

# STATEMENT OF LICENSING POLICY CONSULTATION REPORT

## Licensing Committee – 30 September 2014

Report of Chief Officer Environmental and Operational Services

Status: For Decision

Key Decision: No

---

**Executive Summary:** The Licensing Act 2003 requires that the Council publish a 'Statement of Licensing Policy' that sets out the policies the Council will generally apply to promote the licensing objectives when making decisions on applications made under the Act.

The Council's current Policy Statement took effect from 7<sup>th</sup> January 2011 and at that time the legislation required the Statement of Licensing Policy to be published every three years. Section 122 of the Police Reform and Social Responsibility Act 2011 changed this from every 3 years to every 5 years.

This report provides members with information and guidance on a brand new Statement of Licensing Policy required under the Licensing Act 2003 which requires approval for public consultation.

---

### This report supports the Key Aim of safer communities

**Portfolio Holder** Cllr. Ms Lowe

**Contact Officer(s)** Mrs. Claire Perry Ext. 7325

---

### Recommendation to Licensing Committee:

It is recommended that Members approve the draft Statement of Licensing Policy for public consultation.

---

### Reason for recommendation:

To enable the Council to make decisions for licensing premises applications with an up to date Statement of Licensing Policy.

---

### Introduction and Background

- 1 In its role as the licensing authority under the Licensing Act 2003 the Council has a duty to prepare, and keep under review its Statement of Licensing Policy. This sets out how the authority approaches its responsibilities under the Act. There has been a range of legislative and other changes that have prompted an early review of this policy, which must be publicly consulted upon before it can be adopted.

- 2 Section 5 of the Licensing Act 2003 (the Act) states that –
  - “5 (1) each Licensing Authority must in respect of each 5 year period
    - (a) determine its policy with respect to the exercise of its licensing functions and;
    - (b) publish a statement of that policy before the beginning of that period.”
- 3 Underpinning that obligation are the four Licensing Objectives which are
  - The Prevention of Crime and Disorder
  - Public Safety
  - Prevention of Public Nuisance
  - Protection of Children from Harm
- 4 Equal weight is given to all four licensing objectives and the policy must seek to secure the promotion of those licensing objectives throughout the licensing process.
- 5 The current statement of Licensing Policy was published by the Licensing Authority in January 2011. At that time the statutory maximum review period was 3 years. That has now changed to 5 years. The current policy has not had a major review since 2003 and the previous 3 yearly reviews have resulted in minor changes only.
- 6 The existing policy has been reviewed in regard to its application, suitability and effectiveness since the implementation of the Act in 2003. The current policy had worked reasonably well in the past and had provided a basis for the consideration and determination of less contentious applications and enforcement activity.
- 7 Since the current policy was approved there has been a range of amendments to the Licensing Act 2003 including Early Morning Alcohol Restriction Orders (EMARO's) which allow Licensing Authorities to set an end time for the sale of alcohol between midnight and 6am at all or specific locations within the district. The new Police Reform and Social Responsibility Act 2011 implemented some new initiatives such as the Late Night Levy (LNL). This allows Licensing Authorities to charge an additional levy to all alcohol licensed premises who wish to open after midnight with 70% of that income which is collected by the Licensing Authority going to the police authority to spend as they wish. As detailed at paras 3.17 to 3.19 of the policy there is currently no evidence to support the implementation of either of these schemes in the District.
- 8 Also the Live Music Act was introduced in 2012 which resulted in the deregulation of some elements of live music up to 11pm. We are still awaiting the details of further deregulation of schedule 1 of the Licensing Act in respect of regulated entertainment and introduction of setting fees locally rather than centrally.
- 9 The policy in its current format does not reflect the Licensing Authority's approach to the new initiatives or legislative changes for example the new Temporary Events

processes or relaxation of the DPS requirement in community premises. It therefore provides limited direction to support decisions on contentious applications heard by a licensing sub-committee relevant to the aforementioned changes. It also includes no direction towards a long term licensing vision for the district.

- 10 The policy should provide greater clarity to applicants and other parties to enhance the application process, to create efficiencies and manage and demonstrate expectations. It should ensure that applicants have a clear understanding of the impacts of their licensed business or proposed activities on others and what they must do to enhance the positive impacts and mitigate any detrimental impacts through their operating schedules and self-imposed licence conditions.

#### **How the draft new policy has been formulated**

- 11 The Licensing Authority must have regard to the statutory guidance issued under section 182 of the Licensing Act 2003 when drafting its policy. The latest version which was issued by the Home office in June 2013 has been referred to during the drafting of this policy.
- 12 In preparing this draft policy it was determined that in view of changes and current shortfalls mentioned above, the policy needed to be a brand new document rather than an amendment to the existing. Further, that recent court decisions have provided clarity on some grey areas of the Licensing Act.
- 13 Whilst the Licensing Act 2003 now requires a statutory review after 5 years, this does not prevent the Authority from carrying out an earlier review.

#### **A summary of the new draft policy**

- 14 Signposting improved advice to the licensed businesses and the public to improve knowledge and understanding of the Act and the options available to businesses and residents in relation to applications for licences.
- 15 A more detailed summary of the Authority's approach and positive aspirations for licensing in respect of how this district should look and feel when residents, visitors and businesses are making use of the area to ensure applicants work with the Authority through the application process to achieve this.
- 16 More detail on what the Licensing Authority expects from the different types of licensed trades on managing their business activities, licence applications, operating schedules and suggested licence conditions to promote the licensing objectives.
- 17 Recognising the introduction of the Live Music Act 2012 and how this can promote an increase in live music venues whilst at the same time maintaining a balance to protect residents.
- 18 Detailing the Authority's stance on Late Night Levy's, Early Morning Alcohol Restriction Orders (EMARO's) and Cumulative Impact whilst allowing flexibility in that approach should those matters need consideration for implementation in the future.

- 19 Greater clarity on the special position for members clubs in relation to licensing following some enforcement and non compliance issues in relation to access by non members to club facilities and concerns over club status where this occurs.
- 20 Clarity on the application process for all licence types including the Authority's approach to suspension of licences/certificates for non payment of annual fees.
- 21 Clarity on the reviews process following a rise in applications in order to support validation of review applications and the decision making process to prevent frivolous applications. Also to ensure those premises causing harm and failing to promote the licensing objectives are dealt with appropriately.
- 22 Clarity on the Authority's stance in relation to applications to remove a Designated Premises Supervisor (DPS) from community premises licensed for alcohol sales to allow the sales to be authorised by a management committee. This is to ensure that alcohol sales are responsibly managed in community premises following a relaxation of the requirement to have a DPS.
- 23 Clarity and advice on the role, purpose and requirements for clear licence conditions to promote all of the licensing objectives. This will ensure licensees better understand the restrictions on their licences. It will aid residents affected by licensed premises activities to identify and report if breaches and to allow for effective enforcement by the Licensing Authority to ensure promotion of the licensing objectives.
- 24 Changes to the process for submitting temporary event Notices (TENS) and the inclusion of Environmental Health as a statutory consultee to improve the knowledge of persons submitting TENS and the authority's expectations of them to promote the Licensing objectives at their temporary event.
- 25 Clarity the rules around the provision of adult entertainment including exempt sexual entertainment and the relationship between the Licensing Act 2003 and the Local Government (Miscellaneous Provisions ) Act 1982. This is to ensure that exempt entertainment (under the LG(MP) Act is properly regulated under the LA2003 where licences permit it and to ensure the protection of children from harm.
- 26 The provision of Gambling machines and gaming in licensed premises to ensure that licensees understand the rules and restrictions on gambling and gaming in alcohol licensed premises
- 27 The provision of outdoor seating at licensed premises including smoking areas to ensure such areas are properly designed and regulated and also to ensure that customers are protected from harm by the effects of smoking.

#### **Other Options Considered and/or Rejected**

- 28 The options are to retain the current policy which does not adequately support the licensing decision making process or reflect the impacts of the new legislation.
- 29 The benefits of approving the draft new policy are that the Licensing Authority will have a secure foundation on which to determine applications in a way that clearly

promotes the licensing objectives, protects residents and allows the vision for the district to be achieved through a clear, fair and robust licensing process underpinned by the policy.

## **Key Implications**

### Financial

- 29 There are no financial implications arising from this report other than the cost of defending a Judicial Review should the Authority fail to mitigate the risks identified at paragraph 32 below.

### Legal Implications and Risk Assessment Statement.

- 30 The Authority's licensing policy provided the framework on which the Licensing Service under the Licensing Act 2003 is administered. This policy is not only important in setting out the licensing authority's approach to the Licensing Act; it will also be considered and referred to by the Magistrates' Court on appeal. The Magistrates' Court may decide to depart from the policy if they have good reason for doing so.
- 31 The Magistrates' Court may also decide that an appealed decision of the Authority was not reflective of the policy and that no good reason was given by the authority to depart from the policy when making that decision. In that case the appealed decision may be referred back to the local Authority to reconsider in line with its policy.
- 32 The Licensing Act is clear that each application must be considered on its individual merit and certain matters cannot be considered when making a decision on an application. Therefore the policy must be clear in its aims but if the policy provides a rigid or unlawful approach to licensing it will be subject to challenge in the High Court by way of a Judicial Review.
- 33 There are no legal implications other than those implicit in the subject matter of the report.

### Equality Impacts

Consideration of impacts under the Public Sector Equality Duty:		
Question	Answer	Explanation / Evidence
a. Does the decision being made or recommended through this paper have potential to disadvantage or discriminate against different groups in the community?	No	The equality impact assessment is attached as appendix C.
b. Does the decision being made or recommended through this paper have the potential to promote equality of opportunity?	No	

Consideration of impacts under the Public Sector Equality Duty:		
Question	Answer	Explanation / Evidence
c. What steps can be taken to mitigate, reduce, avoid or minimise the impacts identified above?		Include steps that could be taken for all decision options being presented.

### **Any Other Implications**

- 34 The objective is to clearly 'set out the Authority's stall' to assist it in achieving its aims and vision for the district. At the same time the Authority must comply with the Licensing Act 2003, promote vitality and diversity, support businesses across the District, protect residents and employees and above all promote the licensing objectives through the robust administration of the licensing function.

### **Communication and Consultation**

- 35 The Act sets out a list of statutory consultees and also makes provision for other persons/bodies to be consulted as necessary and as requested.

The statutory consultees are:-

- The chief officer of police for the Licensing Authority's area,
  - The fire and rescue authority,
  - Such persons as the Licensing Authority considers to be representative of holders of premises licences issued by the Authority
  - Such persons as the Licensing Authority considers to be representative of holders of club premises certificates issued by the Authority
  - Such persons as the Licensing Authority considers to be representative of holders of personal licences issued by the Authority
  - Such persons as the Licensing Authority consider being representative of businesses and residents in its area.
- 36 The Draft Policy will be placed on the council website and any other person who wishes to be consulted will be provided with a link to the documents or sent hard copies where that is preferred.
- 37 In line with the Revised Code of Practice and the Cabinet Office Guidance on consultations by the public sector the public consultation will take place for a period of 3 months following approval by the Licensing Committee for consultation to be commenced. At the end of that consultation period the responses will be considered and the policy amended where necessary to reflect those responses. The revised policy will then be considered by the Licensing Committee for approval and referral for adoption by full council.

## **Conclusions**

- 38 The draft new policy should be fit for purpose in enabling it to complement the relevant council strategies, provide a sound foundation to support the Licensing Authority decision making.

**Appendices** Appendix A - Current Licensing Policy 2011-2014 for consideration and approval for public consultation

Appendix B - Draft new Statement of Licensing Policy for approval for public consultation

Appendix C – Equality Impact Assessment for the draft Statement of Licensing Policy

**Background Papers:** Section 182 Guidance -  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/209526/1167-A\\_Licensing\\_Act\\_2003\\_2\\_.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/209526/1167-A_Licensing_Act_2003_2_.pdf).

**Richard Wilson**  
**Chief Officer Environmental and Operational Services**