

Part A

**Report to:** Licensing Committee

**Date of meeting:** Thursday, 6 July 2023

**Report author:** Senior Licensing Officer (AY)

**Title:** Review of Sex Establishment Licensing Policy

**1.0 Summary**

1.1 The council has powers in relation to sexual establishments ('sex shops') and sexual entertainment venues (such as lap-dancing clubs). The committee has adopted a non-statutory policy regarding these licences, which is due for review.

**2.0 Risks**

2.1

<b>Nature of risk</b>	<b>Consequence</b>	<b>Suggested Control Measures</b>	<b>Response</b> (treat, tolerate, terminate or transfer)	<b>Risk Rating</b> (combination of severity and likelihood)
Not renewing policy	Policy lapses, preventing controls in policy from being enforced and implemented, including standardised conditions and limits on number of premises	Renew policy	Treat	High
Legal challenge to decision if consultation comments not properly considered	Negative perception of council and its licensing functions, and challenge through the Courts	Ensure that results of public consultations are thoroughly considered and amendments to proposed policy made where necessary and appropriate	Treat	Medium

### 3.0 **Recommendations**

- 3.1 That the policy at appendix 2 be approved and adopted for three years, subject to any amendments proposed and approved by the committee, starting immediately upon the expiry of the current policy.

**Further information:**

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**Report approved by: Justine Hoy, Associate Director – Housing and Wellbeing**

### 4.0 **Detailed proposal**

- 4.1 The council has powers under the Local Government (Miscellaneous Provisions) Act 1982 (as amended) to licence 'sex shops' and lap-dancing clubs. There is currently only one such premises operating within the borough, being a sexual entertainment venue trading in Market Street.
- 4.2 In October 2010 the Licensing Committee adopted a non-statutory policy, setting out its approach to dealing with applications for these types of licences. The policy particularly sets out the number of sex establishment premises that the committee thought appropriate within defined localities, and in many cases that number is nil. It is open to applicants to argue that they should be considered an exception to the policy.
- 4.3 On 15 June 2011 the Committee agreed to reduce the number of sexual entertainment venues from one to nil in The Parade. This followed the closure of one of the two sexual entertainment venues that were then trading.
- 4.4 This policy has been subject to several reviews over the years, and each time the policy was renewed for a further three years. The Committee has agreed to renew this policy on 14 July 2014, 26 June 2017, and the last time the policy was reviewed and renewed was 7 July 2020. This policy is attached at appendix 1.
- 4.5 Officers are of the opinion that the policy does not require significant change. This approach is proposed based on the experience of officers that no significant representations have been made, nor evidence provided, during the life of the policy. It is proposed to renew the policy for a further three years. Although there is no statutory requirement to review such a policy it is good practice to review policies on a periodic basis.
- 4.6 Consultations are required to be held in accordance with the Government's consultation principles. These principles state:
- Consultations should be clear and concise

- Consultations should have a purpose
- Consultations should be informative
- Consultations are recognised as only part of a process of engagement
- Consultations should last for a proportionate amount of time
- Consultations should be targeted
- Consultations should take account of the groups being consulted
- Consultations should be agreed before publication
- Consultation should facilitate scrutiny
- Consultation exercises should not generally be launched during local or national election periods.

Officers consider that the consultation has been held in accordance with these principles.

- 4.7 The consultation was carried out between 1 and 18 June 2023. The length of the consultation was considered appropriate due to the consultation seeking opinions on renewing the policy without making significant changes, whereas a proposal to change the policy would have justified a longer consultation period. The consultation was open to any person to submit comments by a public consultation accessible through an online survey on the council's website, or to submit comments in writing directly to the licensing team and not necessarily through the online survey.
- 4.8 The online survey did specifically question whether the council should continue to limit the number of licensed establishments within the town centre, and whether the council should continue to prescribe standard conditions for licences granted under this policy. Consultees were also given the opportunity to provide detailed responses and reminded that they were not only restricted to commenting on the limit of premises and standard conditions.
- 4.9 The following groups were consulted directly and invited to partake in the consultation:
- Licence holders
  - Agents acting for licence holders
  - Hertfordshire Constabulary
  - Central Town Residents' Association
  - Watford BID
- 4.10 There is currently only one business operating within the borough to which this policy applies. They were contacted directly for their input on the policy and its renewal. Officers also consulted the firm of solicitors who had represented the premises for their last sexual entertainment venue licence renewal. Both groups were consulted as being representative of licence holders and businesses affected by this policy.

- 4.11 All applications for sex establishment licences made under the Local Government (Miscellaneous Provisions) Act 1982 are required to be copied to the local Police, so their views were sought as a statutory consultee. It was also considered appropriate to consult the Police due to their close involvement with the town's night-time economy.
- 4.12 The policy limits sex establishments and sexual entertainment venues to only operate within the town centre, specifically Market Street and The Parade. It was therefore deemed appropriate to seek the views of parties who represent businesses and residents within the area, and as a result the BID and the local residents' association were contacted.
- 4.13 This approach is similar to the previous consultation on renewing the policy held in 2020.
- 4.14 For ease of reference, officers propose that the following amendments are made to the policy in terms of updating the content of the policy without changing the impact of the policy (all references to paragraphs relate to the proposed policy attached at appendix 2):

Miscellaneous occurrences throughout the document	Updated references to the 'licensing team', 'Community Protection' and 'Environmental Health Business Team' to 'Housing & Wellbeing' to accurately reflect the council's structure
Paragraph 1.6	Combined the history of reviews and renewals of policy into one paragraph instead of separate paragraphs
Paragraph 1.7	Provide details of consultation
Paragraph 1.8	Added in the words 'and their representatives' to clarify that licence holders and their agents were consulted
Paragraph 2.1	Updated the population figures
Paragraph 2.2	Combined paragraphs detailing the history and aspects of the borough into one paragraph, based upon the description in the council's Economic Growth Strategy
Paragraph 2.6	Updated the reference to the Council Plan
Paragraph 5.5	Updated the reference to our Compliance Policy (previously referred to as our enforcement policy)

- 4.15 As detailed above, the only proposed changes are to update references to the structure of the council and references to other policies adopted by the council without changing the impact of the policy.

## 5.0 Consultation responses

- 5.1 The Police responded directly to the licensing team advising that they had no representations to make with regards to renewing the policy and maintaining the limits on premises and the prescribed standard conditions.
- 5.2 One response was received through the online survey. The respondent advised that the council should retain the policies limiting the number of sex shops and sexual entertainment venues. They did not respond to the questions regarding retaining the standard licence conditions, and made no general comments with regards to the overall policy proposal.
- 5.3 No other comments were received in response to the consultation from any other party or organisation.
- 5.4 Members are reminded that the policy cannot prohibit applications, even if a limit on the number of premises is in place. The council is required to process any valid application made to it, and these applications will be subject public consultation. Should valid objections be received then the application is to be determined by a licensing sub-committee.
- 5.5 In any case, where an application is heard before a sub-committee, it will be for the sub-committee to decide if the policy should be implemented or not, and the applicant does have a right to argue that they should be considered as an exception to the policy based upon the individual merits and facts of the relevant application. In all such cases, it will be for the applicant to persuade the sub-committee that an exception to be considered, not on the sub-committee to show why an exception should be made.
- 5.6 The consultation did ask for comments on renewing the policy for a further three years. No specific representations were received against this proposal. Specifying an expiry date of the policy will mean that it will need to be reviewed and renewed prior to expiry.

## **6.0 Implications**

### **6.1 Financial**

6.2 The Shared Director of Finance comments that there are no direct financial implications arising from this report.

### **6.3 Legal Issues (Monitoring Officer)**

6.4 The Group Head of Democracy and Governance comments that the legal implications are contained within the report and specified in the policy.

## 6.5 **Equalities, Human Rights and Data Protection**

6.6 Under s149 (1) of the Equality Act the council must have due regard, in the exercise of its functions, to the need to –

- eliminate discrimination, harassment, victimisation and any other conduct prohibited by the Act
- advance equality of opportunity between persons who share relevant protected characteristics and persons who do not share them
- foster good relations between persons who share relevant protected characteristics and persons who do not share them.

6.7 Having had regard to the council's obligations under s149, it is considered that no additional equalities assessment is required to be conducted due to the very minor changes to the policy.

6.8 It is acknowledged that the policy only directly affects a maximum of two businesses in the borough. The policy sets a limit on the number of businesses that may operate within the borough, and that licences are granted subject to specific conditions. It is also noted that the application and determination process is set out in legislation. It is also noted that we currently have one premises operating under this policy within the borough, which itself has not been recently subject to any complaints or allegations that its operation or existence is undermining the council's equality obligation. However, officers can advise that should any such complaints be made they will be investigated and necessary actions taken should the complaints hold any merit.

## **Appendices**

Appendix 1 – Existing policy (2020-2023)

Appendix 2 – Proposed policy (2023-2026)

## **Background papers**

Watford Borough Council Sex Establishment Licensing Policy 2020-2023

Consultation Principles 2018