

Agenda Item 37

Brighton & Hove City Council For general release

Meeting: Licensing Committee (non-Licensing Act 2003)

Date: 19 April 2007

Report of: Director of Environment

Subject: Cost and Procedure of Promoting a Private Bill

Ward(s) affected: All

1. Purpose of the report

- 1.1 The purpose of this report is to inform Members about the costs, timescale and procedure for promoting a Private Bill through Parliament for the regulation of strip clubs in Brighton and Hove.

2. Recommendations

That the Licensing Committee;

- 2.1 Note the costs and practical implications of promoting a Private Bill
- 2.2 Decide whether to pursue this option in preference to other measures that might achieve the same end; and if so,
 - (i) refer the matter to the Policy & Resources Committee for approval of expected costs, and (if approval granted)
 - (ii) forward the matter to full Council for consideration and passing of required resolutions – see 4.1.2 and 4.1.3

3. Information/background

- 3.1 On 8 March 2007 a resolution was passed in Full Council to lobby the Minister for Culture, Media and Sport to put the strip club licensing controls available to Greater London on a national footing.

- 3.2 Were the Minister to agree to this, then applications to operate strip clubs (referred to in legislation as “sex encounter establishments”) would be subject to stricter controls than are currently available to the Council through the Licensing Act 2003. This would give Members power to refuse applications which failed to meet the stricter criteria laid down in the legislation that currently applies only to London boroughs.
- 3.3 If the Minister decides not to extend these powers nationwide, it is open to the Council to promote a Private Bill through Parliament, which, if successful, would achieve the same result but purely in relation to Brighton & Hove.
- 3.4 Specifically, the Bill would – if unopposed – make any application to operate a strip club subject to the same controls as the Council already has in relation to sex cinemas and sex shops.
- 3.5 The legislation relating to the control of sex establishments is contained in Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982. The Act defines a ‘sex establishment’ as a sex cinema or a sex shop. However, the Greater London Council (General Powers) Act 1986 widened that definition to include ‘sex encounter establishments’ (i.e. strip clubs) but solely in relation to London boroughs.
- 3.6 Appendix 1 to this report contains the relevant parts of the 1982 Act, with additions provided by the 1986 Act highlighted. If the Private Bill were passed unopposed, the highlighted sections would then apply equally to Brighton & Hove.
- 3.7 Once a licence is granted to a sex establishment, the 1982 Act gives local authorities the power to prescribe and apply standard conditions to such a licence. The Council already exercises this power in relation to sex cinemas and sex shops by applying a set of standard licence conditions to these particular operations – see Appendix 2. If the Private Bill were passed, the Council could then prescribe and apply the same or different standard conditions to any licence granted for a strip club.
- 3.8 A Private Bill brought before Parliament is a bill promoted by an organisation outside the House (such as a local authority) to gain special powers or benefits not available under the general law.

- 3.9 Private Bills are introduced not by MPs or Peers but directly by the organisation promoting the Bill. It would therefore fall to the Council to prepare the Bill and manage its passage through Parliament. Due to the complexity of this process and the need to negotiate with possible objectors, the work should be entrusted to a firm of parliamentary agents.
- 3.10 The next part of this report summarises the procedure for introducing and administering a Private Bill.

4. Private Bill Procedure

4.1 Preliminary Stages

- 4.1.1 Private bills have to be presented to Parliament on or before 27 November in each year.
- 4.1.2 Before then, the Council has to pass a resolution in full Council for the promotion of the bill. Notice of the meeting and its purpose has to be advertised locally 30 days in advance. Based on the existing calendar of Council meetings, and in order to meet the 2007 deadline for presenting a Private Bill to Parliament, the last opportunity to pass the required resolution would be on 18 October 2007.
- 4.1.3 Assuming the resolution is passed, a further confirmatory resolution has to be passed at full Council at the earliest opportunity after 14 days following deposit of the Bill in Parliament.
- 4.1.4 Consultation is not a requirement but doing so can reduce the length of time the Bill takes to proceed through Parliament and can help to reduce criticism of the

Bill promoter (i.e. the Council) at the various stages of parliamentary scrutiny.

Local authorities in particular are nowadays expected to consult on major

proposals affecting the community. Indeed, doing so in relation to strip clubs may provide evidence of widespread public support for the provisions of the proposed Bill.

4.1.5 It is recommended that relevant government departments be consulted about proposals for private legislation. In this case, it would seem appropriate to notify the Home Office and DCMS, and possibly DCLG. The departments may wish to meet the Bill promoters to discuss the proposals in advance of deposit.

4.1.6 Once deposited, the Bill has to be advertised publicly in local newspapers and in the London Gazette on or before 11 December, to enable interested parties to object. This is seen as an important provision given that a private bill seeks rights and powers over and above those sanctioned by public acts or the common law.

4.2 Parliamentary Scrutiny

4.2.1 All Private Bills have to pass through both the Commons and the Lords

4.2.2 Bill is introduced to Parliament through a petition presented by the promoter

4.2.3 First Reading in either the Commons or Lords. Anyone affected by the Bill can register their objection within 10 days.

4.2.4 Second Reading. First stage at which Bill can be contested. If an MP proposes a 'blocking motion', a debate is held.

- 4.2.5 Committee Stage. Taken in an Opposed or Unopposed Bill Committee, depending on whether any individual or organisation has objected to the Bill.
- 4.2.6 An Unopposed Bill Committee is quite rapid, with the promoter explaining the purpose of the Bill and the need for it. The Committee then examines technical and legal aspects.
- 4.2.7 An Opposed Bill Committee involves more lengthy proceedings, with formal representations made from the promoters and objectors. The Committee can recommend that the Bill should not proceed or can require amendments to be made.
- 4.2.8 Consideration (in Commons) followed by Third Reading (in both Houses). Consideration of any amendments made in Committee. MPs may table further amendments. Lords may further debate or oppose the Bill.
- 4.2.9 Further consideration by Opposed Bill Committee, if necessary.
- 4.2.10 Once the Bill has been approved by both Houses, it is sent for Royal Assent.

5. Timescale

- 5.1 The timescale involved in promoting a private Bill depends very much on the level of opposition. Delays can be caused by petitioners, government departments, MPs and Peers. For instance, a backbencher can hold up proceedings for a long time by insisting on a debate at every stage. Delays can also be encountered if the lawyers in the House require drafting amendments to the Bill.
- 5.2 As the Parliament Acts do not apply to private Bills, the Lords have as much power as the Commons to reject or amend this type of Bill.
- 5.3 Parliamentary time is limited, and with a full programme of Public Bills to debate over the course of a Parliamentary session, Private Bills may be delayed due to a shortage of available committee dates, particularly in the Lords

5.4 For all that, were a Private Bill to be unopposed at all stages, there is no reason why it should not obtain Royal Assent by the beginning of the Summer recess following its introduction. So, if a Bill were deposited in November 2007, it could secure Royal Assent by July 2008.

5.5 Private Bills can be carried over from one session to the next, resuming where they left off.

6. Financial Implications – cost of promoting a Private Bill

6.1 Parliamentary charges - £16,000

6.2 Administrative expenses:

- Printing of Bill and subsequent reprints - £15,000
- Advertising - £2,000

6.3 Counsel's fees (if Bill opposed by petition) - £15,000 + £2,000 for each additional day's advocacy

6.4 Parliamentary Agent's fees* – will vary considerably depending on the complexity of drafting and level opposition

- (i) If the Bill closely mirrors the legislative provisions introduced by the London boroughs in 1986, and there is no opposition at all to the Bill - £30,000; or
- (ii) If any significant opposition is encountered – up to £100,000

* These fees are based on a quote from Sharpe Pritchard, one of five firms

recognised by the Speaker to act as Parliamentary Agent. Fees charged by any

of the other four recognised Agents would be broadly similar.

6.5 Hence total cost, assuming no opposition - £63,000. Significantly more if any clauses in the Bill are opposed.

6.6 Once deposited, a Bill can be withdrawn at any stage before Royal Assent. Should this happen very early in the proceedings, for example due to unexpected opposition, costs would be reduced.

- 6.7 Sharpe Pritchard advise that the Bills they have promoted on behalf of London boroughs in relation to strip clubs have attracted little opposition

7. Conclusions

- 7.1 Although the cost of promoting a Private Bill is significant, this has to be considered in the context of the long-term benefits of achieving the desired legislation.
- 7.2 Clearly, the Council should await the Minister's response to the resolution passed at full Council on 8 March 2007. If she is willing to apply the London provisions on a nationwide basis, this is the best outcome for the Council as a Private Bill with its associated cost would be unnecessary.
- 7.3 Members may also wish to defer any decision on a Private Bill until DCMS confirms its revised guidance on the operation of the Licensing Act 2003 (currently out for consultation), which currently states that licensing authorities should not use licensing powers to censor the content of regulated entertainment. However, DCMS are unlikely to change their stance on this point.
- 7.4 Should the decision be taken to promote a Private Bill, the matter would have to be referred to P & R Committee for financial approval; and to full Council for the passing of the necessary resolutions.

Meeting/Date	Licensing Committee (non-Licensing Act 2003) 19th April 2007		
Report of	Director of Environment		
Subject	Cost and procedure for promoting a Private Bill		
Wards affected	All		
Financial implications See section 6. Costs of promoting a Private Bill vary significantly depending on the level of opposition to its provisions. Budget provision has not been made for any of these costs. Income received from current licensed establishments has been included within current budget estimates. <i>Finance Officer consulted Alasdair Ridley / Date 28/03/07</i>			
Legal implications A formal procedure exists for promoting a Private Bill through Parliament. Special provisions apply to local authorities, requiring the passing of two resolutions by full Council prior to the Bill being deposited in Parliament. Due to the complexity involved in promoting a Private Bill, the Council would need to engage a Parliamentary Agent. <i>Lawyer consulted: Oliver Dixon / Date: 27 March 2007</i>			
Corporate/Citywide implications The purpose of the Bill would be to control the sex industry in Brighton & Hove, prevent criminal incursion, protect public decency and safety, and prevent nuisance and the siting of strip clubs in inappropriate locations		Risk assessment If the Minister fails to respond positively to the 8 March resolution, and if a Private Bill is not successful, there is risk that strip clubs in Brighton will continue to operate with inadequate controls.	
Sustainability implications None		Equalities implications None	
Implications for the prevention of crime and disorder (See 'Corporate/Citywide implications' above)			
Relevant Legislation Section 12 of the Greater London Council (General Powers Act) 1986 Part 2 of the Local Government (Miscellaneous Provisions) Act 1982 Section 239 of the Local Government Act 1972			
Contact Officer Oliver Dixon, Lawyer, Corporate Law Team. Tel: 1512			

Extracts from the Local Government (Miscellaneous Provisions) Act 1982
Schedule 3 - Control of sex establishments

(Highlighted text are provisions inserted by section 12 of the Greater London Council (General Powers) Act 1986, currently applicable to London boroughs only)

Meaning of "sex establishment"

2

In this Schedule "sex establishment" means a sex cinema, a sex encounter establishment or a sex shop.

Meaning of "sex encounter establishment"

3A

In this Schedule "sex encounter establishment" means—

- (a) premises at which performances which are not unlawful are given by one or more persons present and performing, which wholly or mainly comprise the sexual stimulation of persons admitted to the premises (whether by verbal or any other means); or
- (b) premises at which any services which are not unlawful and which do not constitute sexual activity are provided by one or more persons who are without clothes or who expose their breasts or genital, urinary or excretory organs at any time while they are providing the service; or
- (c) premises at which entertainments which are not unlawful are provided by one or more persons who are without clothes or who expose their breasts or genital, urinary or excretory organs during the entertainment; or
- (d) premises (not being a sex cinema) at which pictures are exhibited by whatever means (and whether or not to the accompaniment of music) in such circumstances that it is reasonable for the appropriate authority to decide that the principal purpose of the exhibition, other than the purpose of generating income, is to stimulate or encourage sexual activity or acts of force or restraint associated with sexual activity;

Provided that no premises which are—

- (i) for the time being, being used for the provision of regulated entertainment (within the meaning of the Licensing Act 2003), in circumstances where that use is authorised under that Act; or
 - (ii) for the time being, being used for the purposes of late night refreshment (within the meaning of that Act), in circumstances where that use is so authorised; or
 - (iii) a private dwelling-house to which the public are not admitted;
- shall be regarded as a "sex encounter establishment".

Refusal of licences

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(1) A licence under this Schedule shall not be granted—

- (a) to a person under the age of 18; or
- (b) to a person who is for the time being disqualified under paragraph 17(3) below; or
- (c) to a person, other than a body corporate, who is not resident in the United Kingdom or was not so resident throughout the period of six months immediately preceding the date when the application was made; or
- (d) to a body corporate which is not incorporated in the United Kingdom; or
- (e) to a person who has, within a period of 12 months immediately preceding the date when the application was made, been refused the grant or renewal of a licence for the premises, vehicle, vessel or stall in respect of which the application is made, unless the refusal has been reversed on appeal.

(2) Subject to paragraph 27 below, the appropriate authority may refuse—

- (a) an application for the grant or renewal of a licence on one or more of the grounds specified in sub-paragraph (3) below;
- (b) an application for the transfer of a licence on either or both of the grounds specified in paragraphs (a) and (b) of that sub-paragraph.

(3) The grounds mentioned in sub-paragraph (2) above 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, renewed or transferred 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, renewal or transfer of such a licence if he made the application himself;
- (c) that the number of sex establishments in the relevant locality at the time the application is made [determined] is equal to or exceeds the number which the authority consider is appropriate for that locality;
- (d) that the grant or renewal of the licence would be inappropriate, having regard—
 - (i) to the character of the relevant locality; or
 - (ii) to the use to which any premises in the vicinity are put; or
 - (iii) to the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.

(4) Nil may be an appropriate number for the purposes of sub-paragraph (3)(c) above.

(5) In this paragraph “the relevant locality” means—

- (a) in relation to premises, the locality where they are situated; and

- (b) in relation to a vehicle, vessel or stall, any locality where it is desired to use it as a sex establishment.

Power to prescribe standard conditions

13

- (1) Subject to the provisions of this Schedule, the appropriate authority may make regulations prescribing standard conditions applicable to licences for sex establishments, that is to say, terms, conditions and restrictions on or subject to which licences under this Schedule are in general to be granted, renewed or transferred by them.

[(1A) No standard condition may be prescribed by regulation under sub-paragraph (1)

above in so far as it relates to any matter in relation to which requirements or prohibitions are or could be imposed by or under the Regulatory Reform (Fire Safety) Order 2005.]

- (2) Regulations under sub-paragraph (1) above may make different provision—

(a) for sex cinemas, sex encounter establishments and sex shops; and

(b) for different kinds of sex cinemas, sex encounter establishments and sex shops.

- (3) Without prejudice to the generality of sub-paragraphs (1) and (2) above, regulations under this paragraph may prescribe conditions regulating—

(a) the hours of opening and closing of sex establishments;

(b) displays or advertisements on or in such establishments;

(c) the visibility of the interior of sex establishments to passers-by; and

(d) any change of a sex cinema to a sex shop or a sex shop to a sex cinema.

(d) any change of a sex cinema to a sex shop or a sex encounter establishment, any change of a sex shop to a sex cinema or a sex encounter establishment or any change of a sex encounter establishment to a sex cinema or a sex shop.

(4) Where the appropriate authority have made regulations under sub-paragraph (1) above, every such licence granted, renewed or transferred by them shall be presumed to have been so granted, renewed or transferred subject to any standard conditions applicable to it unless they have been expressly excluded or varied.

(5) Where the appropriate authority have made regulations under sub-paragraph (1) above, they shall, if so requested by any person, supply him with a copy of the regulations on payment of such reasonable fee as the authority may determine.

(6) In any legal proceedings the production of a copy of any regulations made by the appropriate authority under sub-paragraph (1) above purporting to be certified as a true copy by an officer of the authority authorised to give a certificate for the purposes of this paragraph shall be prima facie evidence of such regulations, and no proof shall be required of the handwriting or official position or authority of any person giving such certificate.

Extract from 'Policy for the grant, renewal or transfer of licences for sex establishments' issued by the Council's Environmental Health & Licensing team (last amended February 2004). In this context, 'sex establishments' refers solely to sex cinemas and sex shops.

LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982
STANDARD LICENCE CONDITIONS

In these conditions reference to the Licensing Authority means the Brighton & Hove City Council, and reference to Premises includes Vehicles, Vessels or Stalls.

1. The terms, conditions and restrictions attaching to the licence shall not be varied except by the Licensing Authority after WRITTEN NOTICE has been given to the Police and the Fire Authority.
2. All due precautions for the safety of the public and employees shall be taken and except with the approval of the Licensing Authority in writing, the Licensee shall retain control over all portions of the premises to which the licence applies.
3. Good order and decent behaviours shall be maintained in the licensed premises during the hours they are open to the public and the premises shall be conducted decently, soberly and in an orderly manner.
4. The Licensee or some responsible person nominated by him in writing, not being a person under twenty-one years of age, and whose nomination has been approved IN WRITING by the Council, shall be in charge of and present in the premises at all times when the public are on the premises. The person in charge shall not be engaged in any duties, which will prevent him from exercising general supervision. Nominations in writing, submitted to the Council for approval, shall include a photograph of the person to be nominated.
5. All parts of the premises to which the public are admitted and all passages, courts, corridors and stairways to which the public have access and which lead to the outside of the premises must, in the

absence of adequate daylight, be illuminated by the general lighting when the public are present. Where artificial lighting is supplied for stairs, ramps or passages external to the premises and is operated by a switch adjacent to an exit door, it need not be in continuous operation but it shall be maintained readily available for use. The general lighting shall be provided by electricity.

6. The Licensee shall comply with any reasonable fire preventative and safety measures that may be required of him by the County Fire Officer or Licensing Authority.
7. All parts of the licensed premises shall be open to free ingress and inspection by:
 - i) Duly appointed officers of the Licensing Authority
 - ii) Police Officers
 - iii) Officers of the Fire Authority
8. The Licence, or a copy thereof, shall be exhibited on the premises and shall be available for inspection by any of the persons mentioned in Condition 7 above.
9. Noise such as to cause persons in the neighbourhood to be unreasonably disturbed shall not be permitted to emanate from the premises.
10. The Licensee shall at all times ensure that persons on entering or leaving the licensed premises conduct themselves in an orderly manner and do not in any way cause annoyance to residents and persons passing by.
11. The Licensee shall take all reasonable steps to ensure that persons entering or leaving the licensed premises and using adjacent car parks and highways do not conduct themselves in a manner so as to cause annoyance to residents and persons passing by.
12. The premises to which the licence refers shall be closed between the hours of 2000 hours and 0900 hours the following day.
13. The days and times the licensed premises are open to the public and a notice indicating those premises are open or closed may be displayed upon the door

leading from the street or a public place into those premises and in letters and figures not exceeding 15mm in height and 5mm in thickness but on no other part of the premises. The door to which this paragraph applies shall be fitted with an effective self-closing device and remain closed at all times other than when a person is passing through it.

14. The provisions of the Indecent Displays (Control) Act 1981 shall be complied with at all times, and the warning notice defined in section 6 of the Act of 1981 shall NOT be displayed on the door leading from a street or public place into the licensed premises but instead shall be displayed on a door or screen located behind or beyond it.
15. Nothing shall be permitted to be on view or visible to members of the general public from the licensed premises which would in any way indicate that the premises are a sex establishment, or that the goods, merchandise or services available therein are those defined in Schedule 3 to the above Act of 1982 as "Sex Shop", "Sex Article", or "Sex Cinema" and the terms of this condition shall apply to any land premises giving access to the licensed premises and shall refer to the name or title of the premises, any advertisement or notice visible outside the premises and to any sound broadcast which can be heard outside the premises.
16. Neither the Licensee nor any employee or other person shall seek to obtain custom from the Sex Shop by means of personal solicitation outside or in the vicinity of the premises.
17. No amusement or gaming machines of any kind, whether for prizes or otherwise, shall be kept or used upon the licensed premises at any time.
18. No person who is apparently under age of eighteen years, or who is known to any person connected with the licensee's business and present on the licensed premises to be under that age, shall be admitted to or allowed to remain on those premises.
19. In premises licensed as a Sex Cinema, no fee shall be charged directly or indirectly to any person in order that that person may (1) obtain admission to the premises or any part thereof or (2) view an exhibition of moving pictures, by whatever means produced; nor

- shall such exhibition be promoted for private gain (other than to demonstrate any product, advertise any goods or services or to provide information, education or instruction) unless a licence under the provisions of the Cinematograph Acts 1909 to 1982 is in force in respect of the said premises.
20. The Licensing Authority reserve the power after the grant or renewal or transfer of this licence at any time to dispense with or modify or relax any of these terms, conditions and restrictions, and to make such additional terms, conditions and restrictions as they may deem requisite to meet the circumstances of any particular case.
21. The Licence may be revoked by the Licensing authority if at any time the holder is convicted of any offence of using the licensed premises, or other premises for which a similar licence has been granted, other than in accordance with the terms, conditions or restrictions of the licence or is convicted of any offence under any enactment defined in paragraph 1 of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982.