

BABERGH DISTRICT COUNCIL

FROM: HEAD OF NATURAL & BUILT ENVIRONMENT

REPORT NUMBER: K180

TO: LICENSING AND APPEALS COMMITTEE

DATE OF MEETING: 3 February 2011

POLICING AND CRIME ACT 2009 & LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982: 'SEXUAL ENTERTAINMENT VENUE' (SEV) LICENSING

1. PURPOSE OF REPORT

- 1.1 To seek approval for the delegation of the Council's statutory functions in respect of sexual entertainment venues as introduced by Section 27 of the Policing Act 2009, to the Council's Licensing and Appeals and Strategy Committees, with any necessary hearings of individual applications being heard by a Licensing Sub-Committee.

2. RECOMMENDATIONS TO COUNCIL

- 2.1 That the powers contained in Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, as amended by Section 27 of the Policing and Crime Act 2009 be adopted.
- 2.2 That the discharge of all functions under the provisions in recommendation 2.1, save for policy setting, be delegated to the Council's Licensing and Appeals Committee, with policy setting to be delegated to the Council's Strategy Committee via recommendation of the Council's Licensing and Appeals Committee.
- 2.3 That Part 3 of the Constitution be updated accordingly.

3. FINANCIAL IMPLICATIONS

- 3.1 No direct financial implications, other than the resource required to implement a suitable scheme. Whilst this is an adoptive function, the existing arrangements solely under the Licensing Act 2003 are inadequate to control venues of this nature. If the Council does not adopt these provisions then it may be challenged and the interests of local communities may not be adequately safeguarded. The function provides for full cost recovery through the setting of discretionary (and reasonable) licence fees.
- 3.2 In view of consistency, resource and merger considerations Babergh District Council has worked, and continues to work, in partnership with Mid Suffolk DC in respect of this matter, and as part of the wider Suffolk Licensing Officer's Group.

4. **RISK MANAGEMENT**

Risk Description	Likelihood	Seriousness or Impact	Mitigation Measures
Failure to adopt these controlling provisions may result in challenge and fail to serve the interests of local communities. Failure to adopt a scheme by 6 th April 2011 may result in further (unnecessary) resource and cost implication for the Council.	Significant	Critical	Adopt the relevant provisions and create a local scheme, and policy, based on the legislative requirements and guidance issued by the Home Office (March 2010).

5. **EQUALITY AND DIVERSITY IMPACT**

5.1 The adoption of the powers does not of itself cause detrimental impact to the equalities groups, but the provisions of a scheme might and equality impact will therefore need to be explored before a scheme can be approved. The provisions will enable individual applications to be refused if there is any unacceptable detrimental impact on equality. The controls available under the scheme should enable procedures, policy and controlling conditions to assist with mitigating against any risk of inequality (for example requiring operators to have a policy on the safety and welfare of performers, or refusing applications in sensitive localities).

6. **KEY INFORMATION**

6.1 Section 27 of the 2009 Act gives Local Authorities powers to exercise greater control of lap dancing clubs and similar venues and wider grounds for consideration than under the Licensing Act 2003. Local Authorities can now regulate such venues as sexual entertainment venues under Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 - the same legislation that applies to sex shops and sex cinemas.

6.2 Adopting Schedule 3 will then allow the powers to be implemented through the licensing scheme, enabling the Authority to progress to implementation the procedural and policy work already being developed in partnership with Suffolk Constabulary and other Suffolk Licensing Authorities including Mid Suffolk.

6.3 The new scheme will allow the Authority greater control and discretion, wider consultation and fuller consideration for granting, refusing and regulating this type of venue. The adoptive legislation not only provides for mandatory grounds of refusal but also broad discretionary grounds such as suitability, business considerations, appropriate numbers or character/nature/uses of locality and the condition of the premises itself. The scheme also allows for both standardised and specifically tailored conditions to apply to this type of licensed venue. The application process can reasonably require more information than a Licensing Act 2003 application – for example concerning the applicant, management and supervision, layout and style of the operation, welfare of performers, rules controlling customer and performer conduct etc.

- 6.4 Functions under Schedule 3 of the 1982 Act are the responsibility of Full Council, which may arrange for those functions, including policy and fee setting, to be discharged by a committee or sub-committee by virtue of section 101 of the Local Government Act 1972. Whilst this report recommends a delegation to the Licensing and Appeals Committee established under the Licensing Act 2003, or sub-committee thereof, the members serving on that committee would not be acting as the Licensing Committee under the 2003 Act and would instead be exercising their function under Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982.
- 6.5 It is not mandatory for local authorities to adopt the new powers. However, if authorities wish to do so, then they have until 6th April 2011. If the Council fails to adopt the amended Schedule 3 within that timescale, then it must carry out further consultation in the Local Authority area over whether to adopt the provisions or not. This would carry associated resource and risk implications, and local communities may interpret this as the Council encouraging such venues when in fact the adoption is to afford greater control.
- 6.6 Section 2 of the 1982 Act sets out the adoption procedure to be followed. Even if a Local Authority has already adopted Schedule 3 for licensing of sex shops and sex cinemas (which Babergh has - 12 July 1983 effective from 01 September 1983 (Council minute 14(b))), a further resolution is necessary before the provisions introduced by Section 27 will have effect in the authority's area. The Home Office has published guidance on these matters in March 2010.
- 6.7 Whilst not a mandatory requirement, it is good practice for the Council to develop a policy on the licensing of sexual entertainment venues in its own area. Such a policy should emphasise that whilst each application will be considered individually and on its own merits the policy may advise on factors such as:
- (a) appropriate/inappropriate locations (i.e. proximity to schools, places of worship etc) – generally or more defined streets/locations;
 - (b) quotas can be set by locality or generally, but may be best avoided as challengeable/fettering discretion;
 - (c) operating requirements/expectations; and
 - (d) fees.

Fees must be set at a 'reasonable' and cost recovery level (including any hearing process). Most Local Authorities in Suffolk will charge between £2000 to £3000 for an application. EU Services Directive considerations also apply to fee-setting and the Director of Finance shall also be involved with any analysis of cost implications for fee setting purposes.

- 6.8 For clarification, premises such as pubs and members clubs that may host the occasional gentlemen's evening/ladies night etc involving a performance of full or partial nudity, may be able to operate without any 1982 Act authorisation. This is subject to them being authorised for dancing activities under the Licensing Act 2003 and where this type of sexual entertainment is provided on no more than 11 occasions within a 12 month period, with an interval of one month between performances and each event to not last longer than 24 hours.

6.9 Whilst Babergh may not at the present time have any sexual entertainment venues they do operate in neighbouring districts/boroughs – where they have had to be inadequately licensed as ‘regulated entertainment’ (i.e. music and dancing) under the Licensing Act 2003. Babergh does receive the occasional enquiry from operators about pole-dancing/lap-dancing activity and there are venues that already provide infrequent striptease and similar activities for stag or hen parties. It is not far-fetched to suggest that failure to adopt the provisions allowing greater control could result in Babergh or any new merged Council area becoming targeted by sex establishment venue operators preferring to bypass greater controls elsewhere.

7. **APPENDICES**

None.

8. **BACKGROUND PAPERS REFERRED TO**

None.

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