

To: General Purposes Licensing Committee

Date: 13 October 2010 **Item No:**

Report of: Head of Environmental Development

Title of Report: Review of Sex Shop Licence Fee

Summary and Recommendations

Purpose of report: To review the fee charged for the grant / renewal / transfer of sex shop licence.

Report Approved by:

Finance: (Verbal Report at Meeting)

Legal: Daniel Smith

Policy Framework: Improve the local environment, economy and quality of life

Recommendation:

- i) to advise on an appropriate level of fee for 2010/11 to be deemed as “reasonable” for the grant and renewal of sex shop licences that covers the costs to administer and enforce such establishments from the options detailed in Paragraph 54 of this report.
- iii) to request that the Head of Environmental Development in conjunction with the Head of Law & Governance devise an instalment plan for the payment of the annual fee and attach conditions to such a plan relating to penalties for the non-payment of an instalment.
- iii) to implement a condition on any instalment plan that an applicant must apply for a renewal of the licence in the manner prescribed by the Local Government (Miscellaneous Provisions) Act 1982 Schedule 3, Paragraphs 8 – 11.

INTRODUCTION

1. Following consultation by the Adult Industry Trade Association with its members regarding the fees charged by Licensing Authorities for a sex shop licence, a challenge to the fee currently charged by the Council has been received from the proprietor of Adult World, 86 Cowley Road, Oxford.

2. Many other Licensing Authorities have also received a similar challenge to the level of fee they charge to licence sex shops.
3. At its previous meeting held on 14th June 2010, the Committee requested that the Head of Environmental Development submit a further report to the next General Purposes Licensing Committee, providing details of the costs to administer and enforce such establishments, in order to determine an appropriate fee.

FEES

4. The requirement is that licence fees should be sufficient to cover the costs to the Council in administering the licensing function.
5. The power to charge a licence fee is contained within Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982. Paragraph 19 provides that:

“An applicant for the grant, renewal or transfer of licence under this Schedule shall pay a reasonable fee determined by the appropriate authority”.

6. Whilst the term ‘reasonable’ is not defined, case law suggests the following general principles should be applied:
 - (a) It is not wrong for the Council to be guided by a policy that the council tax payers should be relieved of the burden of paying the costs of administration and enforcement of the licensing of sex establishments, but it must not exceed those costs;
 - (b) In applying the above principle, it is acceptable for the authority to carry deficits over from one year in calculating the fee(s) for the next; and
 - (c) The Council must not use licence fees as a way to raise revenue.
7. At present, the Council charges an annual fee of £8,000 for the grant, renewal or transfer of a sex shop licence.

CONSIDERATIONS

8. In considering the costs involved in administering a licence, it is necessary to take into account all necessary compliance visits as guided by the mandatory Regulator's Compliance Code which was approved by Parliament under Section 23 of the Legislative and Regulatory Reform Act 2006.
9. The Code was produced in response to the Hampton Review of the UK's regulatory system, which proposed the principles of better regulation based on a risk-based approach and proportionality to regulatory enforcement.

10. Amongst other issues, the Code requires regulators (such as the Council as the licensing authority) to consider:
 - **Supporting economic progress:** Performing regulatory duties should not impede business productivity.
 - **Risk assessment:** Undertaking a risk assessment of all their activities.
 - **Information and advice:** Providing information and advice in a way that enables businesses to clearly understand what is required by law.
 - **Inspections:** Only performing inspections following a risk assessment, so resources are focused on those least likely to comply.
11. The Council, as licensing authority operates within the Regulator's Compliance Code and acts proportionally in applying the law and securing compliance. This involves being consistent in approach, targeting enforcement action, being transparent about how the regulator operates and what those who are regulated may expect.
12. These principles will apply both to enforcement in particular cases and to the management and direction of enforcement activities as a whole.
13. All visits must be made on a risk assessed basis and inspections and compliant premises must not be targeted any more than necessary. Unnecessary visits to compliant premises could easily risk judicial review as the Authority could be considered to have acted outside the Regulator's Compliance Code.
14. If there was a requirement that, in the event of a licence being issued, the establishment should be inspected on a quarterly basis, this would have to be made clear at the time the licence was issued and the reasons why this requirement was being imposed.

Background Research

15. Officers have carried out research in to the charges made by other Local Authorities for sex shops licensed in their areas.
16. Details of the fees charged by other Local Authorities are listed as Appendix 1.
17. In researching the levels of fees charged by other Local Authorities, officers found details of benchmarking carried out by Rushmoor Borough Council in 2008/2009, in listing the level of fee charged by other Local Authorities at the time.
18. The research carried out by Rushmoor Borough Council is attached as Appendix 2.

19. The Committee will note from the charges listed in Appendix 1 and Appendix 2 that several Local Authorities have amended their fees to licence sex shops.
20. The Local Authorities who are listed on both appendices either:
 - Did not alter their fees over the next 2 years, or
 - Amended their fees following a challenge, or
 - Dismissed the challenge to their fees by justifying their charges, or
 - Increased their fees in line with inflation, or
 - Have not yet received a challenge to their fee

Administration & Enforcement

21. It is estimated that issuing a sex shop licence takes up approximately 2 hours of office time if no representations to the application for a grant or renewal of the licence are received.
22. If a representation to a grant or renewal of a Sex Shop licence is received, the matter will be determined by a Licensing & Registration Sub-Committee.
22. If a Hearing is required to determine an application, additional hours and costs are incurred by the Licensing Authority.
23. Should a Hearing be convened it is anticipated that this will add approximately 5 hours additional work to the Licensing Team to carry out the compiling of a Report and attendance at the Hearing, and post-Hearing work.
24. The determination of any application made by the Committee can be appealed, which would incur further Officer time, estimated at approximately 8 hours.
25. The time and services of Law and Governance are also required at the Hearing or Appeal, which also adds an additional cost to the Licensing Authority.
26. Costs may be awarded against the Licensing Authority following a successful appeal and this should be considered when calculating fees.
27. Enforcement inspections of the premises are carried out in accordance with a risk assessed programme.
28. Enforcement visits are currently carried out quarterly, or more frequently if required.

29. Each enforcement inspection takes up approximately 2 hours of officer time. It is usual to send 2 officers to the premises.
30. It is fair to estimate a gross hourly cost of £100.00 to the Licensing Team.
31. The work of the Licensing Team if an application does not meet with objections would be a total of 2 hours administration and 16 hours enforcement, giving a total of 18 hours work.
32. The total hours of work by the Licensing Team should an application require determination at a Hearing would be 23 hours.
33. The total hours of work by the Licensing Team should an appeal be lodged against any decision would be 31 hours.
34. The gross hourly rate for Law & Governance can be fairly estimated to be £150.00.
35. It is fair to estimate that the Law & Governance Service would spend approximately 5 hours on work relating to any Hearing.
36. It can be estimated that the Law & Governance Service would spend approximately 16 hours work on any Appeal.
37. The total number of hours of work estimated for Law & Governance would be 21 hours.
38. As a contingency, Members should be aware that costs may be made against the Local Authority if any appeal against the decision by the Sub-Committee is granted.
39. No surplus for contingency costs has been accounted for in the above calculations.

Training & Development

40. Various training courses are available to Officers to attend that cater for the administrative, enforcement and legal issues relating to such establishments.
41. In order to provide the best level of service to both the trade and the public, and to be able to liaise with partnership agencies, Members are encouraged to support the training and development of the Licensing Team.
42. Any training that may be undertaken will incur additional costs to the Licensing Authority, and should be borne in mind when determining the appropriate fee for the licensing of Sex Shops.

43. It is reasonable to estimate that a figure of £500.00 per officer per annum should be deemed as the cost for training and development in the field of Sex Establishments.
44. It is important to any organisation that the staff who deal with Sex Establishments are fully trained, but in order to reduce overall costs in-house training and shadowing can be carried out.
45. At least 2 officers should be fully trained each year.

Financial Implications

46. The Committee should be aware that any reduction in the levels of fees charged for the licensing of Sex Shops will impact on the Licensing budget.
47. Currently all fees charged for the licensing of sex shops are paid in to the Licensing budget.

Legal Implications

Grounds for Automatic Refusal

48. The legislation makes specific provisions as to whom a licence shall not be granted, for example to a person under the age of 18. It has been determined that none of these provisions apply in this instance.

Discretionary Grounds for Refusal

49. The Council may only refuse the grant, renewal or transfer of a licence on specific grounds. These grounds are:
 - a) "That the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason."
 - b) "That if the licence were to be granted the business to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant of such a licence if he/she made the application him/herself."
 - c) "That the number of sex establishments in the relevant locality at the time the application is made is equal to or exceeds the number which the authority considers is appropriate for that locality."
 - d) "That the grant of the licence would be inappropriate, having regard to;
 - I. the character of the relevant locality; or
 - II. the use to which any premises in the vicinity are put; or

III. the layout, character or condition of the premises in respect of which the application is made.”

50. The legislation states that “nil” may be an appropriate number for the purposes of sub-paragraph 12 (c) above.
51. Also in sub-paragraph 12 (c) “the relevant locality” means, in relation to the premises, “the locality where they are situated.”
52. In R v Birmingham City Council ex parte Sheptonhurst Limited, the Court of Appeal heard a number of linked appeals following refusals to renew licences where there had been no change in circumstances. Lord Justice O’Connor found that where there was no evidence of change in the character of the locality to justify refusal to renew a sex shop licence, the decision to refuse the renewal application was ‘wayward and irrational’.
53. However, the Lord Justice also stated that it was not unreasonable to refuse to grant an application to renew a Sex Establishment licence based on the any of the Discretionary Grounds when evidence was available to support such a decision, and the applicant’s right to expect the licence to automatically be renewed is not correct.

Options

54. Having taken in to consideration the details contained with the Administration & Enforcement and Training & Development sections of this report, Officers have been able to provide the Committee with the following options for the level of fee to be charged by this Authority for the 2011/2012 financial year:
 - i. Retain the current fee levels of £8000.00 for the grant or renewal of a Sex Shop licence. This fee covers all of the considerations and allows for a small surplus for any contingency costs.
 - ii. Retain the current fee level of £8000.00 for the grant of a new licence, and adopt a fee of £2800.00 for any renewal. This option covers all of the considerations and allows for a small surplus for any contingency costs at the grant of a new licence, but only accounts for licensing administration and enforcement at renewal, and assumes that no representations will be received objecting to renewing a licence.
 - iii. Retain the current fee level of £8000.00 for the grant of a new licence, and adopt a fee of £7250.00 for any renewal, and refund an amount of £4450.00 if a Hearing is not required. This option covers all of the considerations and allows for a small surplus for any contingency costs at the grant of a new licence, and accounts for all other consideration (save for a small surplus for contingency costs), and should at the time of renewing the licence, no representation

objecting to the application be received, then the cost built in to cover such matters be refunded to the applicant.

- iv. Adopt a fee of £7250.00 For the grant and renewal of a Sex Shop licence. This option covers all of the considerations, but does not provide for a small surplus for any contingency costs.
- v. Adopt a fee of £7250.00 For the grant of a new Sex Shop licence, and adopt a fee of £2800.00. For the renewal of a Sex Shop licence. This option covers all of the considerations (save for a small surplus for any contingency costs) at the grant of a new licence, but only accounts for licensing administration and enforcement at renewal, and assumes that no representations will be received objecting to renewing a licence.
- vi. Adopt a fee of £7250.00. For the grant of a new Sex Shop licence, and adopt a fee of £7250.00 For the renewal of a Sex Shop licence, and refund an amount of £4450.00 if a Hearing is not required. This option covers all of the considerations and (save for a small surplus for any contingency costs) at the grant of a new licence, and accounts for all other consideration (save for a small surplus for contingency costs), and should at the time of renewing the licence, no representation objecting to the application be received, then the cost built in to cover such matters be refunded to the applicant.

Recommendations

- 55. To advise on an appropriate level of fee for 2010/11 to be deemed as "reasonable" for the grant and renewal of sex shop licences that covers the costs to administer and enforce such establishments from the options detailed in Paragraph 54 of this report.
- 55. To instruct the Licensing Team Leader and Law & Governance to devise an instalment plan for the payment of the annual fee (or otherwise), with conditions relating to the penalties attached to non-payment of the instalment.
- 56. To ensure that prior of each period of the instalment plan, that any applicant apply for a renewal of the licence in the manner prescribed by the Local Government Miscellaneous Provisions Act 1982 Schedule 3 Paragraphs 8 to 11, as attached as Appendix 3

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Background papers:
Version: 1.0

APPENDIX 1

**LEVEL OF FEE SET BY OTHER LICENSING AUTHORITIES
FOR THE GRANT AND RENEWAL OF A SEX SHOP LICENCE**

Licensing Authority	New Application	Renewal Application
Ashford	£2,737	£500
Basingstoke & Deane *	£4,880	£3,690
Bath & NE Somerset	£4,231	£4,231
Bedford *	£3,893	£3,893
Birmingham	£9,935	£5,070
Blackpool	£5,000	£5,000
Bristol *	£8,000	£5,500
Broxbourne *	£950	£950
Burnley	£1,955.95	£1,955.55
Caerphilly	£1,414	£1,414
Canterbury	£5,500	No set fee
Carlisle	£6,639	£5,639
Chelmsford	£2,319	£928
Cheshire West & Chester **	£4,150	£1,800
Colchester *	£5,000	£2,500
Conway	£7,250	£7,250
Cornwall	£3,200	£1,100
Crewe & Nantwich *	£2,260	£1,130
Dacorum *	£4,000	£2,000
Dartford *	£15,000	No fee set
Dover	£2,050	£2,050
Durham	£3,000	£3,000
East Hampshire *	£3,000	£1,500
East Lindsey *	£6,370	£3,359
East Staffordshire *	£6,052	£4,231
Eastleigh *	£1,345	No fee set
Ellesmere Port & Neston **	£4,150	£1,800
Gloucester City *	£10,790	£10,790
Gravesham *	£1,500	£750
Hastings	£8,303	£4,152
Havant *	£4,100	No fee set
Havering	£5,075	£4,500
Hull	£7,917	£7,917
Maidstone	£4,262	£1,602
Manchester	£5,142	£5,142
Medway	£4,000	£2,500
North Cornwall *	£3,200	£1,100
North Devon	£857	£857
North East Derbyshire *	£1,855	No fee set
Northampton *	£3,000	£3,000
Northumberland	£2,326	£2,326
Oxford *	£8,000	£8,000
Plymouth	£2,700	£2,700
Portsmouth *	£12,000	£12,000

Licensing Authority	New Application	Renewal Application
Powys	£864.74	£864.74
Redcar & Cleveland	£1,000	£1,000
Rhondda Cynon	£1,060	£846
Rochford	£2,472	£2,472
Salford	£4,500	£4,500
Scarborough	£7,900	£7,900
Sevenoaks	£2,340	£2,340
Sheffield	£5,200	£5,200
Shepway	£1,750	£1,750
Shropshire	£1,350	£1,350
South Bedfordshire *	£2,040	£1,370
South Lakeland	£850	No fee set
South Northants	£5,000	No fee set
South Somerset *	£10,712	£2,808
Southampton *	£3,500	£3,500
St Edmondsbury	£3,100	£1,650
St Helens	£4,615	£4,615
Stafford	£4,113	£4,113
Stevenage	£4,200	£4,200
Suffolk Coastal	£12,000	£4,000
Sutton	£7,500	£7,500
Swale	£3,200	£560
Swansea	£3,960	***
Test Valley *	£3,000	£3,000
Thanet	£849	£849
Tonbridge & Malling	£6,000	£6,000
Torbay	£5,065	£5,697
Torridge	£7,302	£3,651
Tunbridge Wells	£7,875	£1,990
Uttlesford	£4,500	£4,500
Wandsworth	£2,717	£2,717
West Lindsey	£1,274	£1,189
West Oxon	£752.25	£752.25
Westminster	£29,102	£29,102
Wiltshire	£1,300	£650
Winchester *	£1,200	No fee set
Woking *	£12,790	£12,790
Wolverhampton	£4,478	£3,578
Worcester *	£3,798	£1,813
Worthing	£2,538	£2,538
Wycombe *	£6,800	£6,800
Wyre Forest	£3,994	£1,534

* Local Authority 2008/9 fee shown in Appendix 2

** Ellesmere Port & Neston, now known as Cheshire West & Chester

*** Fee not available at time of report being compiled

SURVEY OF SEX ESTABLISHMENT LICENCE FEES

Local Authority	Family Group*	Number of sex shops	Grant Fee (£)	Renewal Fee (£)	Transfer Fee (£)	Breakdown provided
Rushmoor BC (Current)	Y	2	6230	6230	6230	Based on initial benchmark & added inflation
Rushmoor BC (Proposed)	Y	2	6490	2000	6490	Based on officer mapping
Basingstoke & Deane BC	N	0	4725	3570	N/A	Able to demonstrate fee / costs but not available
Bedford Borough Council	N	2	3600	3600	3600	Did do one a few years ago but not available
Bristol City Council	N	3	15335	15335	769	No
Dacorum Borough Council	N	1	3700	2600	2000	No - but breakdown available.
East Hampshire District Council	N	1	3000	1500	1500	No - but initial breakdown available. Members added 50%.
East Lindsey District Council	N	1	1200	200	N/A	No
Gosport Borough Council	N	1	5948	3136	3136	No
Guildford Borough Council	N	0	N/A	N/A	N/A	N/A
Hart District Council	N	0	N/A	N/A	N/A	N/A
Havant	N	0	4100	N/A	N/A	Committee have said none allowed
North Cornwall District Council	N	1	1000	500	N/A	Average of all authorities becoming unitary
North East Derbyshire	N	0	1821	N/A	N/A	Calculated from other authority fees a few years ago
Oxford	N	3	7750	7750	7750	No
Portsmouth City Council	N	2	12000	8000	12000	Reduced renewal last year as never had objections
South Somerset District Council	N	1	10300	5400	N/A	Based on cost of defending a refusal through courts
Southampton Council	N	4	7500	7500	N/A	No
Test Valley Borough Council	N	1	3000	3000	3000	No
Waverley Borough Council	N	0	N/A	N/A	N/A	N/A

SURVEY OF SEX ESTABLISHMENT LICENCE FEES

Local Authority	Family Group*	Number of sex shops	Grant Fee (£)	Renewal Fee (£)	Transfer Fee (£)	Breakdown provided
Winchester City Council	N	0	4000	N/A	N/A	Set on an enquiry
Woking Borough Council	N	1	12700	12700	12700	On review (c/o Darker), suggested renewal @ £2k but members disagreed.
Wycombe District Council	N	0	6500	N/A	N/A	Likely high cost of processing based on experience
Borough of Broxbourne	Y	2	950	950	950	No - but anxious not to use as revenue generator
Borough of Crewe & Nantwich	Y	2	2260	1130	1130	No - started as round figures & added inflation
Colchester Borough Council	Y	2	6750	3500	N/A	No
Dartford Borough Council	Y	0	15000	N/A	N/A	No - Based on what others in area charge
East Staffordshire Borough Council	Y	0	6052	4231	N/A	No - just increased each year
Eastleigh Borough Council	Y	0	1345	N/A	N/A	No
Ellesmere Port & Neston BC	Y	1	6030	4820	2410	Benchmarking exercise of other local authorities
Gloucester City Council	Y	2	10790	10790	N/A	No
Gravesham Borough Council	Y	2	1500	750	750	No
Northamptonshire partnership	Y	N/A	1000	270	N/A	Average fees of partnership authorities inc. 2 in our group, 5 in total.
South Bedfordshire District Council	Y	1	2040	1370	1370	No
Worcester City Council	Y	1	3624	1730	N/A	No

Notes:

Geographical neighbours – shown in **Bold**

*Family group identified by the Audit Commission using the Value for Money tool and BVPI information.

**GRANT, RENEWAL AND TRANSFER OF LICENCES
FOR SEX ESTABLISHMENTS**

- 8 Subject to paragraph 12(1) below, the appropriate authority may grant to any applicant, and from time to time renew, a licence under this Schedule for the use of any premises, vehicle, vessel or stall specified in it for a sex establishment on such terms and conditions and subject to such restrictions as may be so specified.
- 9 (1) Subject to paragraphs 11 and 27 below, any licence under this Schedule shall, unless previously cancelled under paragraph 16 or revoked under paragraph 17(1) below, remain in force for one year or for such shorter period specified in the licence as the appropriate authority may think fit.
- (2) Where a licence under this Schedule has been granted to any person, the appropriate authority may, if they think fit, transfer that licence to any other person on the application of that other person.
- 10 (1) An application for the grant, renewal or transfer of a licence under this Schedule shall be made in writing to the appropriate authority.
- (2) An application made otherwise than by or on behalf of a body corporate or an unincorporated body shall state—
- (a) the full name of the applicant;
- (b) his permanent address; and
- (c) his age.
- (3) An application made by a body corporate or an unincorporated body shall state—
- (a) the full name of the body;
- (b) the address of its registered or principal office; and
- (c) the full names and private addresses of the directors or other persons responsible for its management.
- (4) An application relating to premises shall state the full address of the premises.
- (5) An application relating to a vehicle, vessel or stall shall state where it is to be used as a sex establishment.
- (6) Every application shall contain such particulars as the appropriate authority may reasonably require in addition to any particulars required under sub-paragraphs (2) to (5) above.
- (7) An applicant for the grant, renewal or transfer of a licence under this Schedule shall give public notice of the application.
- (8) Notice shall in all cases be given by publishing an advertisement in a local newspaper circulating in the appropriate authority's area.

(9)The publication shall not be later than 7 days after the date of the application.

(10)Where the application is in respect of premises, notice of it shall in addition be displayed for 21 days beginning with the date of the application on or near the premises and in a place where the notice can conveniently be read by the public.

(11)Every notice under this paragraph which relates to premises shall identify the premises.

(12)Every such notice which relates to a vehicle, vessel or stall shall specify where it is to be used as a sex establishment.

(13)Subject to sub-paragraphs (11) and (12) above, a notice under this paragraph shall be in such form as the appropriate authority may prescribe.

(14)An applicant for the grant, renewal or transfer of a licence under this Schedule shall, not later than 7 days after the date of the application, send a copy of the application to the chief officer of police.

(15)Any person objecting to an application for the grant, renewal or transfer of a licence under this Schedule shall give notice in writing of his objection to the appropriate authority, stating in general terms the grounds of the objection, not later than 28 days after the date of the application.

(16)Where the appropriate authority receive notice of any objection under sub-paragraph (15) above, the authority shall, before considering the application, give notice in writing of the general terms of the objection to the applicant.

(17)The appropriate authority shall not without the consent of the person making the objection reveal his name or address to the applicant.

(18)In considering any application for the grant, renewal or transfer of a licence the appropriate authority shall have regard to any observations submitted to them by the chief officer of police and any objections of which notice has been sent to them under sub-paragraph (15) above.

(19)The appropriate authority shall give an opportunity of appearing before and of being heard by a committee or sub-committee of the authority—

(a)before refusing to grant a licence, to the applicant;

(b)before refusing to renew a licence, to the holder; and

(c)before refusing to transfer a licence, to the holder and the person to whom he desires that it shall be transferred.

(20)Where the appropriate authority refuse to grant, renew or transfer a licence, they shall, if required to do so by the applicant or holder of the licence, give him a statement in writing of the reasons for their decision within 7 days of his requiring them to do so.

11

(1)Where, before the date of expiry of a licence, an application has been made for its renewal, it shall be deemed to remain in force notwithstanding that the date has passed until the withdrawal of the application or its determination by the appropriate authority.

(2)Where, before the date of expiry of a licence, an application has been made for its transfer, it shall be deemed to remain in force with any necessary modifications until the withdrawal of the application or its determination, notwithstanding that the date has passed or that the person to whom the licence is to be transferred if the application is granted is carrying on the business of the sex establishment.