



## LICENSING COMMITTEE

18 December 2013

**Subject Heading:**

**Recommendation to adopt the Sex Establishment Licensing Policy and the adoption of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, as amended by section 27 of the Policing and Crime Act 2009 for approval by Cabinet.**

**CMT Lead:**

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**Policy context:**

**Financial summary:**

The proposed fees are based on cost recovery.

**The subject matter of this report deals with the following Council Objectives**

- |   |                                     |
|---|-------------------------------------|
| Ensuring a clean, safe and green borough  | <input checked="" type="checkbox"/> |
| Championing education and learning for all                                      | <input type="checkbox"/>            |
| Providing economic, social and cultural activity in thriving towns and villages | <input type="checkbox"/>            |
| Valuing and enhancing the lives of our residents                                | <input checked="" type="checkbox"/> |
| Delivering high customer satisfaction and a stable council tax                  | <input type="checkbox"/>            |

### SUMMARY

This report seeks the recommendation of the Licensing Committee to (1) approve the adoption of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended by section 27 of the Policing and Crime Act 2009) and (2) the Council's Sex Establishment Licensing Policy following consultation in 2011 for approval by Cabinet.

## RECOMMENDATIONS

The Licensing Committee notes the details of this report and recommends that Cabinet approve:

1. The adoption of Schedule 3, Local Government (Miscellaneous Provisions) Act 1982 and
2. The Sex Establishment Licensing Policy.

## REPORT DETAIL

**1.0** The Policing and Crime Act 2009 (PCA09) created a new category of sex establishment, i.e. the “sexual entertainment venue”. Section 2 of the Local Government (Miscellaneous Provisions) Act 1982 [LG (MPA) 82]] is amended by the PCA09 and provides for the adoption of the new provisions contained in schedule 3 of this Act. This allows the ‘appropriate authorities’ to control, by way of a licensing regime, sex establishments. PCA09 came into effect on 6<sup>th</sup> April 2010.

**2.0** ‘Sex establishments’ are:

- a sex cinema
- a sex shop
- a sex encounter establishment (but only where the London Borough has so resolved)
- a hostess bar (but only where the London Borough has so resolved)
- a sexual entertainment venue.

**3.0** A sexual entertainment venue is defined as follows:

LG (MPA) 82 Schedule 3

“2A “sexual entertainment venue” means any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer.

(2) In this paragraph “relevant entertainment” means—

(a) any live performance; or

(b) any 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 the audience (whether by verbal or other means).”

LB Havering had resolved on 13<sup>th</sup> October 1982 to adopt the previous provisions of Schedule 3 which included regulation of sex encounter establishments and hostess bars. These will continue to apply.

A sex encounter establishment is a premise which provides performances wholly or mainly for the sexual stimulation of customers, services or entertainment involving the exposure of private parts and

premises displaying images stimulating sexual activity, e.g. lap dancing club.

**4.0** There is no requirement on a Local Authority to adopt the amendments to Schedule 3, but if Havering decides not to do so then the existing policy under the unamended Schedule 3 will continue to apply. This means that adult entertainment including lap dancing may be licensed under the Licensing Act 2003 as a category of “music and dancing”. A premises licence under the Licensing Act 2003 has no expiry date compared to a licence under the LG (MP) A82 which is valid for one year. If a Local Authority considers that the legislation should be adopted then it should construct a policy to address such issues. Such a policy should:

- include the Local Authority’s approach to such matters
- guide and reassure the public and other public authorities
- ensure transparency
- ensure consistency
- guide and focus its committees
- relate grounds for a refusal of a licence
- define conditions
- define procedures

Please see attached Sex Establishment Licensing Policy. Appendix 1.

**5.0** Once the new version of schedule 3 has been adopted the LG (MP) A82 will prohibit anyone from using any premises as a sex establishment unless they have been granted a licence under that Act. It will no longer be possible to use a premises licence under the Licensing Act 2003 for that purpose.

**6.0** Schedule 3 LG (MP) A 82 provides an exclusion to the operation of this Act for premises licensed under the Licensing Act 2003 [LA03] for regulated entertainment or late night refreshment; however, in London, this exemption is removed and replaced by an amendment to the LA03 to the effect that relevant entertainment for the purposes of schedule 3 of LG (MP) A82 is not regulated entertainment for the purposes of LA03 Premises

**7.0** The London Borough of Havering needs to pass a fresh resolution to adopt the amended LG (MP) A82 and specify the day on which the provisions are to come into force (this day can be no earlier than one month after the date of resolution). The Local Authority must then publish a notice in a local newspaper in two consecutive weeks stating that they have passed such a resolution and its general effect. The first notice must appear no later than 28 days before the date the provisions are to come into force.

**8.0** The Local Authority has a duty to consult 'local people' in relation to whether the Local Authority should make such a resolution under Para 4 Schedule 3 Policing and Crime Act 2009 'Local people' has a wide geographical meaning in this instance and relates to persons who live or work in the area of the Local Authority. This consultation took place in 2011 where the consultation and proposals were published on the website as well as sending letters to the responsible authorities and other interested parties. Only 2 responses were received. One was a query and one was in favour of the adoption of schedule 3 but not the nil policy for each ward. See Appendix 2 for the consultation responses. Because of the lack of responses it is assumed that the proposal was non contentious so people did not feel moved to respond. There was a single response against the policy so it is not proposed to make any changes to the draft document. It is considered that, despite the fact that consultation took place in 2011, there have been no significant changes in the community of Havering that would lead to any changes in responses.

**It is therefore proposed that the Council proceeds to adopt the amendments to schedule 3 of the Local Government and agree the Sex Establishment Licensing Policy.**

## **IMPLICATIONS AND RISKS**

### **Financial implications and risks:**

Currently, and without the adoption of schedule 3, should such an establishment be licensed, that license would be covered by the Licensing Act 2003, fees for which are set by government. At the moment, an average Licensing Act fee is c£250 application fee, plus an annual fee of c£180.

If Schedule 3 is adopted, then the Council can set sex establishment fees on a cost recovery basis. The licence would be valid for one year and the fee, which has been based on estimated costs, would be £2000 from April 2013 for a new licence.

### **Legal implications and risks:**

The new version of Schedule 3 may be adopted by the Council following consultation. The guidance recommends that consultation should be undertaken with local people i.e. those who live and work in the area. Such consultation should be fair and meaningful. This means that it must be undertaken at a time before final decisions have been taken and any comments should be conscientiously taken into account before a final decision is made. Whilst the consultation took place some time ago it does appear to have been undertaken with local people as ward councillors were informed and are representative of those living locally and could have communicated specific details of the consultation to their

constituents. The passage of time may introduce an element of vulnerability however, the risk is considered to be small. The decision maker must be satisfied that there has been sufficient information provided to ensure that all relevant people have been given an opportunity to make any representations they think are appropriate.

The other element of vulnerability is the adoption of a nil establishment policy. The impact of this is that if an application is made it will almost inevitably be rejected even though each case will need to be considered on its own facts. There will be no right of appeal against a decision to reject an application on the basis of the nil policy. The only potential challenge to a specific decision on an application rejected because of the nil policy will be by way of judicial review. Therefore the decision maker must be satisfied that the nil policy has objective justification and is not based on moral objections. However the legislation specifically provides for a nil policy and therefore such a decision, if based on rational objective grounds, gives rise to a low risk. (Paragraph 12(4) LGMPA 1982)”

**Human Resources implications and risks:**

There are no direct human resources implications to this report. The Licensing regime will be implemented from existing resources.

**Equalities implications and risks:**

While it is recognised that the policy may deter a small number of businesses opening up, the benefits of having it in place far outweighs the potential loss of such new businesses. It is envisaged that the policy will protect vulnerable adults and children, young people, women and girls, and will significantly minimise the risk of exploitation of those groups. For further information, please refer to the Equality Analysis (Appendix 3).

**BACKGROUND PAPERS**