

TITLE OF REPORT: LICENSING ACT 2003 - PROPOSED STATEMENT OF LICENSING POLICY 2011-14

REPORT OF THE STRATEGIC DIRECTOR OF PLANNING, HOUSING & ENTERPRISE

1. PURPOSE OF REPORT

- 1.1 The purpose of this report is to summarise the responses to the public consultation in respect of the Council's Statement of Licensing Policy.
- 1.2 The Licensing and Appeals Committee, having considered this report, can make a recommendation to Council in respect of the Policy.

2. FORWARD PLAN

- 2.1 This report contains a recommendation on a key decision that was first notified in the Forward Plan on 1st August 2010.

3. BACKGROUND

- 3.1 The responsibility for the licensing of the retail sale of alcohol, the supply of alcohol to members and guests in members clubs, the provision of regulated entertainment and the provision of late night refreshment was transferred to local authorities on 24th November 2005 by way of the Licensing Act 2003 ("the Act").
- 3.2 In preparation for this new responsibility, local authorities had to publish a Statement of Licensing Policy by 7th January 2005 in accordance with section 5 of the Act.
- 3.3 It is a requirement under section 5 of the Act that this Policy is kept under regular review and that the Policy is formally reviewed and published every three years.
- 3.4 Having re-published the Policy in January 2008, the Policy has now been formally reviewed in accordance with Section 5 of the Act for publishing by January 2011.
- 3.5 The Statement of Licensing Policy seeks to strike a balance between the interests of licence holders and residents in the promotion of the four licensing objectives defined by the Act. It outlines the Council's expectations of licence holders in promoting the licensing objectives, whilst advising on the Council's obligations under the Act.
- 3.6 In administering the Licensing Act 2003, the local authority are deemed to also be the Licensing Authority.
- 3.7 The review of the Council's Statement of Licensing Policy is included within the Corporate Plan for 2010/11. The expected outcome from this review is a streamlined approach to regulation that eases the burden for businesses and encourages vibrancy in our town centres.

4. APPROACH TO THE STATEMENT OF LICENSING POLICY

- 4.1 The development of the Statement of Licensing Policy has been based upon a consultation process undertaken by the Licensing and Enforcement Team, with consideration to the recommended national policy template published by LACORS (Local Authorities Coordinators of Regulatory Services) and the Guidance issued by the Secretary of State under section 182 of the Act.
- 4.2 The consultation process was undertaken between Monday 7th June 2010 and Monday 30th August 2010. A policy consultation page was created on the Council's website including the proposed policy and an explanation of the process for making a representation.
- 4.3 A letter advising of the consultation process was sent to each of the following consultees:
- Hertfordshire Constabulary
 - Hertfordshire Fire & Rescue Service
 - Hertfordshire Trading Standards
 - Hertfordshire Safeguarding Children Board
 - NHDC Environmental Health Team
 - NHDC Environmental Protection Team
 - NHDC Development Control Team
 - NHDC Building Control Team
 - NHDC Legal Services
 - All current premises licence / club premises certificate holders
 - Town Centre Managers
 - NHDC Councillors
 - Town Pubwatch / Shopwatch Schemes
 - Neighbourhood Policing Panels
 - Parish / Town Councils
 - Local MP's
 - Local Trade Associations
- 4.4 It was felt that in general terms the Policy appeared to be working well, therefore, no significant changes were proposed in respect of Policy content.
- 4.5 Due to changes in the legislation and Statutory Guidance, as well as the development of case law, changes to the Policy were proposed to reflect these developments.
- 4.6 Additionally, further clarification was proposed in respect of specific application types, in particular garages and large events.

5. CONSIDERATIONS

- 5.1 Members may be aware that Government is currently reviewing the Licensing Act 2003 and has recently consulted on proposed changes to the licensing regime. Recent communication from the Home Office, which has now assumed responsibility for alcohol licensing, has confirmed that any changes will be subject both to primary and secondary legislation, as well as changes to the Statutory Guidance, which may involve further Government consultations. On this basis, licensing authorities have been advised to proceed with their statutory duty to publish a Statement of Policy by 7th January 2011 as required by section 5 of the Act based on the current licensing regime. Paragraph 2.5 of the proposed Policy refers to this issue

and states that a further review of the Policy will be undertaken at such time as any legislative changes come into force.

- 5.2 The overall structure of the Policy has been re-visited with a view to providing a more user-friendly document. The revised Policy follows a more logical sequence for applicants and is divided into separate sections dealing with the Council's statutory responsibilities in its role as the licensing authority and the Council's vision for licensing in its role as the local authority. The revised Policy now guides applicants logically through the application process before dealing with other post-application issues such as reviews and other enforcement options.
- 5.3 Whilst the re-structuring of the proposed Policy is the major change from the previous Policy, the overall content has not changed significantly.
- 5.4 The proposed Policy now contains a new 'Part C' which deals with the Council's vision for licensing in its role as the local authority. The views of the Council's Community Development Officers were sought in the formation of this part of the Policy. Whilst this section details the Council's aspirations, it is important to be aware that the predominate consideration for any licensing decision is the likely effect on the licensing objectives and the Council's statutory responsibilities in its role as the licensing authority.
- 5.5 The previous Policy contained sections specifically related to two of the four licensing objectives; the prevention of children from harm and the prevention of public nuisance. This approach could be seen to place more emphasis on those two particular objectives when all four licensing objectives are of equal importance. The Policy has been revised, therefore, to include specific sections dealing with each of the four licensing objectives.
- 5.6 By virtue of section 176 of the Act, premises that are used primarily as a garage or which form part of a garage are considered to be "excluded premises" and no premises licence, club premises certificate or temporary event notice has effect to authorise the sale by retail or supply of alcohol from excluded premises. Garages for the purposes of the Act are premises which are used for one or more of the following: the retailing of petrol, the retailing of derv, the sale of motor vehicles, or the maintenance of motor vehicles. The Council have determined several applications for premises that wish to include the sale of alcohol as part of their shop facility and have faced uncertainty from the applicants as to the required level of evidence to assist the Council in their decision making. The Statutory Guidance is not particularly helpful to applicants in this respect, particularly as the Council is guided in its decision making by the appropriate established case law. There is further uncertainty for applicants as the Statutory Guidance provides for two levels of decision-making; either to grant a licence and take enforcement action if the premises is an excluded premises, or to withhold the grant until the Council is satisfied that the premises is not an excluded premises.
- 5.7 The proposed Policy details the Council's approach to the licensing of garages, in particular that the Council will ordinarily withhold the grant of the licence, where their discretion is engaged, until they are satisfied that the premises is not an excluded premises on the basis that it would be irresponsible and misleading to grant a licence that had no legal effect. It also advises applicants that an application will not ordinarily be accepted as a valid application unless sufficient evidence is provided to demonstrate to an officer that the premises is capable of not being an excluded premises. To assist applicants the Policy details the suggested content of the evidence required to assist with the determination of the primary use of the premises, plus the

action the council will take in monitoring the question of primary use after a licence has been granted. This re-drafting of the Policy reflects recent case law confirming best practice in relation to applications for garages and formalises the approach taken by the Council in respect of recent applications.

- 5.8 The proposed Policy contains a new section in respect of the Council's approach to the licensing of large scale events. The District now hosts several successful large scale events, in particular Rhythms of the World at Hitchin Priory and Sonisphere at Knebworth, with a possibility of more to follow. The proposed Policy builds on the Council's successful informal working practices and formalises the current informal arrangements developed with the co-operation of existing event organisers. This section of the proposed Policy was written following consideration of Mendip District Council's Licensing Policy which has proven successful in respect of the annual Glastonbury Festival, building on their experiences and enhancing them with our own. The over-riding principle of this section of the proposed Policy is to allow sufficient timescales to ensure proper scrutiny of applications for large scale events, to ensure public safety given the higher risks involved with such events.

6. LEGAL IMPLICATIONS

- 6.1 The Act requires the Licensing Authority to publish a three year Statement of Licensing Policy by 7th January 2005 and at three yearly intervals thereafter.
- 6.2 In preparing the Statement of Licensing Policy, the Council must consult:
- the chief officer of police for the licensing authority's area,
 - the fire authority for that area,
 - such persons as the licensing authority considers to be representative of holders of premises licences issued by that authority,
 - such persons as the licensing authority considers to be representative of holders of club premises certificates issued by that authority,
 - such persons as the licensing authority considers to be representative of holders of personal licences issued by that authority, and
 - such other persons as the licensing authority considers to be representative of businesses and residents in its area
- 6.3 Section 4 of the Licensing Act 2003 states that in carrying out its licensing functions, a licensing authority must have regard to its Statement of Licensing Policy and any guidance issued by the Secretary of State under Section 182.
- 6.4 The Guidance issued by the Secretary of State under Section 182 of the Licensing Act 2003 ("the Guidance") states that in determining applications a licensing authority may depart from its own policy if the individual circumstances of the case merit such a decision, however, they should give full reasons in their decision for such a departure.
- 6.5 The Statement of Licensing Policy should make it clear that each application will:
- be determined on its own merits,
 - only have necessary, reasonable, proportionate and enforceable conditions imposed if relevant representations are received in relation to the licensing objectives,

- be granted as applied for, save conditions volunteered in the operating schedule, if no relevant representations are received.

6.6 It is important to be aware that there is case law in respect of a successful Judicial Review of the Statement of Licensing Policy of Canterbury City Council by the British Beer & Pub Association and others. (BBPA and others v Canterbury City Council, 25/06/2005). Mr Justice Richards made it clear that local policies should not:

“prescribe or dictate the contents of an application, or give the impression that the Council will assess, and exercise substantive discretionary powers in relation to, all applications and not just to those that come through for a decision under section 18(3).....”

The licensing authority has no power at all to lay down the contents of an application and has no power to assess an application, or to exercise substantive discretionary powers in relation to it, unless there are relevant representations and the decision making function under section 18(3) is engaged.

If a policy creates a different impression, and in particular if it misleads an applicant into believing that he must meet certain requirements in relation to his application and that he lacks the freedom accorded to him by the Act and Regulations, the policy is contrary to the legislative scheme and is unlawful.....”

Due to the specific nature of section 176 of the Act, and relevant case law decisions, it is felt that the proposed section on garages is not prevented by this judgement.

6.7 Under the Constitution, the terms of reference of the Licensing and Appeals Committee state that the Committee is able to consider all licensing matters. As the Policy is a statutory requirement, it is specifically within Full Council’s terms of reference to approve and adopt the policy framework set out in this Report.

7. FINANCIAL AND RISK IMPLICATIONS

7.1 The Government has indicated that they expect the centrally set fees of the Licensing Act 2003 to cover the cost to the Council of administering the licensing regime.

7.2 This Statement of Licensing Policy will not place any new financial resource implications on the Council.

7.3 There would be a risk to the Council of a judicial review if a Statement of Licensing Policy was not published in accordance with the requirements of section 5 of the Act.

8. HUMAN RESOURCE AND EQUALITY IMPLICATIONS

8.1 This Statement of Licensing Policy will not place any new human resource implications on the Council.

8.2 The Council incorporates the statutory equalities duties which apply to all its activities into policies and services as appropriate, as set out in the Council’s Corporate Equality Strategy. We also recognise that in our society, groups and individuals continue to be unfairly discriminated against and we acknowledge our responsibilities to actively promote good community relations, equality of opportunity and combat discrimination in all its forms.

9. CONSULTATION WITH EXTERNAL AND INTERNAL STAKEHOLDERS

- 9.1 The Licensing Authority have consulted with all statutory consultees as defined by the Act and listed in paragraph 6.2 of this Report.
- 9.2 The full list of consultees is contained in paragraph 4.3 of this Report.
- 9.3 The current Statement of Licensing Policy, as used for the consultation, is available on the Council's website. A hard copy can be forwarded on request.
- 9.4 A schedule of comments received and the action taken in respect of these comments is attached as **Appendix A of this Report**.
- 9.5 The proposed new Statement of Licensing Policy, incorporating amendments, is attached as **Appendix B of this Report**.

10. RECOMMENDATIONS

- 10.1 That the proposed Statement of Licensing Policy in respect of the Licensing Act 2003, as attached at **Appendix B** to the Report, incorporating the results of the public consultation exercise, be supported by the Licensing and Appeals Committee.
- 10.2 That the Licensing and Appeals Committee recommend to Full Council the adoption of the Statement of Licensing Policy.

11. REASONS FOR RECOMMENDATIONS

- 11.1 Licensing Authorities are required to publish a Statement of Licensing Policy every three years in accordance with section 5 of the Licensing Act 2003. A new policy must be published by 7th January 2011. It is felt that the proposed Policy builds on the successful use of the first two versions of the Policy, with appropriate changes to reflect developments in the approach to licensing.

12. ALTERNATIVE OPTIONS CONSIDERED

- 12.1 There are no alternative options other than a Statement of Licensing Policy that may differ in content and extent. The proposed Statement of Licensing Policy, whilst comprehensive, aims to strike a balance between the minimum legal requirements and not being overly prescriptive or open to challenge.

13. APPENDICES

- 13.1 Appendix A – Schedule of comments received during the consultation, including recommendations
- 13.2 Appendix B – Proposed Statement of Licensing Policy

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15. BACKGROUND PAPERS

15.1 Licensing Act 2003

15.2 Guidance issued by Secretary of State under Section 182 of the Act

15.3 Statement of Licensing Policy 2008-11