

# North Tyneside Council Report to Cabinet Date: 14 November 2016

**ITEM 6(f)**  
Title: Review of North  
Tyneside Council  
Statement of  
Licensing Policy  
(Sex  
Establishments)

Portfolio: Housing and Transport

Cabinet Member: Councillor John Harrison

Report from Service Area: Environment, Housing and Leisure

Responsible Officers: Phil Scott (Tel: 643 7295)  
Head of Environment, Housing and Leisure

Wards affected: All

## PART 1

### 1.1 Executive Summary:

This report has been prepared to seek approval from Cabinet to consult on the review of the North Tyneside Council Statement of Licensing Policy (Sex Establishments). The initial Policy was adopted in 2011.

### 1.2 Recommendation(s):

It is recommended that Cabinet:

a) agree that a consultation exercise commence, outlining the proposals contained in the draft Statement of Licensing Policy (Sex Establishments) at **Appendix 1** to this report; and

b) agree to receive a further report at Cabinet following the conclusion of the consultation exercise to consider the consultation responses and determine whether or not to adopt the draft Policy.

### 1.3 Forward Plan:

Twenty eight days notice of this report has been given and it first appeared on the Forward Plan that was published on 10<sup>th</sup> October 2016.

### 1.4 Council plan and policy framework:

This report relates to the following priorities in the 2016-19 Our North Tyneside Plan:

Our Places will:

- Be great places to live, and attract others to visit or work here
- Provide a clean, green, healthy, attractive and safe environment

Our people will:

- Be healthy and well – with the information, skills and opportunities to maintain and improve their health, wellbeing and independence.

## **1.5 Information:**

### **1.5.1 Background**

The North Tyneside Council Statement of Licensing Policy (Sex Establishments) was adopted on 20 January 2011 following the formal adoption by the Authority of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982.

In 2010 the Local Government (Miscellaneous Provisions) Act 1982 (the '1982 Act') was amended to include a new category of sex establishment, namely a sexual entertainment venue. The Council adopted Schedule 3 of the 1982 Act in 2011 to enable the Authority to license sexual entertainment venues as well as the existing categories of sex establishments, namely sex shops and sex cinemas.

Although there is no statutory requirement to have a policy concerning the licensing of sex establishments, it has been long established that it is good practice for Licensing Authorities to have a policy that assists in the promotion of decision making and the promotion of consistency. It also informs the licensing trade and the public of the approach of the Licensing Authority to such licensing in its area.

The existing policy includes a numerical limit on the number of sexual entertainment venues within a specified area of Whitley Bay, namely the area bordered by Whitley Road, Park Avenue, the Promenade and the Esplanade. That limit has been set as nil. That limit does not preclude an application for a licence being made within the specified area that would take the number of licences in the area above the set limit. However, in such a situation the presumption will be to refuse such an application and the applicant will have to make their case as to why the licence should be granted in any particular location contrary to the policy which has set the limit in that area as nil.

As part of the consultation exercise the views of the public and trade will be sought in relation to whether or not this numerical limit remains as it is, is amended or removed altogether.

Since Schedule 3 was adopted by the Authority, there have been no applications received for a sexual entertainment venue licence. There is currently one licence issued in relation to a sex shop.

There are some statutory exceptions for the need for sexual entertainment to be licensed. For example if sexual entertainment takes place in a premises that has the benefit of a Premises Licence issued under the Licensing Act 2003 on no more than 11 occasions in a 12 month period and no such occasion lasts for more than 24 hours, and there is a month between each occasion, no sexual entertainment licence is required by that premises.

### **1.5.2 Review of Policy**

A draft Statement of Licensing Policy has been prepared and is attached at **Appendix 1**. The draft Policy has been updated to include references to local plans and data. The numerical limit of nil for the specified area of Whitley Bay has been retained for the

purposes of the draft policy and consultees will be specifically asked to comment on this aspect of the Policy.

### **1.5.3 Consultation**

A consultation period of eight weeks from 21 November 2016 to 14 January 2017 will enable comments to be received from those wishing to comment on the draft Policy. The consultation responses will be reported back to Cabinet at the conclusion of the consultation exercise.

### **1.5.4 Fees**

The fees are reviewed annually against any rise or reduction in cost of administering the licensing regime.

### **1.6 Decision Options:**

The options available to the Cabinet are:

#### Option 1

- (a) Agree that a consultation exercise commence, outlining the proposals contained in the draft Statement of Licensing Policy (Sex Establishments) at **Appendix 1**; and
- (b) Agree to receive a further report at Cabinet following the conclusion of the consultation exercise to consider the consultation responses and to determine whether or not to adopt the draft Policy.

#### Option 2

Not to instruct officers to begin the consultation process.

Option 1 is the recommended option.

### **1.7 Reasons for Recommended option:**

It is recommended that Cabinet agree option 1 and resolve to instruct officers to begin a process of consultation. This will allow the views of internal and external consultees to be considered by Cabinet. The existing Policy is 6 years old and needs to be reviewed to ensure that it remains up to date.

### **1.8 Appendices:**

Appendix 1 – Draft Statement of Licensing Policy (Sex Establishments).

### **1.9 Contact Officers:**

Joanne Lee, Public Protection Manager, Tel: (0191) 643 6901

Alan Burnett, Trading Standards and Licensing Group Leader, Tel: (0191) 643 6621

John Barton, Lawyer Tel (0191 6435354)

Catherine Lyons, Regulatory Services Manager, Tel: (0191) 643 7780

Alison Campbell, Senior Business Partner, Tel: (0191) 643 7038

## **1.10 Background Information:**

The following background papers/information have been used in the compilation of this report and are available at the office of the author.

Schedule 3 Local Government (Miscellaneous Provisions) Act 1982

<http://www.legislation.gov.uk/ukpga/1982/30/schedule/3>

The existing Statement of Licensing Policy (Sex Establishments)

[http://www.northynteside.gov.uk/browse-display.shtml?p\\_ID=510720&p\\_subjectCategory=1280](http://www.northynteside.gov.uk/browse-display.shtml?p_ID=510720&p_subjectCategory=1280)

## **PART 2 – COMPLIANCE WITH PRINCIPLES OF DECISION MAKING**

### **2.1 Finance and Other Resources:**

A local authority is entitled to set fees locally at an appropriate level to cover the cost of administering the licensing regime.

### **2.2 Legal:**

Section 27 of the Policing and Crime Act 2009 came into force on 6 April 2010. This amended Schedule 3 of the 1982 Act and created a new category of sex establishment, namely sexual entertainment venues to the existing two categories, sex shops and sex cinemas.

Whereas the actual determination of an application for a Licence under the Local Government (Miscellaneous Provisions) Act 1982 is a Council function, the function of formulating and adopting a Licensing Policy in relation to this type of licensing is a Cabinet function because neither the Act nor the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 preclude Cabinet from approving such a Policy.

The Authority has the power under the 1982 Act to prescribe standard conditions that will apply to each type of licence. The prescription of standard conditions (and any amendment thereto) is a function of the Authority's Regulation and Review Committee as is the delegation of certain functions by the Committee to officers. Therefore, a report will be taken to the Regulation and Review Committee immediately upon the adoption of a revised Policy to prescribe the standard conditions and make the necessary delegations to officers.

It is for the Authority to determine the appropriate period of time to consult on the draft Policy. An 8 week period of consultation is an appropriate period of time to consult given the limited number of proposed changes to be made to the Policy.

### **2.3 Consultation/Community Engagement:**

An 8 week consultation exercise will be carried out to include internal and external consultees. The consultation will include MP's, MEP's Police, Fire Authority, trade representatives and existing licence holders. Consultation will also take place with members of the public.

## **2.4 Human Rights:**

There are aspects of the administration of the legislation that may impact on the human rights of individuals residing in the Borough and licence holders. Article 8 of the European Convention of Human Rights entitles a person to the right to enjoy a private and family life.

Article 6 of the European Convention also entitles an individual to a fair hearing. Any individual appearing before the Regulation and Review Committee will be given an opportunity to express their views as provided by the Act.

Article 1 of the First Protocol entitles a person to the peaceful enjoyment of his possessions. A possession may include a licence or the goodwill that such a Licence would generate. However, balanced against that is the ability of the Authority to enforce such laws under the Act as is necessary to control the use of such property, including a licence.

## **2.5 Equalities and Diversity:**

An Equality Impact Assessment is in place for the Statement of Licensing Policy (Sex Establishments) and will be before Cabinet when a decision is taken on whether or not to adopt the draft Sex Establishment Licensing Policy.

## **2.6 Risk Management:**

There are no risk management implications directly arising from this report. Risks associated with delivery of the Authority's Public Protection function are monitored via the Technical Services Partnership risk arrangements included within the strategic partnership governance framework.

## **2.7 Crime and Disorder:**

A copy of an application for the grant, renewal or transfer of a licence under Schedule 3 of the 1982 Act has to be forwarded to the Chief Officer of Police within 7 days of the application being made. The police will therefore have the opportunity to scrutinise each application and to object if they have concerns from a crime and disorder point of view within 28 days of the application being made. All objections received by the Authority must be considered before determining an application.

## **2.8 Environment and Sustainability:**

There are no environment or sustainability issues arising directly from this report.

### **PART 3 – SIGN OFF**

- Deputy Chief Executive  x
- Head(s) of Service  x
- Mayor/Cabinet Member(s)  x
- Chief Finance Officer  x
- Monitoring Officer  x
- Head of Corporate Strategy  x