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Meeting	Licensing Committee
Date	11 July 2012
<b>Subject</b>	<b>Sex Entertainment Venue Licensing</b>
Report of	Interim Director of Environment, Planning and Regeneration
Summary	Section 27 of the Policing and Crime Act 2009 introduce a licensing regime for “Sexual Entertainment Venues”. The authority must consult with local residents and business as to whether to adopt this provision. This is a report on this new regime and the consultation that is needed.

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Officer Contributors	Emma Phasey, Trading Standards and Licensing Manger
Status (public or exempt)	Public
Wards Affected	All
Key Decision	N/A
Reason for urgency / exemption from call-in	N/A
Function of	Council
Enclosures	Appendix 1 – proposed consultation document
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## **1. RECOMMENDATIONS**

- 1.1 That the Interim Director of Environment Planning and Regeneration be instructed to consult with local people in relation adoption of section 27 of the Policing and Crime Act 2009**

## **2. RELEVANT PREVIOUS DECISIONS**

- 2.1 Decision by council on to move the sex establishment functions to the Licensing Committee

## **3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS**

- 3.1 The regulation of sex entertainment venues is important in relation to the prevention of crime and disorder, public nuisance, protecting the vulnerable and public safety, these contribute to the corporate priority of 'A Successful London Suburb' as they are meeting the strategic objective to "ensure that our town centres are vibrant places where business can thrive" thereby helping ensure that the Borough is a prosperous place where people want to live and ensuring it remains clean and safe.
- 3.2 The policy will support objectives contained within the Local Area Agreement and the Sustainable Community Strategy

## **4. RISK MANAGEMENT ISSUES**

- 4.1 Paragraph 2.17 of the Home Office Guidance on Sexual Entertainment Venues (March 2010) states:

*"2.17 If a local authority has not made a resolution to adopt the provisions introduced by section 27 within one year of it coming into force it must, as soon as is reasonably practicable, consult local people about whether they should make such a resolution"*

The London Borough of Barnet has not yet made a resolution therefore it is important we consult in relation to this as soon as possible.

## **5. EQUALITIES AND DIVERSITY ISSUES**

- 5.1 When considering applications and representations, only issues provided for in the Local Government (Miscellaneous Provisions) Act 1982 in addition to the authorities policy will be taken into account. This will ensure a consistent approach is adopted. Every application under the terms of the policy will be considered on its own merits regardless of the race, colour, nationality, ethnic origin, sex, marital status, disability or age of the individuals involved.

## **6. USE OF RESOURCES IMPLICATIONS (Finance, Procurement, Performance & Value for Money, Staffing, IT, Property, Sustainability)**

- 6.1 Lap dancing venues are currently licensed under the provisions of the Licensing Act 2003 and as such fees are set by statute. If the Council adopts the provisions to licence Sexual entertainment venues fees will be set by the

Council having regard to the cost of implementation, administration and enforcement of the legal requirements. The fee will be set by Council as part of the annual fees setting process.

## **7. LEGAL ISSUES**

- 7.1 This Authority has adopted the provision of Part II and Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (Licensing of sex shops and sex cinemas)
- 7.2 Section 27 of the Policing and Crime Act 2009 makes amendments to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 and the Council should now consider adopting the amendments to Schedule 3 of that Act.
- 7.3 Section 2 of Part II of the 1982 Act provides for the adoption of the provisions contained in schedule 3, which allows the Council to control, by way of a licensing regime, sex establishments in their area.
- 7.4 Where a local Authority does not make a resolution under section 2 within the period of 1 year beginning with the coming into force of the legislation the Local Authority must, as soon as is reasonably practicable, consult local people about whether the local authority should make such a resolution. If the Local Authority does not make a resolution to adopt the new provisions then sexual entertainment venues would be able to operate without the requirement for any kind of Sexual Entertainment Licence.

## **8. CONSTITUTIONAL POWERS (Relevant section from the Constitution, Key/Non-Key Decision)**

- 8.1 Constitution, Part 3 – Responsibility for Functions, Section 2 Responsibility for Council Functions.

## **9. BACKGROUND INFORMATION**

- 9.1 The increase nationally in the number of lap dancing clubs since the implementation of the Licensing Act 2003 has become a concern for many local communities. Under this licensing regime any representations made against premises licence applications for venues providing lap dancing and similar entertainment can only be based on the four licensing objectives, namely:

- The prevention of crime and disorder;
- Public safety;
- The prevention of public nuisance
- The protection of children from harm.

As a result, licensing authorities can not consider any objections made by local people and businesses that are based on matters outside the scope of the four objectives noted above, for example, such as whether a lap dancing club would be appropriate given the character and locality of the area in which it is proposed to be situated.

- 9.2 Sex shops, in contrast, are licensed under the Local Government (Miscellaneous Provisions) Act 1982. This regime gives the Licensing

Authority a wider discretion in determining whether to grant or refuse licences (including the statutory grounds for refusal), a power to set a limit on the number of premises that may be suitable for a particular locality, greater flexibility on applying licence conditions and the ability to accept representations from a wider scope of the community. Sex shop licences are only valid for up to a year at a time, meaning there is scope for regular review

- 9.3 Currently there are no sex shops or sex cinemas in the London Borough of Barnet and there have not had any application for premises licences for venues to provide lap dancing or similar entertainment
- 9.4 The Local Government (Miscellaneous Provisions) Act 1982 was amended through the police and crime act 2009 so as to create a new category of “sex establishment venue” (SEV) licence that would include lap table and pole dancing. This allowed local authorities to have more powers to control the number and location of lap dancing clubs and similar venues in their area. These powers are not mandatory and will only apply where they are adopted by local authorities. Where adopted, these provisions will allow local authorities to refuse an application on potentially wider grounds than is permitted under the 2003 Act and will give local people a greater say over the regulation of lap dancing clubs and similar venues in their area
- 9.5 Section 27 of the Policing and Crime Act came into effect on 6<sup>th</sup> April 2010. Following this date Local Authorities had 1 year to resolve to adopt Schedule 3 to the 1982 Act as amended by the 2009 Act so that it has effect in their area. Where a local Authority does not make a resolution within the period of 1 year the Local Authority must, as soon as is reasonably practicable, consult local people about whether the local authority should make such a resolution.
- 9.6 Local authorities may now resolve to adopt Schedule 3 to the 1982 Act as amended by the 2009 Act so that it has effect in their area. Although the London Borough of Barnet has already adopted Schedule 3 to the 1982 Act for the licensing of sex shops and sex cinemas, a further resolution is necessary before the provisions introduced by Section 27 Policing and Crime Act 2009 will have effect in this area.
- 9.7 In summary the amendments to Schedule 3 to the 1982 Act will, in particular:
  - allow local people to oppose an application for a Sex Establishment licence if they have legitimate concerns that a Sexual Entertainment Venue (SEV) would be inappropriate given the character of an area, for example, if the area was primarily residential.
  - require licences to be renewed at least annually, at which point local people will have the opportunity to raise objections (if any) with their local authority.
  - allow a local authority to reject a licence application if they believe that to grant a licence for a SEV (including a lap dancing club) would be inappropriate given the character of a particular area.
  - allow a local authority to set a limit on the number of SEVs that they think is appropriate for a particular area.
  - allow a local authority to impose a wider range of conditions or to refuse an application on wider grounds than they are currently able to under the Licensing Act 2003.

- 9.8 However, although the legislation gives more control on the granting and refusing of a licence it is very important to note that simply by adopting Section 27, every premises within the borough will be granted the automatic right to provide 'relevant entertainment' for up to 24 hours, on up to 11 separate occasions a year without the need for any licence or authorisation under the Local Government (Miscellaneous Provisions) Act 1982. Premises would however require an authorisation under the Licensing Act 2003.
- 9.9 'Relevant entertainment' is:  
"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).*"
- 9.10 Unlike the Licensing Act 2003, there is no prescribed application procedure for sex establishments and sex entertainment venues other than advertising the application in a local newspaper, copying the application to the Chief Officer of police within 7 days, and displaying a site notice for 21 days from submitting the application to the council.
- 9.11 Objections may be accepted within 28 days on relevant grounds (purely moral objections cannot be taken into account). Objections will be considered by the Regulatory and Appeals Committee.
- 9.12 SEV licences may be granted for a period of up to one year and renewal procedures are on the same basis as for the grant of a licence.
- 9.13 The Licensing Authority may impose reasonably necessary and proportionate conditions on the new SEV licences. Standard conditions will form part of the policy for dealing with SEVs.
- 9.14 Appeals against a refusal to grant a licence or against the imposition of licence conditions are made to the magistrates' court. There is no right of appeal where the refusal is based on the character of the locality at the time the application is made or the layout, character or condition of the proposed premises, other than by way of judicial review if the decision is made without regard to the normal principles of administrative decision making.
- 9.15 Appendix B shows the proposed consultation document. The consultation will take place during the next 12 weeks, in accordance with best practice.
- 9.16 The 2009 Act is not prescriptive about how local authorities should consult with local people in order to comply with this duty.

It is therefore proposed that copies of the consultations will be sent to

- The Chief Officer of Police
- The Fire Authority
- Environmental Health
- Trading Standards
- Elected Members
- Safeguarding Children Board

The consultation document will also be placed on the London Borough of Barnet's website.

9.17 Following the completion of the public consultation, a further report will be brought before committee detailing the response to the consultation. Members will then need to consider whether they wish to recommend adoption of section 27 and, if they do, will need to recommend a date for the provisions to come into force taking account of the statutory advertising process. This will then need to be approved by full council.

## **10. LIST OF BACKGROUND PAPERS**

10.1 Sexual Entertainment Venues, Guidance for England and Wales  
Home Office – March 2010

# Appendix 1 – proposed consultation document

## Sexual Entertainment Venues

### Consultation Document

#### Introduction

Following a consultation exercise, which highlighted concerns that existing legislation did not give communities sufficient powers to control Lap dancing clubs and similar premises. The Government introduced section 27 of the Policing and Crime Act 2009, which reclassifies lap dancing clubs as sexual entertainment venues and gives local authorities in England and Wales the power to regulate such venues as sex establishments under Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982.

These new powers are not mandatory and only apply where they have been adopted by the Local Authority.

If adopted the new provisions will allow an authority to consider a wider range of matters than currently permitted under the four Licensing objectives of the Licensing Act 2003. The provision of other forms of Licensable activities, such as the sale of alcohol, late night refreshment and regulated entertainment at such premises will still be regulated under the Licensing Act 2003.

The London Borough of Barnet has previously adopted the provisions of schedule 3 of the Local Government (Miscellaneous provisions) Act 1982 for the control of Sex Establishments, such as Sex Shops.

Now the London Borough of Barnet must decide whether it wishes to adopt the additional Sexual Entertainment venue provisions.

#### Definitions

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.”*

The meaning of ‘relevant entertainment’ is *“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. where the entertainment takes place in private booths).

## **Current Position**

Currently there are no premises offering this type of entertainment within the London Borough of Barnet.

Should an application be received for a premises licence to provide lap dancing and similar entertainment representations could only be accepted based on the four licensing objectives, namely:

- The prevention of crime and disorder;
- Public safety;
- The prevention of public nuisance
- The protection of children from harm.

As a result, the licensing department can not consider any objections made by local people and businesses that are based on matters outside the scope of the four objectives noted above, for example, such as whether a lap dancing club would be appropriate given the character and locality of the area in which it is proposed to be situated.

## **Adopting section 27 of the Policing and Crime Act 2009**

If adopted the amendments will, in particular:

- allow local people to oppose an application for a Sex Establishment licence if they have legitimate concerns that a Sexual Entertainment Venue (SEV) would be inappropriate given the character of an area, for example, if the area was primarily residential.
- require licences to be renewed at least annually, at which point local people will have the opportunity to raise objections (if any) with their local authority.
- allow a local authority to reject a licence application if they believe that to grant a licence for a SEV (including a lap dancing club) would be inappropriate given the character of a particular area.
- allow a local authority to set a limit on the number of SEVs that they think is appropriate for a particular area.
- allow a local authority to impose a wider range of conditions or to refuse an application on wider grounds than they are currently able to under the Licensing Act 2003.

However, although the legislation gives more control on the granting and refusing of a licence it is very important to note that simply by adopting Section 27, every premises within the borough will be granted the automatic right to provide 'relevant entertainment' for up to 24 hours, on up to 11 separate occasions a year without the need for any licence or authorisation under the Local Government (Miscellaneous Provisions) Act 1982. Premises would however require an authorisation under the Licensing Act 2003.



Although a premises can currently apply for an authorisation to hold such entertainment under a temporary event notice and only the police or the noise nuisance team could object and only in relation to one of the four licensing objectives. Furthermore currently premises can hold up to 12 such temporary events lasting for up to 168 hours.

### **Consultation**

The London Borough of Barnet is required to consult local people before deciding whether or not to adopt the new powers.

This consultation is an opportunity for local residents, businesses and their representatives to formally comment on the proposal and provide feedback to the Authority.

The consultation commences on the 12<sup>th</sup> July 2012 and finishes on the 4<sup>th</sup> October 2012.

Further ,more detailed, information regarding the effect of the legislation can be found in the Home Office guidance titled "Sexual Entertainment Venues"

The council has identified people and organisations that may be interested in responding to this consultation. However, the council would welcome the views of any interested parties and recipients should feel free to draw the attention of this paper to others who might be interested in responding to the consultation.

In order to comment on the Proposal, respondents may first wish to refer to the guidance issued by the Home Office.

## **Responding to the Consultation**

When responding to this consultation please address the following questions:

- 1. Are you in favour of adoption of section 27 of the Policing and Crime Act 2009?**
- 2. Please give full reasons for your answer above.**

All consultation responses will be taken into account when the authority considers whether or not to adopt the new provisions. Unfortunately it will not be possible to reply in detail to each consultation response.

Please include in your response your name, address and contact telephone number. If you are responding on behalf of an organisation please give the name of the organisation along with details of whom it represents.

The consultation responses are likely to be made public. If you do not wish your identity to be divulged, please make this clear in your response.

Your response should be sent to:

**Trading Standards and Licensing Manager  
Licensing Department  
London Borough of Barnet  
North London Business Park  
Oakleigh Road South  
London  
N11 1NP**

**Or by e-mail to:**

**[Licensingadmin@barnet.gov.uk](mailto:Licensingadmin@barnet.gov.uk)**

**Thank you for taking time to respond to this consultation.**

If you require any further information regarding the consultation document, please contact the licensing department at the address above.