

| <b>Licensing Committee Meeting</b> |                                                                                                                                                                                                                                                                     |
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| <b>Meeting Date</b>                | 13 <sup>th</sup> February 2024                                                                                                                                                                                                                                      |
| <b>Report Title</b>                | Review of Statement of Licensing Policy for Sex Establishments and Sexual Entertainments Venues                                                                                                                                                                     |
| <b>EMT Lead</b>                    | Emma Wiggins, Director of Regeneration and Neighbourhoods                                                                                                                                                                                                           |
| <b>Head of Service</b>             | Charlotte Hudson, Head of Housing and Community Services                                                                                                                                                                                                            |
| <b>Lead Officer</b>                | Christina Hills, Licensing Team Leader                                                                                                                                                                                                                              |
| <b>Classification</b>              | <b>Open</b>                                                                                                                                                                                                                                                         |
| <b>Recommendations</b>             | <ol style="list-style-type: none"> <li>1. Members to consider the draft policy for consultation and advise on any relevant amendments</li> <li>2. Members to note the consultation process as outlined and to instruct officers to proceed with the same</li> </ol> |

## **1 Purpose of Report and Executive Summary**

- 1.1 This report provides Members with information and guidance on a new draft Sex Establishments and Sexual Entertainments policy which requires Members comments and approval prior to formal public consultation.

## **2 Background**

- 2.1 The powers the Council has to regulate sex establishments are contained in Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982. In order to use these powers a local authority has to adopt them through a prescribed process. Swale formally adopted the provisions in January 1983.
- 2.2 Section 27 of the Policing and Crime Act 2009 introduced a new category of sex establishment called “sexual entertainment venues”. In order to implement this change a local authority has to adopt the legislation although it is not mandatory. Swale chose to adopt the provisions on 23 November 2010, and they became effective as of 1 December 2010.
- 2.3 There are no sex establishment premises, sex shops or sexual entertainments venues in the borough.

## **3 Proposals**

- 3.1 There is no statutory requirement to have a licensing policy for sex establishments and sexual entertainments venues, however it can be considered to be best practice. A modern, effective policy document ensures that the trade and public alike have a document that fully explains the elements of the

regulatory process which includes the principles to be applied when considering applications for such premises. It also ensures consistency of approach by officers thus ensuring fairness and transparency for both the trade and public alike. Swale BC therefore initially developed a policy that was approved by Licensing Committee on 23 November 2010.

- 3.2 Although there is no statutory requirement to undertake a review of the policy statement it is accepted best practice to review it at regular intervals to ensure that policy remains up to date and relevant. Swale has regularly reviewed the policy, with the current edition being adopted in 2021 and which is due to expire on 30<sup>th</sup> September 2024.
- 3.3 The existing policy has now been reviewed by officers. There have been no changes to legislation to take into account. The current policy is in keeping with policies that have been adopted by the majority of other local authorities within Kent.
- 3.4 The rationale for this is that the policy was formulated working in close conjunction with the other local authorities in Kent via the mechanism of the Kent and Medway Regulatory Licensing Steering Group thus promoting consistency to the benefit of licensees, potential licensees, businesses and residents alike. The other benefit is to minimise the risk of judicial review of individual policies.
- 3.5 As with the existing policy we propose setting no numerical limits for sexual entertainments venues within Swale. Instead, each application will be judged on its own merits but taking into account the various criteria laid out in the policy document. In this way each application will be considered as to whether it is suitable given the nature of the particular locality in question.
- 3.6 As the policy is not a statutory requirement there is no need for it to be formally adopted by Council following consideration by General Licensing Committee.
- 3.7 The draft statement of licensing policy is attached as **Appendix I**.

## **4 Alternative Options Considered and Rejected**

- 4.1 The Council could choose not to have a Policy of Sex Establishments and Sexual Entertainments Venues, however, to do so would be contrary to best practice and may lead to a lack of clarity on the application of the legislation.
- 4.2 The Committee could consider not consulting on the proposed policy; however this would not accord with good governance, giving interested parties an opportunity to consider the proposed policy and make any representations where they consider that changes might be made before adoption.

## 5 Consultation Undertaken or Proposed

- 5.1 A consultation period of 8 weeks is proposed to run between 4<sup>th</sup> March 2024 and 26<sup>th</sup> April 2024. Methods of consultation will be by advertising on the Council's website and in local newspapers and where appropriate by email and post. The results of this will then be presented to the Licensing Committee with a view to being formally adopted.
- 5.2. Consultees will be the following:
- Ward Councillors
  - Parish and Town Councils
  - Kent Police
  - Kent Fire and Rescue
  - Kent Trading Standards
  - KCC Social Services
  - Interested Parties (local residents and businesses)
  - Any existing licence holder
- 5.3 All incoming responses will be entered onto a grid for consideration. The Community Services Manager together with licensing officers will conduct an evaluation of each response and give a recommendation as to whether or not to amend the policy statement. The grid and recommendations will be put before a future General Licensing Committee for consideration and inclusion of any amendments prior to formal adoption.

## 6 Implications

| Issue                            | Implications                                                                                                                                                                                                                        |
|----------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Corporate Plan                   | Having an adopted Statement of Licensing Policy for Sex Establishments and Sexual Entertainments Venues aligns with objectives in the adopted corporate plan 2020-2023                                                              |
| Financial, Resource and Property | There are no direct financial implications For Swale Council concerning this matter at present. However, if at any time in the future the policy was subject to legal challenge, there could be costs associated with this process. |
| Legal, Statutory and Procurement | The relevant legislation in relation to the regulation of sex establishments and sexual entertainment venues is contained within Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended)                |
| Crime and Disorder               | The powers allowed within the licensing regime for sex establishments and sexual entertainment venues allow the Council to tackle issues of concern to communities around crime and anti-                                           |

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|                                                              | social behaviour that may sometimes be associated with sex establishments.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| Environment and Climate/Ecological Emergency                 | None identified.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| Health and Wellbeing                                         | Child Protection Services is named within the Policy as a consultee and the possibility of children or other vulnerable persons being harmed or exploited by the provision of sexual entertainment or the operation of sex shops or sex cinemas is referred to in the Policy as one of the specified matters to which the authority will have consideration in deciding whether or not to grant an application.                                                                                                                                                                                                                                                                                                                                     |
| Safeguarding of Children, Young People and Vulnerable Adults | Child Protection Services is named within the Policy as a consultee and the possibility of children or other vulnerable persons being harmed or exploited by the provision of sexual entertainment or the operation of sex shops or sex cinemas is referred to in the Policy as one of the specified matters to which the authority will have consideration in deciding whether or not to grant an application.                                                                                                                                                                                                                                                                                                                                     |
| Risk Management and Health and Safety                        | Whilst each individual application will be judged on its own merits a policy ensures a transparent and consistent approach to licensing that would reduce the opportunity for challenge through the courts. Challenges to a particular decision are more likely to fail if we can demonstrate that we have adhered to our published policy and there is no justifiable reason to depart from it. Any departure from the policy will be based on material evidence and documents giving clear and compelling reasons for doing so.                                                                                                                                                                                                                   |
| Equality and Diversity                                       | Section 149 of the Equality Act 2010 obliges public authorities in the exercise of their functions to have due regard to the need to eliminate discrimination, harassment and victimisation, to advance equality of opportunity between the sexes and to foster good relations between the sexes. If SEV licences were granted the Council would be able to attach conditions to licences as appropriate, for example to protect performers from harassment and any threat to their dignity and to address any suggestion that women may be less welcome in premises than men. The fears of women and vulnerable persons using the vicinity of the premises can be addressed in decisions as to the locations of such facilities and by conditions. |
| Privacy and Data Protection                                  | Normal data protection and privacy rules will apply                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |

## 7 Appendices

- 7.1 The following documents are to be published with this report and form part of the report:

- Appendix I: Draft Statement of Licensing Policy for Sex Establishments and Sexual Entertainments Venues 2024 - 2027

## **8 Background Papers**

Local Government (Miscellaneous Provisions) Act 1982 Schedule 3