
**THE LICENSING OF SEXUAL ENTERTAINMENT VENUES
IN THE BOROUGH OF DARLINGTON**

Responsible Cabinet Member - Councillor Bill Dixon
Neighbourhood Services Portfolio

Responsible Director - Paul Wildsmith, Director of Corporate Services

SUMMARY REPORT

Purpose of the Report

1. The purpose of this report is to invite Members to adopt new legislative powers in respect of the licensing of Sexual Entertainment Venues (SEVs), and approve proposed procedures for licensing such applications.

Summary

2. Prior to the inception of the Licensing Act 2003 in November 2005, entertainment of a sexual nature was regulated by local authorities through the use of conditions on a Public Entertainment Licence (PEL). Since that date there has been no automatic provision to attach conditions and entertainment such as lap dancing, pole dancing and strip tease etc has largely been unregulated. The introduction of new legislation gives local authorities the opportunity to once again control the provision of such entertainment by virtue of the issue of a Sexual Entertainment Venue Licence. This will be in addition to the premises licence required to sell or supply alcohol and provide other regulated entertainment and will provide the opportunity for conditions to be placed on SEVs to address such issues as the proximity of the performer to the audience, the type of entertainment permissible, restrictions on advertising etc. Such measures are designed to protect children and non users of such entertainment and also to protect performers. To be able to offer licences for SEVs however, the Council will have to adopt the new legislation and this report proposes that Darlington Borough Council does adopt the legislation.
3. In addition to the ability to licence such premises, local authorities also have an option on whether or not to have a licensing policy in respect of such licences and this can include restrictions on the number of licences, considerations about locality and other relevant issues. Each application must however still be dealt with on the basis of its individual merits. Darlington Borough Council currently licences sex shops on the basis of each application on its individual merits rather than on the basis of a licensing policy and this has proven to be successful. This report proposes that the same approach be taken in respect of the licensing of Sexual Entertainment Venues rather than developing a licensing policy given that a blanket approach cannot be adopted in respect of any policy. This report does, however, invite Members to approve a standard set of conditions to be placed on the grant of a SEV licence and also some guidance for applicants.

4. Should the new legislation be adopted, fees will have to be set in respect of such venues. Once again, the approach taken with sex shops is proposed with an identical application fee and renewal fee for most Sex Entertainment Venues and a reduced fee for working men's clubs where entertainment is generally limited to strip tease for members and bona fide guests.
5. A decision is required by Council in respect of the adoption of the legislation and associated matters but the general consideration of individual applications is best dealt with by Members who have in depth training and knowledge in respect of such matters. This report therefore proposes that the functions of the new legislation be delegated to the Council's Licensing Committee who will in turn be invited to delegate non contentious applications to officers.
6. This report was presented to Members of the Council's Licensing Committee at their meeting on 7 September 2010. Members required that the report be referred to Council with their support.

Recommendation

7. It is recommended that:
 - (a) In relation to the regulation of sexual entertainment, the Council adopt Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, as amended by Section 27 of the Policing and Crime Act 2009, as authorised by Section 2 of The 1982 Act in accordance with the procedures set out in Appendix 1 to this report. Such adoption to take effect from 01 January 2011.
 - (b) Each application should be decided on its own merits rather than within the framework of a licensing policy.
 - (c) The guidance and set of standard conditions detailed in Appendix 2 to this report be approved.
 - (d) The fees detailed in paragraphs 33 and 34 of this report be approved.
 - (e) The functions relating to the licensing of Sexual Entertainment Venues be delegated to the Council's Licensing Committee on the basis that each application be decided on its own merits. The Council's Constitution be amended to reflect this change.

Reasons

8. The recommendations are put forward to ensure that proper controls are put in place to regulate the provision of sexual entertainment in the borough of Darlington.

Paul Wildsmith
Director of Corporate Services

Background Papers

The Local Government (Miscellaneous Provisions) Act 1982

The Policing and Crime Act 2009

The Licensing Act 2003

The Home Office Guidance – Sexual Entertainment Venues March 2010

Appendices

- 1 Procedure for adopting this legislation
- 2 Proposed Guidance and Standard Conditions

| | |
|----------------------------------|---|
| S17 Crime and Disorder | This report has direct implications for crime and disorder |
| Health and Wellbeing | There are no issues which this report needs to address |
| Sustainability | There are no issues which this report needs to address |
| Diversity | There are no issues which this report needs to address |
| Wards Affected | The proposals could potentially affect all Ward dependent on where such entertainment is offered. |
| Groups Affected | The proposals could potentially affect all groups |
| Budget and Policy Framework | This report represents a change to Policy and Conditions |
| Key Decision | The proposals do represent a key decision |
| Urgent Decision | This is not an urgent decision |
| One Darlington: Perfectly Placed | The proposals contribute to the safer theme of the Sustainable community Strategy |

MAIN REPORT

Background

9. Local Authorities currently licence sex establishments (i.e. sex shops and sex cinemas) in accordance with the provisions of Section 3 of the Local Government (Miscellaneous Provisions) Act 1982. The provisions of this legislation were adopted by Darlington Council on 25 July 1983 (Minute E48, Jul/83) along with specific standard conditions to regulate such premises. The Council did not however develop a policy in respect of limiting the number of sex establishments in a locality. Currently Darlington Council licences three sex shops. No applications have been received in respect of sex cinemas.
10. From 6 April 2010, Section 27 of the Policing and Crime Act 2009 has amended Section 3 of The 1982 Act by introducing a new category of sex establishment, namely a “sexual entertainment venue”. This empowers Local Authorities to properly regulate lap dancing venues and similar establishments. Although there have been such premises in Darlington in the past at the time of writing this report no such premises exist.

Information and Analysis

11. Premises which at present offer lap dancing, pole dancing, strip tease and similar entertainment currently fall within the remit of the Licensing Act 2003 (The 2003 Act) under the provision of regulated entertainment (i.e. performance of dance or similar). This simply requires the premises to have a premise licence. Prior to the inception of The 2003 Act such entertainment was covered by the provisions of Public Entertainment Licences (PELs) and it was commonplace for stringent conditions to be placed onto the PEL to control entertainment of a sexual nature. The 2003 Act, however, did not make special provision for such entertainment and also did not permit licensing authorities to place conditions on licences other than those offered by the applicant or required due to the receipt of representations from Responsible Authorities. Such conditions also had to relate to one or more of the 4 licensing objectives, namely:
 - (a) The prevention of crime and disorder
 - (b) Public safety
 - (c) The prevention of public nuisance
 - (d) The protection of children from harm
12. In effect the powers of the licensing authorities have been very limited in respect of entertainment of a sexual nature. Although not currently the case in Darlington, many other council areas have found that such entertainment has increased, with both the council and local residents finding it difficult to make representations about such venues.
13. Under the new legislation each Local Authority can decide whether or not to adopt the new legislative provisions. If the provisions are adopted the local authority will be able to impose conditions on the grant of licences controlling how such premises operate, including opening hours, means of advertising, etc. If a resolution is not made to adopt such control measures will not be permitted.
14. If a resolution has not been made to adopt the new provisions before 06 April 2011 the local authority will, by statute, be obliged to consult local residents and businesses on whether the Council should make such a resolution. The purpose of this is to ensure that local people can express their views about the choice not to adopt such a resolution.

15. Local Authorities also have the options of either developing a licensing policy in respect of the licensing of such venues or dealing with each case on its merits.

Meaning of Sexual Entertainment Venue/Relevant Entertainment

16. In the amendment to Schedule 3 of the 1982 Act a sexual entertainment venue is defined as: “any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer”. It does not include a private dwelling to which the public are not admitted.

17. “Relevant entertainment” is defined as “any live performance or live display of nudity which is of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of an audience (whether by verbal or other means)”. An audience can consist of just one person, e.g. lap dancing or similar, where entertainment takes place in a private booth. While the local authority can decide what should be included as relevant entertainment, the Home Office guidance suggests that it will include the following:

- (a) Lap dancing
- (b) Pole dancing
- (c) Table dancing
- (d) Strip shows
- (e) Peep shows
- (f) Live sex shows

18. The legislation defines that the display of nudity will mean, in the case of a woman, exposure of her nipples, pubic area, genitals or anus, and in the case of a man, exposure of his pubic area, genitals or anus. The display of nudity alone does not mean that a sex entertainment venue licence will automatically be required. Performances including nudity as part of a drama or dance in a theatre may be unlikely to be provided solely or principally for the purpose of sexually stimulating the audience.

19. A venue will be exempt from the requirement to obtain a SEV licence if entertainment of a sexual nature is provided on no more than 11 occasions in any 12 month period; if such occasions last less than 24 hours and are at least one month apart.

Whether or not to have a Licensing Policy

20. Unlike the requirements of the Licensing Act 2003 and the Gambling Act 2005 there is no requirement in law for a local authority to produce a licensing policy in respect of sex entertainment venues. The Home Office guidance states that local authorities can produce different policies or a separate set of criteria for different types of sex establishments. However although a local authority may have a policy, for example to limit the number of such venues in a particular locality, it cannot fetter its discretion in respect of each individual application. It is proposed that Members approve guidance and standard conditions in respect of such applications as a direct alternative to a licensing policy. This will mean that the licensing of sex entertainment venues will be decided on the same principle as the current licensing of sex shops and will remove the need for constant updating of any policy. This proposal has been discussed with a leading barrister who specialises in the licensing of sex establishments who has confirmed the legitimacy of such proposal.

Making an Application

21. Subject to the adoption of the new legislative provisions, premises which are currently offering sexual entertainment will need to make an application for a sexual entertainment venue (SEV) licence. No grandfather rights will be conferred on such premises. There will be a transitional period of 12 months for existing premises to apply for a SEV licence and any such premises in respect of which an application is not made in this time frame will face closure.
22. Both existing and new applicants will be required to make an application and also place a public notice of application both at their premises and in a local newspaper. This will prompt a statutory consultation period during which local residents and businesses can make written objections. In addition a copy of the application must be sent to the Chief Officer of Police. Any person may object to an application but such objections cannot be on moral grounds.

Refusing an Application

23. It is proposed that the licensing of SEVs is delegated to the Council's Licensing Committee which already has delegated powers in respect of the licensing of sex establishments. This is not the committee set up to deal with the Licensing Act 2003 but rather the Committee that deals with general licensing matters e.g. taxi licensing, street trading etc. In the event of objections to an application this will then be dealt with on its own merits at a hearing by the Licensing Committee. There are however grounds set in statute for the refusal of an application as follows:
 - (a) If the applicant is under the age of 18 years.
 - (b) If the applicant has had a previous licence revoked in the local authority district within the last 12 months.
 - (c) If the applicant is not resident in UK or was not resident in the 6 months immediately preceding the date of application.
 - (d) If applicant is a body corporate not incorporated in the UK.
 - (e) If applicant has been refused a licence for the same premises in 12 months immediately preceding the application.
24. A licence may also be refused if:
 - (a) The applicant is unsuitable to hold the licence because he has been convicted of an offence or for any other reason.
 - (b) The business would be managed or carried on for the benefit of a person other than the applicant who would be refused a licence if he made the application himself.
 - (c) The grant would be inappropriate having regard to the locality of the premises.
25. The Licensing Committee will be invited to approve a scheme of delegation to Officers in respect of non contested applications and refusals on the statutory grounds detailed in paragraph 19 above.

Offences

26. There are a range of offences in respect of the new legislative provisions. These include:
 - (a) Knowingly permitting or using a premises as a SEV without a licence.
 - (b) Employing a person who is disqualified from holding a licence.

- (c) Knowingly contravening or permitting the contravention of the terms, conditions or restrictions of a licence.
- (d) Employing someone under 18 years of age in the SEV or permitting someone under 18 years of age onto the premises.
- (e) Failing to display a copy of the licence and conditions in the place specified in the licence.

Transitional Arrangements and the Appointed Days

27. A 12 month transitional period commences from the date that the new legislative provisions are adopted. This will be known as the 1st appointed day. It is proposed that this will be 1 January 2011. Six months later ie 1 July 2011 will be the 2nd appointed day. This will be followed by the end of the transitional period on the 3rd appointed ie 1 January 2012.
28. Existing operators who have a premise licence in accordance with the 2003 Act and offer sexual entertainment or are undertaking work to use their venue for sexual entertainment will be permitted to continue to operate until the 3rd appointed day or the date of determination of their application (including any appeal) whichever is later. New applicants will not be able to offer sexual entertainment after the first appointed day until they have been granted such a licence.
29. Applications may be made at any time after the 1st appointed day. All applications made before the 2nd appointed day must be considered together and not on a first come first served basis. Each case must be decided on its own merits. Such consideration cannot take place until after the 2nd appointed day. New applications which are granted will take effect immediately. Existing applications which are granted will take effect from the 3rd appointed day, however existing operators will be able to continue their business until the 3rd appointed day.
30. Applications made after the 2nd appointed day must be considered only after those applications made before the 2nd appointed day are determined. If granted they too will take effect immediately. The duration of all SEV licences is a maximum of one year.

Licence Conditions

31. Conditions in respect of entertainment of a sexual nature that exist on premises licences granted under The 2003 Act shall be replaced by conditions on the SEV licence.
32. A pool of standard conditions and guidance notes has been produced at Appendix 1 to this report. When determining an application Members will be able to place any or all of these conditions on a SEV subject to them being relevant to the type of premises and also that it is necessary and proportionate to do so. In addition Members may add further conditions when they believe it is necessary to do so.

Fees

33. It is proposed that the fee structure currently in place for sex shops shall apply to most Sex Entertainment Venues. This means that the initial application fee shall be £3600 and subsequent applications to renew or transfer will be £1150 (these will however be reviewed from 1 April 2011 when the revised fee shall take effect). It is proposed that an application to vary a SEV will attract the same fee as an initial application fee.

34. Some Premises that currently hold only a Club Premises Certificates i.e. working men's clubs could also be required to obtain a SEV licence if performances of strip tease are offered more regularly than detailed in paragraph 19. Given that such clubs limit the provision of entertainment to members and bona fide guests it is proposed that a lower initial application fee of £750 is levied for working men's clubs and that this amount shall also apply to any subsequent application to renew.
35. If the fee set for renewal does not reflect the amount of work required by Officers a further proposal will be made at the annual revision of all licensing fees.

Additional Information

36. The information contained within this report was presented to Members of the Council's Licensing Committee on Tuesday 7 September 2010. The Committee determined that the recommendations be referred to Council with their support.