

**North East Derbyshire District Council**

**Communities Scrutiny Committee**

**28 February 2020**

**Local Government (Miscellaneous Provisions) Act 1982  
Draft Sex Establishment Policy Review**

**Report of Debs Cartwright, Solicitor - Legal Services**

This report is public

**Purpose of the Report**

- The purpose of this report is for Communities Scrutiny Committee to consider and feedback on the first draft of the Council's **Sex Establishment Policy** to enable the Licensing Committee to take the Committee's comments into account as part of their consideration prior to formal public consultation.

**1 Report Details**

- 1.1 Under the Local Government (Miscellaneous Provisions) Act ("LGMPA") as amended, subject to the contents of 1.2 below, the Council has powers to control the number and location of sex establishments in its area.
- 1.2 On 17 October the Licensing Committee passed a resolution to invite the full Council to resolve to adopt the legislation. In order to proceed, the Council must carry out a public consultation. To reduce risk of legal challenge, such consultation should be carried out prior to formal adoption.
- 1.3 The Committee is being invited to review the draft policy and provide comments. The Scrutiny Committee has requested submission of this report for its consideration at this stage but it should be noted by members that at this stage the document is a "work in progress": members will see that the standard condition for sex cinemas and sex shops remain to be drafted. The Scrutiny Committee's comments on the draft in its present form will be incorporated by the Licensing Manager and the revised draft will then be submitted to the Council's Licensing Committee in due course. That Committee will consider the draft, with a view to commencing statutory consultation.
- 1.4 The outcome of the 12 week consultation period will be fed back to the Licensing Committee, and a final version of the policy will then be recommended to Full Council for approval.
- 1.5 A Local Area Profile (LAP) will be prepared in due course as a separate document. The LAP will map out the characteristics of the area, and because the area profile can change so frequently it is seen as good practice to keep this document separate. This is still in development at this time but will be published at the same time as the Policy, to ensure that the document is as up to date as possible.

1.6 The key aspects to the contents of the policy are as follows

**Introducing a policy document which sets out the Councils approach to sex establishment regulation**

**Citing the findings of the public consultation** – clearly this part of the Policy is absent at this stage and will be drafted following such consultation. By including the findings the Council will be able to demonstrate that the adoption of the legislation and the contents of the Policy clearly reflect the will of its residents. This is important in protecting the Council against judicial review.

**Setting out of statutory criteria for mandatory and discretionary grounds for refusal of an application**

**Separately detailing the Council's policy in respect of the granting of licenses for each type of sex establishment (sexual entertainment venues, sex cinemas and sex shops)**

**Detailing other legislation relevant to the grant or refusal of a licence**

**Specifying exemptions**

**Setting out the application procedure and that for variations, renewals, transfers and revocations**

**Detailing interpretation of key terms**

**Setting out standard conditions for each type of sex establishment**

**2 Conclusions and Reasons for Recommendation**

- 2.1 On 17 October 2019 NEDDC's Licensing Committee resolved that the full Council should be invited to consider passing a resolution to adopt the legislation and policy in respect of sex establishments. This process, which would include implementation of key elements of the public consultation, would mean that residents will have a greater say in what happens within their community.

**3 Consultation and Equality Impact**

- 3.1 The approved draft policies will be subject to a full public consultation. The feedback will be presented to members of the licensing committee thereafter and approval sought to recommend the final version of the policy to Council.
- 3.2 Similarly an equality impact assessment will be undertaken once feedback has been received, before the matter goes to the Licensing Committee.

**4 Alternative Options and Reasons for Rejection**

- 4.1 There is no legal requirement to adopt the legislation or have a Policy in place. However, the Licensing Committee has approved this action and doing so gives the Council power to regulate either the number and type of establishments in its area and the manner in which such premises are run. Residents could question why, when

Parliament has created regulatory powers for the Council, the Council had not been availed itself of them in order to protect their interests and reflect their views.

**5 Implications**

**5.1 Finance and Risk Implications**

5.1.1 There will be a minor cost associated with carrying out the consultation and publish statutory notices which can be accommodated from existing budgets

**5.2 Legal Implications including Data Protection**

5.2.1 Having a policy which is clearly detailed and compliant with the legislation, fit for purpose and clear to Applicants could assist in implementing rules while preventing a legal challenge by way of appeal or judicial review, with associated costs in defending the same.

**5.3 Human Resources Implications**

5.3.1 None.

**6 Recommendations**

6.1 That Members review the attached policy documents and provide comments for consideration by Licensing Committee.

**7 Decision Information**

<p><b>Is the decision a Key Decision?</b>  A Key Decision is an executive decision which has a significant impact on two or more District wards or which results in income or expenditure to the Council above the following thresholds:  BDC: Revenue - £75,000 <input type="checkbox"/>  Capital - £150,000 <input type="checkbox"/>  NEDDC: Revenue - £100,000 <input type="checkbox"/>  Capital - £250,000 <input type="checkbox"/>  <input checked="" type="checkbox"/> Please indicate which threshold applies</p>	<p>No</p>
<p><b>Is the decision subject to Call-In?</b>  (Only Key Decisions are subject to Call-In)</p>	<p>No</p>
<p><b>District Wards Affected</b></p>	<p>All indirectly</p>
<p><b>Links to Corporate Plan priorities or Policy Framework</b></p>	<p>All</p>

8 **Document Information**

<b>Appendix No</b>	<b>Title</b>
1	Draft policy
<b>Background Papers</b> (These are unpublished works which have been relied on to a material extent when preparing the report. They must be listed in the section below. If the report is going to Cabinet (NEDDC) or Executive (BDC) you must provide copies of the background papers)	
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