

North Tyneside Council

Report to Cabinet

Date: 20 February 2023

Title: Review of the North Tyneside Statement of Licensing Policy (Sex Establishments)

Portfolio: Community Safety and Public Protection	Cabinet Member: Councillor Carole Burdis
Report from Service Area: Regeneration and Economic Development	
Responsible Officers: John Sparkes, Director of Regeneration and Economic Development	Tel: (0191) 643 1441
Wards affected: All	

PART 1

1.1 Executive Summary:

At its meeting on 31 September 2022 Cabinet agreed that the North Tyneside Council's Statement of Licensing Policy (Sex Establishments) should be reviewed. Cabinet authorised the Director of Regeneration and Economic Development to commence public consultation on the revised draft Policy and for Cabinet to receive a further report at the conclusion of the consultation process.

The draft Policy has been developed following the conclusion of a six week consultation period. All responses received were in support of the revised Policy and the imposition of a nil limit for licences in the Whitley Bay area, including support from Northumbria Police and the Whitley Bay Ward Councillors.

This report presents to Cabinet a revised draft Policy for its consideration and adoption if considered appropriate to do so.

1.2 Recommendation:

It is recommended that the Cabinet:

- (1) Approve the adoption the revised North Tyneside Council Statement of Licensing Policy (Sex Establishments) as attached at **Appendix 1** to this report.

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 18 November 2022.

1.4 Council Plan and policy framework:

This report relates to the following priorities in the 2021 – 2025 Our North Tyneside Plan:

A thriving North Tyneside :

- We will bring more good quality jobs to North Tyneside - by helping local businesses to sustain and grow, making it attractive for new businesses to set up or relocate in the borough.

A caring North Tyneside:

- People will be cared for, protected and supported if they become vulnerable, including if they become homeless.

A secure North Tyneside:

- Council wardens will work in partnership with Northumbria Police to prevent and tackle all forms of antisocial behaviour.

1.5 Information:

1.5.1 Background

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

In 2010 the Local Government (Miscellaneous Provisions) Act 1982 ('the 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 adopt various non-statutory policies that assists in the promotion of consistency in decision-making. It also informs the licensing trade and the public of the approach of the Licensing Authority to sex establishment 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 that particular location contrary to the policy.

There are some statutory exceptions for the need for sexual entertainment venues 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 Existing licenses in North Tyneside

Since Schedule 3 was adopted by the Authority, there have been no applications received for a sexual entertainment venue licence. There are no licences currently issued in relation to sex shops or sex cinemas.

1.5.3 Review of licensing policy and public engagement

A draft Statement of Licensing Policy has been prepared and is attached at Appendix 1. The numerical limit of nil for the specified area of Whitley Bay was retained for the purposes of the draft policy and consultees were specifically asked to comment on this aspect of the Policy.

The draft Policy has been updated to include the following:

- Updated references to Council Plan
- Reference to Public Sector Equality Duty
- Need for Basic Disclosure Certificate for applicants
- Safeguarding training for applicants.

An engagement period of six weeks took place from 10 October to 20 November 2022. An online survey was developed for individuals or businesses to make consultation responses as well as being able to make written responses. Information was made available on the Engagement Hub. At the conclusion of this consultation 16 responses were received. A summary of the responses is attached at Appendix 2.

Of the 16 responses received, all were in support of the revised Policy. In addition, every response received agreed with the imposition of a nil limit for licences in the Whitley Bay area. Northumbria Police commented that all premises previously providing adult entertainment on South Parade are no longer trading.

In consideration of the responses, no further amendments to the draft Policy were made.

1.5.4 Fees

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

1.6 **Decision Options:**

The following decision options are available for consideration by Cabinet:

Option 1

Cabinet approves the recommendations at paragraph 1.2 of this report.

Option 2

Cabinet does not approve the recommendations at paragraph 1.2 of this report.

Option 3

To instruct officers to make amendments to the Policy and to bring a further report to Cabinet for it to consider those amendments.

Option 1 is the recommended option.

1.7 Reasons for Recommended option:

Option 1 is recommended to ensure that the existing Policy is updated and remains transparent, accountable, proportionate and consistent. The Policy has been subject to a six week consultation exercise and views expressed during that period have been considered in formulating the final draft document.

1.8 Appendices:

Appendix 1: Draft Statement of Licensing Policy (Sex Establishments)
Appendix 2: Summary of responses

1.9 Contact Officers:

Joanne Lee, Head of Public Protection, (0191) 643 6901
Stephanie Graham, Senior Licensing Officer, (0191) 643 6969
John Barton, Lawyer, (0191) 643 5354
David Dunford, Senior Business Partner, (0191) 643 7027

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:

- 1) Sex establishments | North Tyneside Council
- 2) Schedule 3 Local Government (Miscellaneous Provisions) Act 1982
- 3) Cabinet report Sept 2022
- 4) Equality Impact Assessment

PART 2 – COMPLIANCE WITH PRINCIPLES OF DECISION MAKING

2.1 Finance and Other Resources:

There are no financial implications directly arising from the report. The costs of preparing the revised Licensing Policy and the associated consultation arrangements can be met from existing revenue budgets.

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 in addition to the existing two categories of sex establishments, namely, 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. It will be for the Regulation and Review Committee to determine whether all or some of those conditions should apply to any individual application for a licence that may be received. The standard conditions are included within the policy.

2.3 Consultation/Community Engagement:

2.3.1 Internal Consultation

Internal consultation has taken place with the Cabinet Members, Members and service areas.

2.3.2 External Consultation

As outlined in section 1.5.3 of the report, an engagement process has concluded. An online response form was made available for respondees to make consultation responses. In addition, written responses could be made to the Licensing Office or via Customer First Contact Centres. Details of all responses received are attached at Appendix 2 to this report.

2.4 Human Rights:

There are aspects of the administration of licences 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 a Regulation and Review Panel will be given an opportunity to express their views.

Article 1 of the First Protocol entitles a person to the peaceful enjoyment of his possessions. A possession may include the goodwill that such a Licence would generate. However, balanced against that is the ability of the Licensing 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:

The Policy has been drafted having regard to the Authority's Public Sector Equality Duty. An Equality Impact Assessment has been undertaken in relation to the formulation of the Policy and to inform the consultation process. The Assessment has been updated to assess the potential impact of the Policy. The consultation process was undertaken to ensure that all persons, groups and organisations had an opportunity to participate, including those with protected characteristics. Individual decisions taken under the Policy will also have to be taken having regard to the Public Sector Equality Duty.

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 Public Health and Regeneration and Economic Development risk arrangements.

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 environmental or sustainability issues arising directly from this report.

PART 3 – SIGN OFF

- Chief Executive x
- Director of Service x
- Mayor/Cabinet Member x
- Chief Finance Officer x
- Monitoring Officer x
- Assistant Chief Executive x