of eight weeks from 21 November 2016 to 14 January 2017. At the conclusion of this consultation nil responses were received. The consultation consisted of the draft policy being available on the North Tyneside Council website and copies being made available at local customer contact sites. Councillors were made aware that such a draft policy was being consulted on in addition to all persons listed in the Policy.

1.5.4 Fees

The fees are reviewed annually against any rise or reduction in cost of administering the licensing regime and consists of an application fee and a licence maintenance fee.

1.6 Decision Options:

The options available to the Cabinet for Housing and Environment are:

Option 1

Approve the the adoption the Statement of Licensing Policy (Sex Establishments) at **Appendix 1**

Option 2

Not approve the Statement of Licensing Policy (Sex Establishments)

Option 1 is the recommended option.

1.7 Reasons for Recommended option:

It is recommended that Cabinet agree to adopt the policy as attached at Appendix 1. This has been subject to an eight week consultation exercise and at the conclusion of the consultation period no views were expressed objecting to the draft policy or to the limit on the number of sexual entertainment venues for Whitley Bay remaining at nil. The existing Policy is 6 years old and needs to be reviewed to ensure that it remains up to date.

1.8 Appendices:

Appendix 1 – Draft Statement of Licensing Policy (Sex Establishments).

1.9 Contact Officers:

Joanne Lee, Public Protection Manager, Tel: (0191) 643 6901

Alan Burnett, Trading Standards and Licensing Group Leader, Tel: (0191) 643 6621

John Barton, Lawyer Tel (0191 6435354)

Catherine Lyons, Regulatory Services Manager, Tel: (0191) 643 7780

Alison Campbell, Financial Business Manager, Tel: (0191) 643 7038

1.10 Background Information:

The following background papers/information have been used in the compilation of this report and are available at the office of the author.

Schedule 3 Local Government (Miscellaneous Provisions) Act 1982

<http://www.legislation.gov.uk/ukpga/1982/30/schedule/3>

The existing Statement of Licensing Policy (Sex Establishments)

PART 2 – COMPLIANCE WITH PRINCIPLES OF DECISION MAKING

2.1 Finance and Other Resources:

A local authority is entitled to set fees locally at an appropriate level to cover the cost of administering the licensing regime.

2.2 Legal:

Section 27 of the Policing and Crime Act 2009 came into force on 6 April 2010. This amended Schedule 3 of the 1982 Act and created a new category of sex establishment, namely a sexual entertainment venue. This category added to the existing categories of sex establishment, namely, sex shops and sex cinemas.

Whereas the actual determination of an application for a Licence under the Local Government (Miscellaneous Provisions) Act 1982 is a Council function, the function of formulating and adopting a Licensing Policy in relation to this type of licensing is a Cabinet function because neither the Act nor the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 preclude Cabinet from approving such a Policy.

The Authority has the power under the 1982 Act to prescribe standard conditions that will apply to each type of licence. The prescription of standard conditions (and any amendment thereto) is a function of the Authority's Regulation and Review Committee as is the delegation of certain functions by the Committee to officers. A report will be taken to the Regulation and Review Committee as soon as possible after the adoption of the revised Policy, assuming of course that Cabinet approves the adoption of the Policy so that Regulation and Review Committee prescribes the standard conditions to be attached to each category of sex licence and make the necessary delegations to officers.

2.3 Consultation/Community Engagement:

An eight week consultation exercise has been concluded which included both internal and external consultees. The consultation included MP's, MEP's Police, Fire Authority, trade representatives and existing licence holders. Consultation has also taken place with members of the public via a draft policy being made available on the Council's website, libraries and Customer Contact Centres and Pub Watch.

2.4 Human Rights:

There are aspects of the administration of the legislation that may impact on the human rights of individuals residing in the Borough and licence holders. Article 8 of the European Convention of Human Rights entitles a person to the right to enjoy a private and family life.

Article 6 of the European Convention also entitles an individual to a fair hearing. Any individual appearing before the Regulation and Review Committee will be given an opportunity to express their views as provided by the Act.

Article 1 of the First Protocol entitles a person to the peaceful enjoyment of his possessions. A possession may include a licence or the goodwill that such a Licence would generate. However, balanced against that is the ability of the Authority to enforce such laws under the Act as is necessary to control the use of such property, including a licence.

2.5 Equalities and Diversity:

An Equality Impact Assessment is in place for the Statement of Licensing Policy (Sex Establishments).

2.6 Risk Management:

There are no risk management implications directly arising from this report. Risks associated with delivery of the Council's Public Protection function are monitored via the Technical Services Partnership risk arrangements included within the strategic partnership governance framework.

2.7 Crime and Disorder:

A copy of an application for the grant, renewal or transfer of a licence under Schedule 3 of the 1982 Act has to be forwarded to the Chief Officer of Police within 7 days of the application being made. The police will therefore have the opportunity to scrutinise each application and to object if they have concerns from a crime and disorder point of view within 28 days of the application being made. All objections received by the Council must be considered before determining an application.

2.8 Environment and Sustainability:

There are no direct implications for environment and sustainability arising from this report.

PART 3 – SIGN OFF

- Deputy Chief Executive
- Head(s) of Service
- Mayor/Cabinet Member(s)
- Chief Finance Officer
- Monitoring Officer
- Head of Corporate Strategy