

<b>Committee/Meeting:</b> Cabinet	<b>Date:</b> 3 August 2011	<b>Classification:</b> Unrestricted	<b>Report No:</b> <b>(CAB 023/112)</b>
<b>Report of:</b>  Corporate Director –  Steve Halsey Communities Localities and Culture  <b>Originating officer(s)</b>  Colin Perrins Head of Commercial Services		<b>Title:</b>  Sex Establishments – Adoption of Legislation – Approval of Consultation Process  <b>Wards Affected: All</b>	

<b>Lead Member</b>	Deputy Mayor – Ohid Ahmed
<b>Community Plan Theme</b>	Safer and Supportive Communities
<b>Strategic Priority</b>	Fostering Greater Community Cohesion

1. **SUMMARY**

- 1.1 This report updates Cabinet on the proposed adoption of the legislation and associated policy development for the control of lap dancing and striptease premises in the Borough.

2. **DECISIONS REQUIRED**

- 2.1 Cabinet is recommended to:-

- a) “Resolve that Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended by section 27 of the Policing and Crime Act 2009 is to apply to the London Borough of Tower Hamlets area; and that Schedule 3 shall come into force in the London Borough of Tower Hamlets area.
- b) That the date that Schedule 3 shall come into force shall be the same day as the policy for Sex Establishments comes into force..
- c) Approve the draft policy for Sex Establishments for consultation.

### **3. REASONS FOR THE DECISIONS**

- 3.1 The legislation that allows greater control of Sex Establishments is discretionary. Therefore if the Council wishes to avail itself of these powers the relevant legislation has to be adopted.
- 3.2 Central Government advice recommends that Local Authorities adopting Sex Establishments legislation develop a Policy that defines how the legislation will be administered and applied. Policy development should be carried out with appropriate consultation.

### **4. ALTERNATIVE OPTIONS**

- 4.1 Adoption of the legislation is not compulsory and so the Council could choose not to pursue adoption. However this option will not give the Council the new powers now available to adopting Councils to regulate striptease and lap dancing premises in their Boroughs. Given the aspirations of the Council on this issue to have greater control over the establishment of these uses in the Borough this alternative option is therefore not recommended.

### **5. BACKGROUND**

- 5.1 New legislation has been introduced that allows local authorities to have greater control and regulation of sex establishments. This includes a category of premises called Sexual Entertainment Venues which includes places where lap dancing and striptease takes place.
- 5.2 This report provides Cabinet with the background and advice on the process for adoption and implementation of legislation.
- 5.3 As recommended by Government a draft policy has been produced that sets out the Council's approach to sex establishments and how the legislation will be implemented locally. The policy can be found in Appendix 1.
- 5.4 In September 2008, the previous Government announced its intention to give local people a greater say over the number and location of lap dancing and striptease venues in their area. This followed consultation with local authorities which highlighted concerns that the legislation that then existed did not give communities sufficient rights to have a say about whether sex establishments should be allowed to operate in their locality.
- 5.5 These concerns were addressed by Government introducing new legislation in 2009. This legislation was formulated to create a new category of sexual establishments called "sexual entertainment venues". The new legislation now gives Local Authorities greater powers to control and regulate premises that hold lap dancing, pole dancing, table dancing, strip shows, peep shows and

live sex shows. In order to use these powers, Local Authorities have to adopt the legislation.

- 5.6 In 2008, the Council conducted an Overview and Scrutiny review of striptease premises. An extensive consultation process was carried out and there was an overwhelming response which said that striptease had an adverse impact on neighbourhoods and that the Council should do all it could to restrict this type of activity. The scrutiny report produced was submitted as evidence for the Government's consultation on the proposed new legislation.

## **6. POLICY DEVELOPMENT AND PROCEDURE**

### *6.1 Policy Development*

- 6.1.1 The new legislation brought in by Government in 2009 allows Local Authorities the following:

- The discretion to adopt the new legislation. (The legislation is not mandatory. It can only apply once it has been adopted by a Local Authority.)
- Control the number of premises
- Control the location of premises
- Give local people a greater say over sexual entertainment venues in their area

- 6.1.2 This report is recommending adoption of the provisions for regulating sexual establishments which cover licences for sex shops, sex cinemas and sexual entertainment venues (SEVs) as set out in the Local Government (Miscellaneous Provisions) Act 1982 ('the 1982 Act') as amended by the Policing and Crime Act 2009.

- 6.1.3 A draft policy has been developed (Appendix 1) that sets out how, if adopted, the new legislation will be administered and applied. The policy suggests how the Council should exercise its power to restrict the number and location of premises in the Borough.

- 6.1.4 The policy has been developed to reflect and complement existing Council strategies, namely:-

- § Tower Hamlets Community Plan.
- § Tower Hamlets Crime & Drug Reduction Partnership Plan.
- § Tower Hamlets Enforcement Policy.
- § Tower Hamlets Core Strategy.
- § Tower Hamlets Town Centre Spatial Strategy.
- § Tower Hamlets Statement of Licensing Policy (Licensing Act 2003).
- § Tower Hamlets' Statement of Licensing Policy (Gambling Act 2005).

The draft policy also has regard to:

- § Human Rights Act 1998.
- § Disability Discrimination Act 1995.

6.1.5 Taking into consideration the findings of the Overview & Scrutiny Review, the draft policy seeks to contribute to “One Tower Hamlets” principle by fostering community cohesion, reducing inequalities and empowering communities.

6.1.6 Furthermore, and linking to the documents identified above, the draft policy seeks to:-

- § Address concerns about the level of crime and fear of crime.
- § Contribute to retaining the richness in Tower Hamlets’ diversity.
- § Recognise the importance of place shaping and ensuring connected and cohesive communities through planning and design.
- § Encourage respect among communities.

## 6.2 *Policy Implementation & Policy Principles*

6.2.1 The policy will reflect specific guidance for Local Authorities on the adoption and administration of the Sexual Entertainment Venue legislation produced by Government. Although not statutory guidance, Government is asking Local Authorities to take due regard so that the legislation is introduced as consistently as possible where it is introduced. Included in the guidance is a statement that says that although the powers for Local Authorities are increased, moral grounds or values should not be used as reasons for refusal to grant a licence.

6.2.3 The policy that has been produced reflects the legislation’s emphasis on the suitability of localities to have Sex Establishments. The policy has used the places and localities structure as set out in the Council’s Core Strategy. Each place / locality has been assessed by the Council as Local Planning Authority and as Licensing Authority in relation to suitability based on:-

- Population density and growth trends for residential amenity and related infrastructure.
- Locality and place profiles.
- Borough ethnicity profile.
- Economic and health specific deprivation indices.
- Our diverse cultural communities.
- Locations of:-
  - Premises attracting vulnerable people such as GP surgeries and addiction centres.
  - Areas and premises attracting families such as leisure and sport facilities and play spaces, parks and open spaces.
  - Premises attracting young people such as schools, nurseries and other educational establishments.
  - Places of worship.

6.2.4 The assessment carried out clearly indicates that no place / locality in the Borough will be suitable for Sex Establishments.

### 6.3 *Consultation*

6.3.1 It is proposed that the formal consultation process should pose the following questions. (References to sections in this paragraph are those in the Draft Sex Establishment Policy):

- a. Do you agree with the Council's proposed definitions for "Localities"? (See section 5.1).
- b. Do you agree with the Council's "Policy Considerations" in section 4.0?
- c. Do you agree that Council has properly applied and interpreted its policy considerations in suggesting the appropriate number of sex establishments in each locality in Tower Hamlets should be "nil"?
- d. Do you have any other comments regarding the Draft Sex Establishment Policy?

6.3.2 A consultation and communications plan is being prepared for this initiative by the Licensing Service in CLC and the Corporate Communications Team. It is recognised that a comprehensive consultation process is required and that being a potential controversial issue a programme of communication has to be developed. *(This paragraph will be updated when the Consultation / Communications Plan is developed)*

### 6.4 *Next Steps and Adoption*

6.4.1 The process for adoption and indicative time line would be as follows:

- Cabinet approval for adoption of legislation, draft policy and consultation process – August 2011
- Carry out formal consultation – September/October 2011
- Review consultation responses – November 2011
- Mayor and Cabinet to approve policy – January 2012

### 6.5 *Approach of Neighbouring London Boroughs*

6.5.1 The Corporation of London who have no striptease or lap dancing premises at present will be adopting a "nil" policy. Camden, Hackney and Islington will be setting a "nil" policy for new applications but will allow existing businesses to trade as long as they are compliant with new legislative and policy considerations. If after consultation responses, Tower Hamlets decides to set a "nil" policy for existing and new applications, it is likely to be controversial and likely to be subject to a legal challenge from existing businesses in the Borough and possibly from other players in the sex establishment industry.

## **7. COMMENTS OF THE CHIEF FINANCIAL OFFICER**

- 7.1 There are no specific financial implications emanating from this report, but in the case of any legal challenge arising that cannot be contained within the existing service budget, resources will then need to be identified as no specific provision exist within Council budgets. The impact will then need to be considered in the light of impact on the Council's savings targets for the Medium Term Financial Plan.

## **8. CONCURRENT REPORT OF THE ASSISTANT CHIEF EXECUTIVE (LEGAL SERVICES)**

- 8.1 This report outlines proposals to consult on development of a council policy on sex establishments and also to adopt Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended by section 27 of the Policing and Crime Act 2009 so that Schedule 3 will apply to the London Borough of Tower Hamlets.
- 8.2 The Local Government (Miscellaneous Provisions) Act 1982 ("the 1982 Act") has been amended to bring the licensing of lap dancing and pole dancing clubs and other similar venues under the more robust licensing regime set out in the 1982 Act, rather than dealing with the licensing of such premises under the Licensing Act 2003.
- 8.3 The 1982 Act now provides for a new category of sex establishment called a "sexual entertainment venue" ("SEV"). These are premises where "relevant entertainment is provided before a live audience for the financial gain of the organiser or entertainer". "Relevant entertainment" may take the form of any live performance or any live display of nudity and must be of such a nature that (ignoring financial gain) it must reasonably be assumed to have been provided solely or principally for the purpose of sexually stimulating any member of the audience.
- 8.4 The new approach to licensing SEVs will only apply if the Council adopts the provisions of the 1982 Act as amended by the 2009 Act. If the Council chooses not to adopt, then lap dancing and pole dancing clubs and other similar venues would continue to be dealt with under the Licensing Act 2003.
- 8.5 If the Council adopts the provisions of the 1982 Act as amended by the 2009 Act, then there are three ways in which it can proceed –
- (1) Have no policy. The licensing committee (or sub-committees) would then deal with applications for licences on a case by case basis.
  - (2) Adopt a policy and within the policy seek to define localities and impose a limit, which could be nil, of the number of sex establishments (including SEVs) that the Council will licence in each locality. Applications would still have to be considered by the licensing committee (or sub-committees) and whilst the policy will provide

guidance, each application would still need to be considered on its own merits on a case by case basis.

- (3) Adopt a policy which does not impose a limit but imposes a set of criteria that the licensing committee (or sub-committees) should consider in respect of each application in determining the application.

8.6 There may be merits with each of these options. The report proposes that there be consultation on the second option and it is certainly open to the Council to proceed with that course. If it does, then the matters in section 6.3 of the report should be included in the consultation. Any consultation should be undertaken at a time when proposals are still at a formative stage, include sufficient information to allow those consulted to give intelligent consideration and response and allow adequate time for this purpose.

8.7 From a practicable point of view, once the Council resolves that Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended comes into force in its area then the date that it comes into force is the first appointed day for the purposes of the Policing and Crime Act 2009 (Commencement No 1 and Transitional and Saving Provisions) (England) Order 2010 and therefore when the transitional provisions commence. If it is wished that applications from that date on are to be considered in accordance with the Policy then the Policy should be in place at that time and hence the resolution that if it is decided to adopt Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended then the Policy and that schedule coming into force should coincide.

8.8 Before adopting a policy, the Council must have due regard to the need to eliminate unlawful conduct under the Equality Act 2010, the need to advance equality of opportunity and the need to foster good relations between persons who share a protected characteristic and those who don't.

## **9. ONE TOWER HAMLETS CONSIDERATIONS**

9.1 The draft Sex Establishment Policy has been developed with "One Tower Hamlets" as being a key part of its rationale. The Policy intends to contribute to retaining the richness in Tower Hamlets' diversity, recognise the importance of place shaping and ensuring connected and cohesive communities through planning and design and encourage respect among communities.

## **10. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT**

10.1 There are no SAGE implications for this report

## **11. RISK MANAGEMENT IMPLICATIONS**

11.1 It is likely that the proposals if adopted may lead to a Legal challenge from businesses that are currently operating within the Borough. The proposals

have been developed with the best available advice and opinion in order to resist any such legal challenge should it be made.

## **12. CRIME AND DISORDER REDUCTION IMPLICATIONS**

12.1 The draft Sex Establishment Policy has been developed to complement Crime and Drug Reduction Partnership Plan. The Policy has also taken into consideration the concerns about the levels of crime and the fear of crime in the Borough

## **13. EFFICIENCY STATEMENT**

13.1 This report is not concerned with expenditure, reviewing or changing service delivery or the use of resources

## **14. APPENDICES**

Appendix 1 – The draft Sex Establishment Policy

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### **Local Government Act, 1972 Section 100D (As amended) List of “Background Papers” used in the preparation of this report**

Brief description of “background papers”	Name and telephone number of holder and address where open to inspection.
<i>Sex Establishment Guidance for Local Authorities</i>	<i>Colin Perrins x6872 Anchorage House</i>