

LICENSING COMMITTEE (Licensing Act 2003 Functions)

Agenda Item 31

Brighton & Hove City Council

Subject: *Policing & Crime Bill*
Date of Meeting: **5 February 2009**
Report of: *Director of Environment*
Contact Officer: Name: *Tim Nichols* Tel: **29-2163**
E-mail: tim.nichols@brighton-hove.gov.uk
Wards Affected: All

FOR GENERAL RELEASE

1. SUMMARY AND POLICY CONTEXT

- 1.1 On 6 March 2008, Policy & Resources Committee resolved that the provisions of the Council's new licensing policy and other available regulatory powers be used to manage strip clubs;
- 1.2 The council would work with the Local Government Association (LGA) with a view to lobbying government for a change to national legislation; and
- 1.3 The government's response to the London Local Authorities Bill would be monitored.
- 1.4 In the event of any significant developments during the passage of the London Local Authorities Bill such as the moving and acceptance of any amendments relating to the licensing of strip clubs, a meeting of the cross-party working group on sex establishments would be reconvened;
- 1.5 The continued ring-fencing of the funding from the previous LABGI allocation that was set aside to fund a Private Bill should that option be taken forward was agreed;
- 1.6 Full representations should be made during the forthcoming government review of the 2003 Licensing Act in relation to the licensing of strip clubs and the need for local councils to be better able to regulate them.

2. RECOMMENDATIONS

- 2.1 That the cross party working group's work should be continued by Licensing Committee.
- 2.2 That Licensing Panels continue to be guided by paragraph 2.9.2 of the statement of licensing policy including the imposition of conditions applicable to lap dancing clubs in determining applications.
- 2.3 That the Council is recommended to adopt provisions relating to sex encounter venues, if the Policing and Crime Bill is enacted.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS

- 3.1 Under the statement of licensing policy, a Licensing Panel hearing an application for regulated entertainment involving naked or semi-naked dancing will have regard to:
 - (i) the location of the premises in relation to schools, places of worship, community centres and residential accommodation; and
 - (ii) the cumulative effect of the number of such premises on the character of the area

Further, Panel members may impose conditions, where appropriate, to regulate the conduct of dancers, customers (including the exclusion of persons under 18), and staff

- 3.2 Local MPs were briefed by officers in April 2008. Letters were sent by the Leader and Chief Executive to the appropriate DCMS Minister in May and June 2008. The June letter resulted from Chairman's communications on 19 June. The Chairman outlined a response that would be sent to the DCMS/Home Office. The response detailed the history of lap-dance clubs in the city and argued that local authorities should be permitted to control the localities, numbers and management of these premises as they do for sex shops and cinemas. An officer attended a meeting with the Home Office Minister (Parliamentary Under Secretary for Crime Reduction) and Home Office, DCMS and DCLG officials, government lawyers and council officers from Durham, Blackpool, Birmingham, Derwentside, Tower Hamlets and Southwark, which appeared to be councils with concerns about lap dancing controls.
- 3.3 It was intended to explore the extension of sex establishment controls under the 1982 Local Government (Miscellaneous Provisions) Act as this would allow controls on location and proliferation and standard conditions. The Home Office would lead this work.

- 3.4 In the 2008 Queen's speech there was a Policing and Crime Bill which, amongst other measures, promised tighter controls around lap dancing clubs.
- 3.5 The Home Office published the Policing & Crime Bill after it received its First Reading in the Commons; Second Reading was scheduled for 19 January.
- 3.6 Under clause 25 of the Bill, Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 will be amended so as to extend the meaning of 'sex establishments' to include 'sex encounter venues'. The Bill further defines a 'sex encounter venue' as premises where a live performance or a live display of nudity is provided for a live audience, for the purpose of sexually stimulating any member of the audience. This definition is intended to catch the majority, if not all, lap dancing clubs. The effect of clause 25 is to subject sex encounter venues to the same controls that currently apply under that legislation to sex cinemas and sex shops. By virtue of Schedule 3 to the Bill (transitional arrangements), the new provisions do not appear to apply retrospectively. They will only apply to new licensed premises when the council makes a resolution to that effect under section 2 of the 1982 Act. Once the Council resolves to bring the provisions of clause 25 into effect, any new applications for lap dancing clubs in Brighton & Hove will be subject to the wider controls.

The Home Office advises Council lawyers: "the purpose of paragraph 2(2) of Schedule 3 is to ensure that a local authority who has already adopted Schedule 3 to the 1982 Act does not automatically become bound by the amendments being made by clause 25 of the Bill.

Instead, they must resolve to adopt them. Where a local authority resolves to adopt Schedule 3, as amended by clause 25 of the Bill, the intention is that existing lap dancing clubs will be covered by the new regime provided they fall within the definition of "sex encounter venue". Regulations will be made to provide appropriate transitional arrangements to deal with existing clubs which presently have a regulated entertainment licence under the Licensing Act 2003.

- 3.7 It is not yet clear whether clause 25 applies retrospectively. However, it may be possible to apply conditions applicable to lap dancing clubs on variation or review.

4. CONSULTATION

- 4.1 Legal and Finance officer comments are incorporated in this report.

5. FINANCIAL AND OTHER IMPLICATIONS

Financial Implications:

- 5.1 Licence fees for sex establishments are set at a level that are anticipated will cover costs of administering and enforcing provisions. Premises licence fees are set by regulations. The bill ensures that the local authority will be able to charge a fee for applications to vary a licence granted under the 1982 Act. A reasonable fee set by the local authority is also payable for the grant, renewal or transfer of a licence under the 1982 Act.

Finance Officer Consulted: Karen Brookshaw

Date: 21/01/09

Legal Implications:

- 5.2 "Sex encounter venue" means any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer. Appendix A reproduces the official explanatory note to the Policing & Crime Bill, prepared by the Home Office.

Equalities Implications:

- 5.3 Licensing authorities may impose conditions excluding minors and to protect performers' safety, where justified.

Statement of Licensing Policy excerpts:

2.9.2 Where appropriate, the Licensing Authority will also take into account the cumulative effect of a number of such premises on the character of the area. Where such applications are made the licensing authority will expect operating schedules to address the following matters and will include such conditions as are necessary to promote the licensing objectives.

- A. A code of conduct for dancers and appropriate disciplinary procedures, developed in consultation with the Police and the Council.
- B. Rules of conduct for customers, developed in consultation with the police and the council.
- C. Procedures to ensure that all staff employed in the premises have pre-employment checks including suitable proof of identity, age and (where required) permission to work.
- D. The exclusion of persons under 18 from the premises when such activities are taking place.

2.9.3 Conditions to regulate may prohibit physical contact between customers and performers and may include:

- Dressing room security
- Displays
- CCTV

Lawyer Consulted: Rebecca Sidell & Oliver Dixon *Date: 21/01/09*

Sustainability Implications:

5.4 None.

Crime and Disorder Implications:

5.5 Concerns were raised by local authorities that the Licensing Act 2003 controls led to a relaxation of controls, because the grounds on which a local authority can refuse a licence were constrained by the four licensing objectives, none of which may help in blocking an application if the licensee can make a sufficiently strong case that the proposed activity qualifies as an “entertainment similar to dance”.

Risk and Opportunity Management Implications:

5.6 None.

Corporate/Citywide Implications:

5.7 Under public entertainment licensing provisions the Council, so far as erotic entertainment (e.g. lap dancing or striptease) was concerned, would not grant a licence to establishments proposing to stage such events unless conditions imposed restrictions on the level of nudity and contact.

SUPPORTING DOCUMENTATION

Appendices

1. Appendix A reproduces the official explanatory note to the Policing & Crime Bill, prepared by the Home Office.

Documents in Members' Room

1. None.

Background Documents

1. Statement of Licensing Policy.
2. The official explanatory note to the Policing & Crime Bill.

Appendix A

Sex establishments

Clause 25: Regulation of lap dancing and other sex encounter venues and Schedule 3: Lap dancing and other sex encounter venues: transitional provisions

184. This clause inserts a new category of “sex establishment” called a “sex encounter venue” into Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (the “1982 Act”). This will bring the licensing of lap dancing and pole dancing clubs and other similar venues under the regime set out in the 1982 Act, which is currently used to regulate establishments such as sex shops and sex cinemas.
185. The clause would insert a new paragraph 2A into Schedule 3 of the Local Government Act 1982.
186. Sub-paragraphs (1), (2) and (8) of the new paragraph define a “sex encounter venue” as a premises where certain entertainment is provided, or permitted to be provided, by or on behalf of the organiser in front of a live audience for the financial gain of the organiser or entertainer. The entertainment may take the form of a live performance or live display of nudity and must reasonably be assumed to have been provided solely or principally for the purpose of sexually stimulating any member of the audience. An audience can consist of just one person.
187. Sub-paragraph (3) explains that sex shops, sex cinemas and any premises that provide relevant entertainment less than once a month are not sex encounter venues. The Secretary of State, or in Wales the Welsh Minister, may also make an order excluding other premises. In addition, under sub-paragraph (4) they may make an order excluding certain types of performances or displays of nudity.
188. Sub-paragraphs (5), (6) and (7) make provision relating to the exercise of the order making power described in sub-paragraphs (3) and (4). In particular, the power to make such an order is subject to the negative resolution procedure.
189. Sub-paragraph (9) stipulates that it is the organiser that must apply for a licence under the 1982 Act as the “user” of the premises.
190. Sub-paragraph (10) provides various definitions including the meaning of “nudity” in the cases of men and women. The definition of “premises” means that private dwellings to which the public are not admitted are expressly excluded from the definition of premises. Sub-paragraph (10) also states that it does not matter whether the financial gain arises directly or indirectly from the performance of display or whether it is the person providing the entertainment who receives the benefit or some other person. Therefore, for example, it should not matter whether those admitted to the premises pay for admission to or membership of the club.
191. *Subsection 4* amends paragraph 12(3)(c) of Schedule 3 to the 1982 Act, which deals with refusal of licences, to allow local authorities to set a limit on the number of sex establishments of a particular type in a

locality, as well as the number of sex establishments generally, and to refuse a licence on the basis that the number of establishments in the locality is equal to or exceeds the number which the authority considers appropriate.

192. *Subsection 5* amends paragraphs 13(2) and (3) of Schedule 3 to the 1982 Act which provides local authorities with the power to prescribe in regulations standard terms and conditions for sex establishment licences. The amendments allow local authorities to impose different standard conditions on a sex encounter venue compared with other kinds of sex establishment, such as a sex shop. Copies of any regulations made by a local authority under paragraph 13 of Schedule 3 must be supplied by the local authority upon request and payment of a reasonable fee.
193. *Subsection 6* ensures that the local authority will be able to charge a fee for applications to vary a licence granted under the 1982 Act. Indeed, a reasonable fee set by the local authority is also payable for the grant, renewal or transfer of a licence under the 1982 Act. *Subsection 7* inserts a new paragraph after paragraph 25 of the 1982 Act that stipulates the procedure by which the police and local authority officers can, under the authority of a warrant, seize property from premises that can be forfeited following a conviction for an offence under paragraphs 20 (enforcement) or 23 (offences relating to persons under 18) of the 1982 Act. The provisions largely replicate those inserted by the Greater London Council (General Powers) Act 1986 but are necessary as that Act is of limited application. *Subsection 8* similarly replicates an amendment made by the Greater London Council (General Powers) Act 1986.

Schedule 3: Lap dancing and other sex encounter venues: transitional provisions

194. *Paragraph 1* deals with those local authorities that have not already resolved to adopt Schedule 3 of the 1982 Act and provides that the amendments made to the 1982 Act by clause 24 will apply where such an authority resolves to adopt Schedule 3 on or after clause 24 comes into force.
195. *Paragraph 2* deals with those local authorities that have already adopted Schedule 3 and any subsequent amendments made by local acts. In these cases the amendments to Schedule 3 made by clause 24 will not apply to a local authority area unless the relevant local authority resolves to adopt them.
196. *Paragraph 3* allows the appropriate national authority to make, by statutory instrument, appropriate saving, transitional or transitory provisions relating to the coming into force of Schedule 3 of the 1982 Act as amended by this Bill.

These notes refer to the Policing and Crime Bill as introduced in the House of Commons on 18 December 2008 [Bill 7].