

LICENSING COMMITTEE



Report subject	Sex Establishment Policy
Meeting date	16 September 2021
Status	Public Report
Executive summary	<p>Sex Establishment premises are regulated and licensed under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982. This legislation originally provided for the licensing of sex shops and sex cinemas before being amended by section 27 of the Policing and Crime Act 2009 to extend the scope of the schedule to include sexual entertainment venues.</p> <p>Prior to Local Government Reorganisation, Bournemouth Borough Council and the Borough of Poole had existing Sex Establishment Policies.</p> <p>On the 5 January 2021 BCP Council passed a resolution that this legislation should apply within the BCP Council area, allowing the council to control and regulate the operation of sex establishments within the conurbation assisted by way of the Sexual Establishment Policy once finalised and agreed by Full Council.</p> <p>The BCP Council Sex Establishment Policy has now been subject to a second round of public consultation following recommended changes to the draft policy presented to the Licensing Committee on 19th May 2021.</p> <p>The Policy sets out how BCP Council will control the type and number of sexual establishments within its area. These establishments include Sex Shops, Sexual Entertainment Venues (SEV's) and Sex Cinemas. It sets out the Conditions to be applied to any such licences granted and there are clear requirements set out for applicants when they are seeking to apply for a licence. The policy states that the character of the locality and its proximity to different types of premises as set out in the policy, will be considered in respect of each application.</p> <p>The policy does not impose a limit to the number of sexual entertainment licences permitted within the BCP area. However, any proposed location will be considered on the basis of the character of the locality and whether the grant of the application would be inappropriate having regard to the proximity of the location to the local characteristics listed within the policy. Each application will be considered on its own merits. The characteristics</p>

	<p>include proximity to residential premises, cultural facilities, public leisure facilities, premises used by children, hospitals, and tourist attractions.</p> <p>During the second consultation period, a Councillors' briefing took place on 29th June 2021 to ensure all BCP Councillors had the opportunity to ask questions of officers and discuss the rationale behind the proposed policy.</p> <p>The views of workers within the local SEV's were sought and in the majority of cases the feedback was that they feel safe and secure in their chosen work environment and they did not feel exploited but empowered. They are self-employed with their choice of venues and working shifts, and venues invest in facilities and security to attract the better dancers.</p> <p>Equalities issues were addressed via the EIA and approved by the EIA panel.</p> <p>Overall, the impact of the policy is positive, strict licence conditions should ensure safe well managed venues for both patrons and dancers. There is no indication of crime associated with local venues therefore, there is no negative proven impact on the safety of dancers, patrons or members of public in the vicinity.</p> <p>Local research by the Community Safety team analyst has found no evidence to link licensed SEVs and violent crime. Research shows only one reported violent crime linked to these establishments within the BCP area during the period 2018 to March 2020 when they had to close as a result of the pandemic. Analysis of reported sexual violence across Bournemouth & Poole suggests that only 15% of all such reports were in any way linked to Bournemouth's night-time economy and none linked to SEV's.</p> <p>A Licensing Committee Member workshop took place on 10th August to consider the results of the further consultation. All consultation feedback was considered, and members felt that the views of local dancers and the lack of evidence connecting the SEVs to crime, give positive weight to the policy. It was considered that the majority of consultation comments were outside the scope of the licensing framework and as such cannot carry weight in the decision-making process.</p> <p>Members are now asked to further consider the consultation responses and to agree the final wording of the policy which will then be recommended to full council for approval.</p>
<p>Recommendations</p>	<p>It is RECOMMENDED that:</p> <p>The Committee considers the consultation feedback and Councillor recommendations from the workshop and</p> <ul style="list-style-type: none"> a) agree the final version of the policy and b) recommend that final version of the policy to Council

	for approval.
Reason for recommendations	<p>The now dissolved Bournemouth Borough Council and Borough of Poole had both previously published individual policies. These authorities became part of the new local authority known as BCP Council in April 2019. The Local Government (Structural Changes) (General)(Amendment) Regulations 2018 provides that the Licensing Authority of BCP Council has 24 months from the date of reorganisation to prepare adopt and publish a Sex Establishment Policy for the new local government area.</p> <p>The policy sets out how BCP Council will license and regulate sex establishments with the conurbation. Setting out clearly the characteristics of an area or locality that would not be suitable for any new premises. This enables the Licensing Committee to have a consistent and transparent process for dealing with any new applications.</p>
Portfolio Holder(s):	Councillor May Haines – Community Safety
Corporate Director	Kate Ryan – Chief Operating Officer
Report Authors	Nananka Randle – Licensing Manager
Wards	Council-wide
Classification	For Decision

Legislative Background

1. Sex Establishment premises are regulated and licensed under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982. This legislation originally provided for the licensing of sex shops and sex cinemas before being amended by section 27 of the Policing and Crime Act 2009 to extend the scope of the schedule to include sexual entertainment venues.
2. On the 5 January 2021 BCP Council passed a resolution that this legislation should apply within the BCP Council area, allowing the council to control and regulate the operation of sex establishments within the conurbation assisted by way of the Sexual Establishment Policy once finalised and agreed by Full Council.
3. Sex establishments fall into three categories: sex shops, sex cinemas and sexual entertainment venues.
4. No sex establishment can operate unless it has obtained a licence from the Council – any such licence will contain conditions that will regulate how that individual and category of sexual establishment may trade from the prospective premises.

5. Licences for sexual entertainment venues (SEV) are required for '*any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer.*' Relevant entertainment is defined under the Act.
6. In deciding whether entertainment is 'relevant entertainment' we will consider the content of the entertainment to be provided at the premises before determining whether a sexual entertainment licence is required. Generally this will apply to;
 - a. lap dancing
 - b. pole dancing
 - c. table dancing
 - d. strip shows
 - e. peep shows
 - f. live sex shows
7. A venue does not require a licence where they are providing relevant entertainment as long as:
 - a. there are no more than 11 occasions of entertainment within a 12-month period
 - b. each occasion has lasted no more than 24 hours and
 - c. there is at least 1 month between each occasion
8. Under Section 17 of the Crime and Disorder Act 1998, local authorities must exercise its functions with regard to the likely effect on, and the need to do all it reasonably can, to prevent crime and disorder in their area.
9. Licences for sex establishments are issued for 12 months and must be renewed every year. On application for renewal, the premises must display a notice on the premises and put an advert in the Echo. The application details are also published on the council's website under public notices and distributed to all Members. Since 2016 there have been no objections to the renewal of any sex establishment licence.

Policy Development

10. On the 10th December 2020 the Licensing Committee agreed a draft policy which was then subject to public consultation between 4th January 2021 – 1st February 2021. This consultation included an online survey alongside links to the policy document. In total there were 205 responses to the survey.
11. On the 4th March 2021 the Licensing Committee Members agreed that due to the sensitivity of the policy and the large number of consultation responses received, a working party made up of five Members from the committee would be established to provide an update and make recommendations back to the Full Committee.
12. The working party met on 29th March 2021. They carefully considered the consultation responses as well as the wider policy implications of the Public Sector Equality Duty. Members requested that direct contact was made with workers involved in the local licenced sexual entertainment venues to obtain their feedback and thoughts on the policy.

13. The Licensing Committee met again on the 19th May 2021 and considered all the recommendations from the working party as well as all consultation responses. The draft policy was amended to include recommendations regarding the licensing of existing venues and wording of Conditions. Members agreed that the draft policy should be subject to further public consultation, a full Member briefing and that the working party should meet again once this additional consultation was concluded. The Members would then make further recommendations based on the results of this consultation.
14. A Councillor briefing took place on 29th June 2021 where officers presented information to Members and answered questions. The presentation provided is at Appendix 1.
15. Following input by the Chair of the Licensing Committee to agree the wording of the consultation questions, the online consultation survey which included the revised draft policy Version 2 Appendix 2, took place between 14th June – 16th July 2021. In total there were 176 responses to the survey. The report can be viewed at Appendix 3.
16. Overall, 60% of respondents agree with the policy's aim to control and regulate sex establishments. Respondents disagree with not placing a specific limit on any sex establishments and agree with the local characteristics listed.
17. The majority of respondents disagree that SEV's complement the entertainment offer in Bournemouth with 53% of respondents disagreeing with licensing existing establishments.
18. Many consultation responses state anecdotal evidence concerns relating to increased sexual violence around SEV's. Local research by the Community Safety team analyst has demonstrated that there has been only one reported crime linked to these establishments during the period 2018 to March 2020 when they had to close because of the pandemic. Analysis of reported sexual violence across Bournemouth & Poole suggests that only 15% of all reports were in any way linked to Bournemouth's night-time economy and none were linked to SEV's.
19. Several responses to the consultation related to the fear of harassment when walking past SEV's, concerns of violence in and around SEV's potential victimisation of workers within the venues, general violence against women due to the presence of these establishments. Suggestions provided within the public consultation as well as suggestion from the Community Safety Partnership Manager have been taken and included within the policy as a condition of their licence.
20. Concerns and fears expressed by consultation respondents are mitigated locally by the measures put in place to deal with violence in the night-time economy, this includes the provision of a safe bus in place at peak night-time economy times, the area is patrolled by street pastors and there are marshals overseeing general safety of patrons as they leave the area. The Community Safety Partnership has a priority to tackle violent crime, including public space violence.
21. Views have been expressed that link sexual entertainment venues to prostitution, sexual violence and harassment of women. However, there is no local evidence that the existing venues in Bournemouth have such issues.
22. The Licensing Team engaged directly with the locally licensed SEV's and the views of managers and dancers within the venues were provided. The responses

are at Appendix 4. A summary of these responses can be found at Appendix 5. These responses were considered by the Members working group workshop which took place on 10th August 2021.

23. The working group considered all responses as contained with the consultation report the draft policy. No further amendments were suggested to the draft policy.
24. There were a number of emails received directly into the Licensing team, which were received outside of the formal consultation period, they have been included here for Members consideration. All the emails have the same/similar wording. The responses have been collated into one document which shows the two versions of the same email sent by all parties with a numbered index showing which respondent sent which version of the email. See Appendix 6. The granting of grandfather rights was questioned.
25. Within the draft policy and the consultation responses there is reference to the term 'grandfather rights'. This is not a legal term that is used within Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, the legislation used by Local Authorities to regulate sex establishments, but it is a term which is familiar to those involved with Licensing. This term has been included in the draft policy in paragraph 10 *Existing Licenced Premises* which sets out that existing licences will be continued to be renewed during the life of this policy, despite changes that may already have been made to the character and locality of where these premises are situated. If objections are raised in respect of any renewal application or if the character of the location is further changed during the life of the policy, then that application will come before the Licensing Committee for determination in accordance with paragraph 12 of the Schedule.
26. If this section is removed and no grandfather rights are provided the risk, in addition to potential Judicial Review from the existing venues, is that these large venues could become nightclubs.
27. The emails received directly to the Licensing team do question the contents of paragraph 10 of the policy, but the Committee should be reminded that they are entitled to take a fresh look at the character and location of where a premises is situated when determining any renewal application. There is nothing in the legislation that prevents 'grandfather rights' from being included or excluded from the policy if you choose to do so.

Options Appraisal

28. Licensing Committee is asked to:
 - Agree any amendments to Version 2 of the policy and agree the final version of the policy– if there are no substantial changes there is no further need to consult on the policy.
 - Agree to recommend the final version of the policy for approval by Full Council on 9th November 2021.

Summary of financial implications

29. The Licensing Committee, at its meeting on 10th December 2020 agreed the fee structure for BCP. All costs in the implementation of this policy will be covered by the fees which are set on a cost recovery basis.

Summary of legal implications

30. Sex Establishment premises are regulated and licensed under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982. This legislation originally provided for the licensing of sex shops and sex cinemas before being amended by section 27 of the Policing and Crime Act 2009 to extend the scope of the schedule to include sexual entertainment venues.
31. The committee is not bound by a statutory procedure for formulating the policy or consulting in respect of Sex Establishments.
32. An informed policy will ensure consistency and transparency in relation to all applications received and minimise the risks in relation to any legal challenge around the application process. Depending upon the result of an application, each applicant has the right of appeal to the Magistrates Court. A policy will provide guidance in relation to the application and decision-making process, which in turn should serve to minimise the potential for any challenge.

Summary of human resources implications

33. The policy is delivered within the current resources of the Licensing Team.

Summary of equality implications

34. The EIA panel reviewed the EIA documentation on 5th August 2021. The summary of findings concludes overall the policy will have a positive impact because it enables a safe space for both dancers and patrons of the SEV's. The licence conditions ensure dancers have private dressing rooms and toilet facilities with security in place to protect these spaces. Conditions requiring codes of conduct for both dancers and patrons ensures standards of behaviour on both sides.
35. By regulating the industry and issuing licences BCP Council are having a positive impact on the trade, are not at risk of driving the activities underground whereby they would be unregulated and expose dancers and patrons to risk.
36. Although it is recognised that nationally there may be links between SEV's and the sex trade and sexual assaults; on a local level within BCP there is no such established link. Police crime statistics show no correlation between attendance of these venues and sexual crimes either in the vicinity or wider afield. The EIA is based on local evidence from those within the trade, police and crime statistics and not on assumptions.
37. The venues within BCP area are well run and have not been challenged on reapplication each year. The advertising of renewals is accessible to all via a number of mediums – website, physical copy on the venue and in the local press.
38. These findings and the supporting documents were approved by the EIA panel on 5th August 2021 and a copy of the documents is available at Appendix 7 and 8

Summary of risk assessment

39. As with any policy, this will be open to potential review. A clear and transparent process has been followed to develop the policy. Evidence has been sort from the public, campaign groups, the Police and partners and those working at SEV's. However, this is a contentious issue and following a clear process may not be sufficient to mitigate against a challenge.

Background papers

Local Government (Miscellaneous Provisions) Act 1982

Policing and Crime Act 2009

Crime and Disorder Act 1998

Appendices

Appendix 1 - Member briefing presentation

Appendix 2 - Draft Policy Version 2

Appendix 3 – Consultation responses report

Appendix 4 - Feedback and comments by dancers and managers from local SEV's

Appendix 5 – Summary of feedback and comments by dancers and managers from local SEV's

Appendix 6 - Emails directly received by Licensing Team outside of consultation timescales

Appendix 7 - Form 2 EIA Capturing Evidence

Appendix 8 - Form 3 EIA Report and EIA Action Plan