

SEV Task & Finish Group

Conclusions following Consultation

The group met on Thursday 8 May 2014 to discuss the top line results from the end of the web survey and decide their next steps.

At the meeting the group felt that they would like the results broken down into the four main towns to see how views varied. The Council's GIS team worked in conjunction with Mr Purfield to collate the results via a postcode map.

Members also requested that comments be filtered into two camps – those who would like to see a Nil Cap introduced and those who were happy to see one SEV or more.

At the meeting on 30 June 2014 the group agreed that the full report – including the web-based survey, randomly-sent resident's postal survey and business surveys – and detailed graphs had made the analysis much clearer and thanked Mr Purfield for his help and hard work during this project.

The group were encouraged that, in his opinion, the response rate had been good especially when taking into account the subject matter. He felt that the results represented a wide ranging response, across the District, from both urban and rural areas. The responses from the randomly-sent postal survey agreed with results found from the web-based survey. The web-based survey blocked multiple responses sent from individual computers. It should be noted that the one current operator in the District was written to but did not respond.

It was agreed that the results showed clear support for a Nil Cap throughout the District although there was some evidence that there was a minor percentage of support for one premise in Leamington.

The group received advice from the Legal Services representative. It was noted that some of the comments in response to the consultation could indicate that the participant had moral or religious objections to all SEV's. The legislation does not permit refusal of an SEV licence on purely moral or religious grounds. The legal services representative advised that comments that indicated this stance were few in number and advised that they should not be excluded: The consultation asked participants to indicate the number of SEV's appropriate in particular locality; there was no reason why people who objected to these venues in principal should not be able to contribute to a consultation about the appropriateness of such a venue within a particular locality.

The legal representative advised that it was lawful for the Licensing Authority to consider that a nil cap was appropriate in a certain locality and that this could be a reason to refuse a license application. The areas considered as part of the consultation would be likely to be considered as distinct localities – for example; 15 minutes' walk from Kenilworth Clock Tower. The Licensing Authority should be cautious about imposing a District wide nil cap as the District could not be strictly considered as one locality. The legal representative advised that the Group could consider imposing a nil cap in the areas that were subject of

consultation and deal with any future applications outside of these areas on a case by case basis. The Group felt that the responses to the question about other areas of the District where an SEV would be suitable showed strong support for a District wide nil cap. It was acknowledged that other local authorities had imposed a nil cap over a wide area and the Group did not want the policy to give an impression that applications for SEV's would be treated more favourably outside of the "town centre" locations. The legal representative's advice was that if the policy was amended to indicate a District wide nil cap then decision makers would still need to look at the actual locality where any venue was proposed and decide whether it was appropriate. The legal representative advised that there was a risk that a change to the policy and the imposition of a nil cap could be subject to Judicial Review. A challenge from the existing operator would be the most likely. The legal services representative advised that the likely grounds of any JR application would be that the council acted illegally, irrationally or unreasonably and it was possible that the consultation process would be attacked as inadequate. The legal representative advised that her view was that the consultation was sufficiently fair and robust to withstand challenge but this could not be guaranteed and we would need to be certain that the consultation results supported the proposed change and to ensure that the correct procedure was followed.

The legal representative also reminded the Group that there may be Human Rights Act considerations when deciding whether or not the policy should be changed; the right to freedom of expression and protection of property may be of particular relevance. There would also need to be consideration of whether the decision could impact on protected groups to ensure compliance with the Public Sector Equality Duty although the legal representative's initial view was that this was unlikely.

Members were mindful that any SEV application would still have to be processed and considered by the Licensing and Regulatory Committee in the usual manner. In addition, they appreciated that the Committee could still grant the licence even though the policy advised a Nil Cap.

In addition, Members were advised that legislation permits any licensed premise to hold up to 11 Sexual Entertainment events throughout a twelve month period, without having to have an SEV licence.

The group agreed that the existing policy did not reflect the views of the public and should be amended to reflect a Nil Cap on SEV's throughout the District. Finally, it was noted that this is a policy for Sex Entertainment Venues, and does not apply to all forms of Sex Establishment Venues (e.g. sex shops, cinemas).