

Agenda Item No: 7

Report To: **REGULATORY COMMITTEE**

Date of Meeting: 16 January 2024

Report Title: **Sex Shops, Sex Cinemas, and Sexual Entertainments Venue Policy Review**

Report Author: Trevor Ford
Job Title: Environmental Protection & Licensing Team Leader

Portfolio Holder: Cllr. Liz Wright
Portfolio Holder for: Communities and Health



Summary: The purpose of this report is to present a review of the 'Sex Shops, Sex Cinemas, and Sexual Entertainment Venues Policy'

Key Decision: NO

Significantly Affected Wards: All

Recommendations: **The Committee is recommended to:-**

- **approve an revised 'Sex Shops, Sex Cinemas, and Sexual Entertainments Venue Policy'**

Policy Overview: The determination of sex shop establishments, sex cinemas, and sexual entertainment venue applications is a statutory duty of the Council.

Although there is no legal requirement for a policy with respects to this licensing subject, such a policy guides members of the public, applicants, elected members and officers on matters relating to sex establishments, sex cinemas and sex shops

The existing policy became due review as of 12 January 2022

This report recommends the approval of a revised policy.

Financial Implications: None

Legal Implications: Although there is no statutory duty to have a policy for licensing of sex shops, sex cinemas, and sexual entertainment venues, the adoption of a policy aids to guide would be applicants, businesses, officers, members, and the public on how the authority will consider and deal with such

Text agreed by Principle Litigator on 28th December 2023

matters. As such it appears pragmatic to maintain such a policy, and from time to time review the policy when there is change to guidance, legislation or case law.

Equalities Impact Assessment:	See Attached
Data Protection Impact Assessment:	N/A
Risk Assessment (Risk Appetite Statement):	Judicial review is a risk if the policy strays beyond the requirements of the act, or restricts legal activities without due and appropriate cause.
Sustainability Implications:	None
Other Material Implications:	None
Exempt from Publication:	NO
Background Papers:	Sex Shops, Sex Cinemas, and Sexual Entertainment Venues Policy available at; https://www.ashford.gov.uk/media/cjdmzcs/sev-policy-2017-2022-final.pdf
Contact:	trevor.ford@ashford.gov.uk – Tel: (01233) 330 397

Report Title: Sex Shops, Sex Cinemas, and Sexual Entertainments Venue Policy review

Introduction and Background

1. The purpose of this report is to present to Committee the review of the current Sex Shops, Sex Cinemas, and Sexual Entertainments Venue Policy.
2. The Local Government (Miscellaneous Provisions) Act 1982 schedule 3 governs the control of sex establishments (sex shops, sex cinemas, and sex establishments).
3. On the 17th February 2011 the council adopted provisions of Schedule 3 of the Act, and adopted the council's *Sex Shops, Sex Cinemas, and Sexual Entertainment Venues Licensing Policy 2011*.
4. Although there is no legal requirement for a policy with respects to this subject, such a policy guides members of the public, applicants, elected members and officers on matters relating to sex establishments, sex cinemas and sex shops.
5. There are currently no licensed premises within the borough.
6. There are a number of mandatory grounds for refusal of such licenses. A license **must** not be granted:
 - to a person under the age of 18;
 - to a person who is for the time being disqualified due to the person having had a previous licence revoked in the area of the appropriate authority within the last 12 months;
 - to a person, other than a body corporate, who is not resident in an European Economic Area (EEA) State or was not so resident throughout the period of six months immediately preceding the date when the application was made; or
 - to a body corporate which is not incorporated in an EEA State; or
 - to a person who has, within a period of 12 months immediately preceding the date when the application was made, been refused the grant or renewal of a licence for the premises, vehicle, vessel or stall in respect of which the application is made, unless the refusal has been reversed on appeal.

In addition a licence **may** be refused where:

- the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason;
- if the licence were to be granted, renewed or transferred the business to which it relates would be managed by or carried on for the benefit of a

person, other than the applicant, who would be refused the grant, renewal or transfer of such a licence if he made the application himself;

- the number of sex establishments, or of sex establishments of a particular kind, in the relevant locality at the time the application is determined is equal to or exceeds the number which the authority consider is appropriate for that locality;
 - that the grant or renewal of the licence would be inappropriate, having regard to the:
 - i. character of the relevant locality; or
 - ii. use to which any premises in the vicinity are put; or to the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.
7. The policy sets out how the council will approach the making of such decisions, indicating what the council considers to be important, what control measures it will be looking for, and so forth.
8. It is vital that the policy does not turn into a rule that is applied inflexibly and fetters the exercise of discretion. There must be a willingness to consider individual applications on their particular merits.
9. A policy relating to the decision-making stage not only guides the decision-maker but also services to inform an applicant about what they should consider in preparing their application.

Proposal

10. As a result of no significant legislative changes since the last revision, a lack of any particular new guidance, and a lack of feedback from the consultation exercise it is recommended that the Committee approve to council the republishing of the Policy for 2024 onwards.
11. Administrative amendments, such as updating the relevant Committee and Sub-Committee names, and date etc. will be made to the republished policy document to ensure that the policy remains accurate, however these changes will not affect the policy elements of this document.
12. If there is relevant new guidance, or legislative changes, then the policy will be subject to review prior to the expiry of the five-year period, or shall otherwise be subject to review after five years.

Equalities Impact Assessment

13. The policy will affect all persons involved or affected in licensable activity in the Borough. Direct recipients of the policy include holders of premises licences, members of licensing sub-committee, authorities e.g. Police, Trading Standards, Kent Fire & Rescue Service, etc. Indirect recipients of the policy are all of the Borough's businesses, residents of the borough and those who visit to use the above premises.

14. An equalities impact assessment is attached as *Appendix A*

Consultation Planned or Undertaken

15. An open consultation seeking any views on the review, and potential revision, of this policy was published in April 2023 and closed on the 31 July 2023.
16. This consultation was listed both under the relevant licensing webpages, and also the council's consultation portal.
17. The following persons/organisations were also directly invited to submit comments;
 - Kent Police
 - Kent Fire & Rescue Service
 - Kent County Council Trading Standards
 - Kent County Council Social Services
 - Members
 - Ashford Borough Council Planning Authority
 - Ashford Borough Council Legal Services
 - Ashford Borough Council Economic Development
 - Tenterden Town Council
18. It should be noted, that with no current licensees within the borough, and no known trade organisations, no direct consultation could be undertaken with parties representing the local trade.
19. No responses were received with reference to the consultation.

Other Options Considered

20. The requirement to implement and enforce the Act is an adoptive duty. Alternate options to this policy include variations on the theme, or not having a policy. There is no statutory duty to have a written policy for this subject.

Reasons for Supporting Option Recommended

21. The approach of periodically reviewing the policy, and updating where there are relevant changes in the law or good practice is recommended to ensure that the policy remains up to date, and effectively can be usefully applied by the council, officers, applicants, and the general public.

Next Steps in Process

22. One adopted the republished policy will be made available through the council's website.

23. The policy will be subject to review after five years, along with any periodic review brought about by changes in council approach, or change to relevant legislation

Conclusion

24. In summary a licensing policy would be unlawful if it gave the impression that it could dictate the contents of an application and give the impression that the Council would assess and exercise substantive discretionary powers in relation to all applications, unless there are relevant representations and the decision taking function is permitted under the authority of the Act.
25. It is recommended that the Committee recommend to council the republishing of the existing policy for the period of 2024 onwards

Portfolio Holder's Views

26. 'As Portfolio Holder I am satisfied that, in the light of due consultation having been carried out, to continue to adopt the existing policy on these issues is a proper and appropriate response.'

Councillor Liz Wright
Portfolio Holder for Communities and Health

Contact and Email

27. Trevor Ford
Environmental Protection and Licensing Team Leader
(01233) 330 397
trevor.ford@ashford.gov.uk

Appendix A: Equalities Impact Assessment