

LICENSING AND APPEALS COMMITTEE 6 October 2015

*PART 1 – PUBLIC DOCUMENT	AGENDA ITEM No. 7
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TITLE OF REPORT: ADOPTION OF A STATEMENT OF LICENSING POLICY FOR THE PERIOD 2016–2021 REQUIRED BY VIRTUE OF SECTION 5 OF THE LICENSING ACT 2003

REPORT OF THE HEAD OF HOUSING AND PUBLIC PROTECTION
EXECUTIVE MEMBER: COUNCILLOR BERNARD LOVEWELL

1. SUMMARY

- 1.1 The purpose of this report is for the Licensing and Appeals Committee to consider the draft policy prepared by officers and any public consultation responses in order to recommend the adoption of a Statement of Licensing Policy (“the policy”) to Full Council.

2. RECOMMENDATIONS

- 2.1 That the proposed Statement of Licensing Policy in respect of the Licensing Act 2003, as attached at Appendix A to the report, be supported by the Licensing and Appeals Committee.
- 2.2 That the Licensing and Appeals Committee recommend the adoption of the Statement of Licensing Policy to Full Council.

3. REASONS FOR RECOMMENDATIONS

- 3.1 Licensing authorities are required to publish a policy every five years by virtue of section 5 of the Licensing Act 2003 (“the Act”).
- 3.2 A new policy must be published by 7 January 2016 to comply with this statutory requirement.
- 3.3 The proposed policy builds on the success of the previous and existing versions of the policy, whilst reflecting legislative changes and the increased flexibility given to licensing authorities to develop local policies.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 The only alternative option would be a policy that differs in content and/or extent.
- 4.2 An alternative policy has not been considered as the proposed policy strikes a balance between the protection of the public and not being so burdensome that it inhibits a vibrant and diverse night-time economy.

5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS

- 5.1 The Executive Member for Housing and Environmental Health has been kept informed throughout the drafting of the policy and the public consultation process.
- 5.2 An information note was published in the Members Information Service at the commencement of the consultation period inviting all Councillors to participate in the consultation process.
- 5.3 The Act requires the licensing authority to consult with the following persons in relation to the proposed policy:
- the chief officer of police for the licensing authority's area
 - the fire and rescue authority for that area
 - each Local Health Board for an area any part of which is in the licensing authority's area
 - each local authority in England whose public health functions within the meaning of the National Health Service Act 2006 are exercisable in respect of an area any part of which is in the licensing authority's 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
 - such other persons as the licensing authority considers to be representative of businesses and residents in its area
- 5.4 To comply with these requirements, the licensing authority published its proposed policy on a dedicated webpage on the council's website with details of the consultation period and an explanation of how to make a representation.
- 5.5 All responsible authorities under the Act, existing premises licence and club premises certificate holders, and neighbouring authorities were sent a consultation letter directing them to the consultation page on the council's website.

6. FORWARD PLAN

- 6.1 This report contains a recommendation on a key decision that was first notified to the public in the Forward Plan on the 14 December 2012.
- 6.2 The reason that the Policy has been on the Forward Plan since December 2012 is that repeated legislative changes have continually pushed back the final drafting of the Policy prior to public consultation.

7. BACKGROUND

- 7.1 The responsibility for the licensing of the retail sale of alcohol, the supply of alcohol to members and guest in members clubs, the provision of regulated entertainment and the provision of late night refreshment was transferred to local authorities on 24 November 2005. For the purpose of undertaking its responsibilities under the Act, the Council are acting as the licensing authority for North Hertfordshire.

- 7.2 In preparation for this new responsibility, licensing authorities had to publish a policy by 7 January 2005 in accordance with section 5 of the Act.
- 7.3 The Act requires the policy to be kept under regular review and formally reviewed by way of public consultation, including adoption by Full Council, initially every three years but now every five years due to a recent change to the Act.
- 7.4 The policy was last adopted with effect from 7 January 2011 therefore the statutory five year period expires on 6 January 2016.
- 7.5 The policy seeks to strike a balance between the interests of licence holders, applicants and residents in the promotion of the four licensing objectives defined by the Act. Additionally, it outlines the licensing authority's expectations of licence holders in promoting the licensing objectives, whilst outlining the licensing authority's vision for licensing in North Hertfordshire.
- 7.6 It is the licensing authority's intention that the policy offers appropriate protection for residents and a streamlined approach to regulation that eases unnecessary burdens on businesses, thus maintaining the diverse and vibrant night-time economy in the district's town centres. It should also offer the same protection for residents in the district's villages whilst encouraging licensed premises to remain at the heart of the community.

8. ISSUES

Current policy

- 8.1 The current policy has worked well enabling consistent decision-making by the licensing sub-committees, however there have been a number of legislative and statutory guidance changes since its adoption that have been reflected in the proposed policy.
- 8.2 No significant issues relating to the policy have arisen since its adoption.

A new vision for licensing

- 8.3 Since the introduction of the Act on 24 November 2005, the Government have continually amended the legislation and the statutory guidance moving from a centralised generic approach to a more local-based approach. This has now enabled licensing authorities to play a more substantial part in framing the night-time economy for their area. To support this approach, it was felt necessary to include the licensing authority's vision for licensing which makes clear the licensing authority's intention when making licensing decisions. This will enable applicants to address this vision when making applications and assist licence holders in ensuring they support this vision throughout their licenced period. The vision is stated as:

"To ensure that North Hertfordshire continues to offer a diverse range of well managed entertainment venues and community and cultural activities within a safe and enjoyable environment"

A local approach to the wording of licence conditions

- 8.4 There is a duty on licensing authorities to ensure that any licence conditions are appropriate, proportionate and enforceable whether they are imposed by a licensing sub-committee or volunteered by an applicant as part of the operating schedule.

- 8.5 Whilst these conditions should always be tailored to the individual circumstances of the application, a consistent approach is necessary in order to ensure fairness across the district. For example, if two different premises both needed closed circuit television it would be unreasonable if there were substantially different licence conditions unless the evidence deemed it appropriate. This point has been raised nationally by the Institute of Licensing who have been consulting on a set of model licensing conditions to ensure consistent wording wherever possible.
- 8.6 The proposed policy supports the intention of the Institute of Licensing and includes an appendix of model licence conditions. Whilst the policy makes clear that the appendix is not a requirement, it can be used by applicants and licensing sub-committees alike, where conditions are appropriate, to ensure a fair and consistent approach.
- 8.7 To make the model licence conditions more effective, the list has been drawn from existing licence conditions currently in use in consultation with the respective responsible authorities to ensure the conditions are fit for purpose. The list will be of particular assistance in the case of the need for a technical condition relating to noise, public safety at large scale events, etc.

Safeguarding against child sexual exploitation (CSE)

- 8.8 Licensing authorities have an important role to play in safeguarding against child sexual exploitation. The proposed policy includes a specific section advising applicants and licence holders of their responsibilities which form an integral part of the protection of children from harm licensing objective. The policy includes link to the Hertfordshire Safeguarding Children Board's website that has a range of useful guides for different aspects of the licensed trade.

Meaning of appropriate

- 8.9 One of the most significant changes to licensing legislative changes has been the replacement of the word 'necessary' with 'appropriate' in determining what steps, if any, should be taken in response to relevant representations. The policy provides guidance to applicants and licensing sub-committees on how to interpret 'appropriate', in particular with regard to proportionality and European case law.

The role of planning

- 8.10 The cross-over between the licensing and planning regimes is often confusing for applicants therefore the proposed policy gives clear guidance on the distinction between the two processes.

Large-scale outdoor events

- 8.11 Due to the diverse community and cultural entertainment offered within the district and the number of outdoor events, particularly at venues such as Knebworth Park and Hitchin Priory, the proposed policy includes a specific section relating to events with a capacity of 500 or more.
- 8.12 This section builds on the existing policy guidance but replicates the new sections included within the proposed policy, such as large-scale event conditions within the model licence conditions appendix. It also clarifies the role of the Safety Advisory Group (SAG) and encourages early dialogue between the SAG and prospective applicants.

- 8.13 In order to assist applicants that intend to hold regular (usually annual) events that may vary in layout and nature as the event evolves, the proposed policy recommends the inclusion of an Event Management Plan (EMP) as part of the operating schedule linked to the licence by licence condition. This ensures maximum flexibility for applicants and licence holders whilst ensuring the promotion of the licensing objectives.

Adult entertainment

- 8.14 This new section clarifies the relationship between a premises licence under the Act and a sexual entertainment licence under the Local Government (Miscellaneous Provisions) Act 1982 to prevent duplication of licence conditions.
- 8.15 Importantly, this section clarifies to applicants that should they leave the adult entertainment section of the application form blank or include a comment such as 'none', the licensing authority will interpret the application as not including the provision of adult entertainment. This would be reflected on the licence with an operating schedule condition preventing the provision of adult entertainment.

The role of public health bodies

- 8.16 Public health bodies have recently been added as responsible authorities under the Act however public health is not a licensing objective. This has caused confusion amongst applicants, licence holders and the Director of Public Health as to the role this new responsible authority can play in licensing decisions. This section clarifies the important role that health bodies can play in licensing decisions linked to the existing licensing objectives.

Local licensing

- 8.17 The proposed policy includes new sections on local issues specific to North Hertfordshire, for example fly-posting and A-boards. These local issues often cause problems but are difficult to resolve quickly within existing legislative powers. The proposed policy clarifies how the licensing regime and the promotion of the licensing objectives can be linked to these issues and provide extra tools for dealing with issues related to licensed premises.

Early morning restriction orders (EMRO) and the late night levy (LNL)

- 8.18 The Police Reform and Social Responsibility Act 2011 introduced these two new powers for licensing authorities which were met with great concern by the licensed trade. An EMRO restricts hours during which licensable activities can take place and a LNL is effectively a tax on late-night licensable activity to fund additional resourcing such as policing and street cleaning.
- 8.19 The Council's Responsible Authorities Group (RAG), chaired by the Chief Executive and consisting of the statutory partners of the North Hertfordshire Community Safety Partnership considered these two powers in 2012 and agreed that there was no evidence to consider implementation in North Hertfordshire.
- 8.20 The proposed policy outlines the principles of an EMRO and a LNL and confirms the Council's current position.

Responsible authority consultation responses

- 8.21 In response to the consultation exercise detailed within section 5 of this report, formal responses were received from Hertfordshire Constabulary, Hertfordshire Fire & Rescue Service, NHDC Environmental Protection, NHDC Commercial Team and the Director of Public Health's Office. All of these responses supported the proposed policy.

9. LEGAL IMPLICATIONS

- 9.1 Section 4 of the Act 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 of the Act.
- 9.2 The Guidance issues by the Secretary of State under section 182 of the Act 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 notice for such a departure.
- 9.3 The policy should make it clear that each application will:
- be determined on its own merits
 - only have appropriate, reasonable, proportionate and enforceable conditions imposed if relevant representations are received in relation to the licensing objectives
 - be granted as applied for, save for conditions volunteered in the operating schedule by the applicant, if no relevant representations are received.
- 9.4 It is important to be aware that there is case law in respect of a successful judicial review of the Statement of Licensing Policy for Canterbury City Council by the British Beer & Pub Association and others¹. 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 lacks the freedom accorded to him by the Act and Regulations, the policy is contrary to the legislative scheme and is unlawful ...”

The proposed policy contains some specific guidance for applicants in relation to certain types of applications (i.e. large-scale outdoor events, garages, etc.) however, the policy makes it clear that applications will be granted as applied for in the absence of relevant representations and so these specific sections are not precluded by this judgement.

- 9.6 Under the Constitution, the terms of reference of the Licensing and Appeals Committee states that the committee is able to consider all licensing matters. As specified in the

¹ *R (on the application of the British Beer and Pub Association) v Canterbury City Council [2005] EWHC 1318 (Admin)*
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Act, adoption of the policy is reserved for Full Council. The terms of reference for Full Council include approving and adopting a Statement of Licensing Policy under the Act.

10. FINANCIAL IMPLICATIONS

10.1 The Government has previously indicated that it expects the centrally-set licensing fees, based on the non-domestic rateable value of premises, to fully cover the cost to licensing authorities of administering the licensing regime. It is clear however that the cost of the licensing function, despite recently reviewed and streamlined working practices, is in excess of the licensing fee income. Government has undertaken a consultation on locally-set licensing fees however no indication of a likely implementation date has been given; indeed, the Local Government Association has been tasked with undertaking further analysis of the licensing regime to assist the Government in its deliberations.

10.2 This policy will not place any new financial resource implications on the Council.

11. RISK IMPLICATIONS

11.1 If a policy is not published by 7 January 2016 in accordance with section 5 of the Act, the Council would be at risk of a judicial review.

11.2 Equally, an unlawful policy would offer the same risk.

12. EQUALITIES IMPLICATIONS

12.1 The Equality Act 2010 came into force on the 1 October 2010, a major piece of legislation. The Act also created a new Public Sector Equality Duty, which came into force on the 5 April 2011. There is a general duty, described in paragraph 12.2, that public bodies must meet, underpinned by more specific duties which are designed to help meet them.

12.2 In line with the Public Sector Equality Duty, public bodies must, in exercise of its functions, give due regard to the need to eliminate discrimination, harassment, victimisation to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.

12.3 The proposed Policy does not place any barriers or unique requirements on any person on the grounds of ethnicity, gender, religion or any other protected characteristic. Officers work with all applicants and licence holders, where appropriate, to ensure that the Council's duty under the Equality Act 2010 is met, for example, guidance notes could be provided in other languages upon request.

13. SOCIAL VALUE IMPLICATIONS

13.1 As the recommendations in this report do not constitute a public service contract, the measurement of 'social value' as required by the Public Services (Social Value) Act 2012 need not be applied, although equalities implications and opportunities are identified in section 12.

14. HUMAN RESOURCE IMPLICATIONS

14.1 The policy will not place any new human resource implications on the Council.

15. APPENDICES

- 15.1 Appendix A - Proposed Statement of Licensing Policy.

16. CONTACT OFFICERS

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17. BACKGROUND PAPERS

- 17.1 [Licensing Act 2003](#)
- 17.2 [Guidance issued by the Secretary of State under section 182 of the Licensing Act 2003](#)
- 17.3 [Existing Statement of Licensing Policy 2011 - 2016](#)