

**LICENSING AND APPEALS COMMITTEE**  
**26 October 2020**

**\*PART 1 – PUBLIC DOCUMENT**

**TITLE OF REPORT:**           **ADOPTION OF A STATEMENT OF LICENSING POLICY  
REQUIRED BY VIRTUE OF SECTION 5 OF THE LICENSING  
ACT 2003**

**REPORT OF:**                 **THE LICENSING MANAGER**

**EXECUTIVE MEMBER:**       **HOUSING AND ENVIRONMENTAL HEALTH**

**COUNCIL PRIORITIES:**      **BUILD THRIVING AND RESILIENT COMMUNITIES / RESPOND  
TO CHALLENGES TO THE ENVIRONMENT**

**1. EXECUTIVE 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 to Full Council.

**2. RECOMMENDATIONS**

2.1. That the Committee be recommended to:

- (a) Consider the responses to the public consultation
- (b) Support the proposed Statement of Licensing Policy attached as Appendix D, subject to any amendments
- (c) 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 2021 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 Council's priorities.
- 3.4 Responses to the public consultation were limited and raised no significant opposition to any of the proposals.

#### **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 on 24 July 2020 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. All proposals were highlighted in red for ease of reading.
- 5.5 The public consultation ran from 20 July 2020 to 9 October 2020.
- 5.6 An email was sent to all premises licence holders and statutory consultees outlining the consultation with a link to the relevant page of the website.
- 5.7 The Council's Communications Team regularly posted reminders of the consultation on social media.

## **6. FORWARD PLAN**

- 6.1 This report does not contain a recommendation on a key Executive decision and has therefore not been referred to in the Forward Plan.

## **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 2016 therefore the statutory five-year period expires on 6 January 2021.
- 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. RELEVANT CONSIDERATIONS**

### Current policy

- 8.1. The current policy has worked well enabling consistent decision-making by the licensing sub-committees so no significant amendments are proposed.
- 8.2 No significant issues have arisen relating to the policy and there have been very few decisions challenged in Court, all of which have been upheld.

### Local area profile

- 8.3 In order for an applicant to be able to assess the impact of an application on the four licensing objectives, a local area profile has been added to the policy. This should assist applicants to understand any specific issues they should be aware of and reflect in their operating schedule.

### Council's vision for licensing

- 8.4 The vision has worked well however it has been fine-tuned to reference licensed venues and clarify if applies to the daytime and night-time economy
- 8.5 Section B9 already dealt with the vision for town centres however little reference was made to the district's many rural communities. A new paragraph B10 has been added to explain the vision in relation to rural communities, particularly in relation to events.

### Applications

- 8.6 A new section D2.11 has been added to clarify that applicants do not need to request more than they need to allow some negotiation room. This is often the case and proves frustrating for responsible authorities and can attract additional representations from the public unnecessarily.

### Temporary event notices

- 8.7 A new section D13.9 has been added to emphasise that representations against temporary event notices should contain the same detail as a representation against a licence application. Representations against temporary event notices should not be seen as an easy way to stop events at well managed premises or when other reactive legislation exists.

### Pre-application advice

- 8.8 It is the Council's intention to offer a pre-application advice service at a competitive rate as it is aware that the use of licensing solicitors or licensing agents can prove expensive.
- 8.9 Section D16 explains the service that the Council will provide and explains that the service is not compulsory, nor does it guarantee a successful application.

### Closed-circuit television

- 8.10 Section E1.4 has been amended to confirm when CCTV is appropriate and that it should not be used to address matters outside the remit of the licensing objectives or issues specifically related to the premises in question.

### Safeguarding

- 8.11 The policy already contained a section on child sexual exploitation in relation to the licensing objective of the protection of children from harm.

- 8.12 A new section E1.8 has been added explaining the responsibilities of applicants and licence holders to address all safeguarding matters and the need to outline the management controls to be used in the operating schedule.

#### Duplication of existing public nuisance legislative requirements

- 8.13 Clarification has been added at section F4 to the Council's wide definition of public nuisance to confirm that matters covered in other legislation, for example the Wildlife and Countryside Act 1981, will not be considered relevant to the public nuisance licensing objective.
- 8.14 That said, convictions obtained under other legislation would become relevant in a review process as part of the prevention of crime and disorder objective.

#### Matters within the licence holder's control

- 8.15 The Council is aware of the problems that may be caused by people queuing to enter licensed premises. A new section F8.3 has been added to clarify that entry queues are considered matters within the control of the applicant/licence holder and can be subject to licence conditions. Additionally, where a queue is having an adverse impact on the licensing objectives and licence conditions will not address those concerns, a sub-committee could consider refusal or revocation.

#### Environmental considerations

- 8.16 Whilst the policy clarifies that environmental considerations do not naturally fit in any of the four licensing objectives and cannot ordinarily be mandated, encouragement is given to applicants to consider the environment.
- 8.17 Where the environment can be linked to a licensing objective, ordinarily the prevention of public nuisance, measures have been included such as:
- Glassware is ordinarily prohibited at festivals and events so the policy encourages compostable and/or biodegradable drinking vessels, food trays and cutlery
  - Requirements for waste management plans to clearly demonstrate an appropriate recycling scheme
  - Encouraging less use of vehicles to attend festivals/events by providing shuttle buses from railway stations or discounted schemes for car sharing of environmentally friendly vehicles

## **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 others<sup>1</sup>. 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.

9.5 Under the Constitution, the terms of reference of the Licensing and Appeals Committee states at section 8.2.3 (a) that the committee is able:

*“to consider all licensing matters with the exception of the statements of licensing policy under the Licensing Act 2003 and the Gambling Act 2005 and those matters delegated to the Licensing Sub-Committee and the Service Director: Legal and Community.”*

9.6 Section 8.2.3 (b) of the Constitution states that the committee is able:

*“to make recommendations to Council on the statements of licensing policy under the Licensing Act 2003 and the Gambling Act 2005.”*

9.7 Schedule 1 Part B Regulation 14A of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 states that any function of a licensing authority under the Licensing Act 2003 cannot be the responsibility of the Executive.

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<sup>1</sup> *R (on the application of the British Beer and Pub Association) v Canterbury City Council [2005] EWHC 1318 (Admin)*

9.8 By virtue of section 7 (2) of the Licensing Act 2003, the Statement of Licensing Policy is a matter reserved for Full Council.

9.9 Section 4.2.1 (e) of the Constitution states that Full Council can adopt:

*“Licensing Policy statements under Licensing Act 2003 and Gambling Act 2005.”*

## **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 had been tasked with undertaking further analysis of the licensing regime to assist the Government in its deliberations. Further updates from the Government are still awaited.

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 2021 in accordance with section 5 of the Act, the Council would be at risk of a judicial review.

11.2 The risk to the Council of not periodically reviewing and amending policy is that the Policy may become outdated and no longer fit for purpose. Given that the Policy is a fundamental element of consistent decision making, a policy that was not fit for purpose would increase the risk of legal challenge.

## **12. EQUALITIES IMPLICATIONS**

12.1. In line with the Public Sector Equality Duty, public bodies must, in the exercise of their 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.

12.2 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.

## **13. SOCIAL VALUE IMPLICATIONS**

13.1. The Social Value Act and “go local” requirements do not apply to this report.

## **14. ENVIRONMENTAL IMPLICATIONS**

14.1. One of the key considerations of the new proposals is to support the Council’s declaration of a Climate Emergency and Climate Change Strategy.

14.2 Policy and decision-making under the Licensing Act 2003 is restricted to the four licensing objectives and should not seek to duplicate other existing legislative requirements however there are environmental considerations that can be highlighted, particularly in relation to large-scale events.

14.3 Proposals include measures such as:

- Requiring appropriate recycling provision
- Reusable non-glass drinking vessels rather than single-use plastics
- Compostable non-glass drinking vessels
- Compostable and/or biodegradable cutlery and food trays
- Encouraging car sharing
- Provision of shuttle buses from train stations
- Discounted parking for environmentally friendly vehicles

## **15. HUMAN RESOURCE IMPLICATIONS**

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

## **16. APPENDICES**

16.1 Appendix A - Draft policy published for public consultation

16.2 Appendix B - Summary of consultation responses with officer comments

16.3 Appendix C - Full consultation responses

16.4 Appendix D - Proposed policy

## **17. CONTACT OFFICERS**

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**18. BACKGROUND PAPERS**

18.1 [The Licensing Act 2003](#)

18.2 [Statutory Guidance issued by the Home Office](#)