

| Licencing Act 2003 Committee Meeting | |
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| Meeting Date | 22 July 2015 |
| Report Title | Draft Statement of Licensing policy for Consultation |
| Cabinet Member | Cllr Ken Pugh, Cabinet Member for Community Safety and Health |
| SMT Lead | Mark Radford |
| Head of Service | Mark Radford |
| Lead Officer | Mark Radford |
| Key Decision | No |
| Classification | Open |
| Forward Plan | Reference number: N/a |
| Recommendations | <p>The Committee is asked to:</p> <ol style="list-style-type: none"> 1. Approve the form of the draft Statement of Licensing attached as Appendix 1 for consultation. 2. Receive a further report setting out the responses to the consultation and the final draft policy for approval and referral to full council before January 2016. |

1 Purpose of Report and Executive Summary

1.1 The Licensing Act 2003 requires that, at least every 5 years, the Council publish a 'Statement of Licensing Policy' that sets out the policies the Council will generally apply when exercising its licensing functions under the Act.

1.2 This report provides Members with information and guidance on a new draft 'Statement of Licensing Policy', which requires Member approval for public consultation.

1.3 Since the last revision to the statement of Licensing Policy in 2010 there have been a number of changes as a result of wide ranging reforms to the Licensing Act 2003. In light of those amendments, this new draft policy forms a secure foundation on which to determine applications in a way that clearly promotes the licensing objectives.

1.4 The opportunity has also been taken to revise the format to make it align more closely with the structure of the Home Office guidance. 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 was issued by the Home Office in March 2015 has been referred to during the drafting of this policy.

1.5 In preparing this draft policy it was considered that in view of changes and current updating requirements mentioned above, the policy needed to be a completely revised document rather than simply including amendments to the existing policy.

1.6 Before the policy can be finally approved for adoption by Council, consultation must take place in order for Members to give appropriate weight to the views of those persons/bodies which it is required to consult

2 Background

2.1 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 have been a range of legislative and other changes that necessitate revision of this policy and the statutory requirement to review our policy every five years is now due.

2.2 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.”

2.3 Underpinning this obligation are the four statutory Licensing Objectives, which must be promoted in carrying out the authority’s licensing functions.

These are:

- Prevention of Crime and Disorder
- Public Safety
- Prevention of Public Nuisance
- Protection of Children from Harm

2.4 Equal weight is given to all four Licensing Objectives and the policy must seek to secure the promotion of those objectives throughout the licensing process.

2.5 The current Statement of Licensing Policy was published by this Council in December 2010. At that time the statutory maximum review period was three years. Section 122 of the Police Reform and Social Responsibility Act 2011 has now amended this to every 5 years. The current policy has not had a major review for a while 2003, as the previous 3 yearly reviews have resulted in minor changes only.

2.6 The existing policy has been reviewed in regard to its application, suitability and effectiveness since the implementation of the Act in 2003 and with the benefit of a decade of experience.

2.7 Since the current policy was approved there have been a number of amendments to the Licensing Act 2003. The Police Reform and Social Responsibility Act 2011 introduced the power to implement Early Morning Alcohol Restriction Orders (EMARO’s). This allows Licensing Authorities to set an end time for the sale of alcohol between midnight and 6am at all or specific locations within the district, on all days or certain days of the week or year. If a licensing authority introduces an EMARO, it will apply to all Premises, Clubs and Temporary Events Notices that operate within the specified EMARO period. Licensing Authorities are required to advertise the proposal to make the EMARO and demonstrate that they have evidence to justify doing so, as well as considering any representations at a hearing, before its introduction.

2.8 In addition, The Police Reform and Social Responsibility Act 2011 provides some new initiatives such as the Late Night Levy (LNL). If introduced, the LNL allows Licensing Authorities to charge an additional levy to all alcohol licensed premises who wish to open at specified times after midnight and before 6 am. A minimum of 70% of that income, which is collected by the Licensing Authority, after administration costs, goes to the Police Authority to spend as they determine and up to 30% to the authority to spend on specified purposes. There can be permitted exemption categories and categories for reduction of levy amount.

2.9 The Live Music Act 2012 and other legislative amendments up to as recently as 6 April 2015 have amended some categories of regulated entertainment under the Licensing Act 2003. Many activities which were originally licensable no longer require a licence within certain time, place and audience limits.

2.10 The Government consulted from 13 February to 10 April 2014 on a proposal to set licensing fees locally. The Government after considering the responses decided not to introduce locally-set licensing fees at the present time. Instead local government was invited to provide evidence of its costs before proceeding.

2.11 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 Notice (TENs) processes for late applications and changes to the limits on numbers etc. or relaxation of the Designated Premises Supervisor requirement in community premises. The policy therefore needs to be updated to support decisions on all applications heard by a Licensing Sub-Committee relevant to the aforementioned changes.

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

2.13 Further, the Regulator's Code which came into force on 6 April 2014, places a duty on all Local Authorities to have regard to that Code when developing policies or operational procedures, setting standards and giving guidance in relation to Licensing Act 2003 functions. There should be a 'risk and evidence' based approach to the regulatory activity which has been incorporated into the draft policy.

2.14 Whilst the Licensing Act 2003 now requires a statutory review after 5 years, this does not prevent the Authority from carrying out a review before the end of the 5 year period and it remains good practice to keep any policy under continuous review.

3 Proposals

3.1 The following paragraphs summarise the key points of the new policy:

3.2 Providing advice to licensed individuals and businesses and the members of the public to improve knowledge and understanding of the Act; together with the options available to businesses and residents concerned with applications relating to licences, variations and reviews

3.3 Improved detail on what the Licensing Authority expects from the different types of licensed premises on managing their business activities, licence applications and operating schedules, in order to promote the licensing objectives.

3.4 Recognising the introduction of the Live Music Act 2012 is intended to promote an increase in live music venues whilst at the same time maintaining a balance to protect residents.

3.5 Detailing the Authority's current position on Late Night Levies (LNL), Early Morning Alcohol Restriction Orders (EMARO's) and Cumulative Impact (CI) whilst allowing flexibility in approach should the Council's approach need to be reconsidered in the future.

3.6 Greater clarity on the position for bona fide private members' clubs, in relation to licensing following enforcement and non-compliance issues in particular to tackle access by non-members to club facilities and concerns over club status.

3.7 Clarity on the application process for all licence types including the Authority's approach to suspension of licences/certificates for non-payment of annual premises licence fees.

3.8 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 failing to promote the Licensing Objectives are dealt with appropriately.

3.9 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.

3.10 Clarity and advice on the appropriateness, proportionality, purpose and requirements for clear and enforceable conditions to promote all of the Licensing Objectives. This will ensure anyone managing or working at premises understands the conditions attached to the premises licence or club premises certificate. It will also aid those affected if breaches occur and will assist effective enforcement by the Licensing Authority.

3.11 Setting out changes to the process for serving Temporary Event Notices (TENs) and the inclusion of Environmental Health as a statutory consultee to improve the knowledge of persons serving TENs indicating the Authority's expectations of them to promote the Licensing Objectives at their temporary event.

3.12 The provision of gaming machines and gaming in licensed premises will be set out to ensure that licence holders and staff understand the limitations and requirements on gambling and gaming in alcohol licensed premises.

3.13 The authority needs to revise the current policy to ensure coverage of the changes in the legislation and to set out how the Authority intends to approach its licensing responsibilities ;in particular what it expects from management of different types of licensed premises in their business activities and how they intend to promote the four licensing objectives.

- Prevention of Crime and Disorder
- Public Safety
- Prevention of Public Nuisance

- Protection of Children from Harm

3.14 By being open and transparent in the approach taken in administering the licensing regime the public can see the efficiency of the service and have confidence in the decision making process.

3.15 **The Committee is therefore asked to:**

(i) approve the form of the draft Statement of Licensing attached as Appendix 1 for consultation.

(ii) receive a further report setting out the responses to the consultation and the final draft policy for approval and referral to full council before January 2016.

4 Alternative Options

4.1 The Council could choose not to review and agree a revised policy but a failure to adopt a revised policy in early 2016 would be in breach of statutory requirement and put the authority at risk of legal challenge to decisions made under an out of date policy.

4.2 In any event the current policy does not reflect the impacts of the amendments to legislation and requires updating to support the licensing decision making process

5 Consultation Undertaken or Proposed

5.1 Consultation has taken place with the relevant officers in Licensing, Pollution, Planning and Legal to ensure that the draft meets the statutory requirements and supports, where appropriate cross authority working.

5.2 The Draft Statement once approved by the Committee for consultation will be widely circulated to relevant parties (see page 5 of the draft statement.)

5.3 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

5.4 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.

5.5 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.

5.6 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.

6 Implications

| Issue | Implications |
|---------------------------------------|--|
| Corporate Plan | <p>A borough to be proud of: the statement seeks to strike the right balance between promoting and encouraging live and recorded music, dancing, theatre and other forms of entertainment for the wider cultural benefit of communities generally but not to cause a disturbance.</p> <p>A community to be proud of: by promoting the four licensing objectives in this way the authority is enriching and enhancing the community whilst maintaining its regulatory and enforcement role.</p> <p>A council to be proud of: the statement will support good decision making processes</p> |
| Financial, Resource and Property | None identified at this stage |
| Legal and Statutory | The legal and statutory elements are contained within the report |
| Crime and Disorder | The Statement reflects the need to promote the four licensing objectives one of which is the prevention of crime and disorder. |
| Sustainability | None identified at this stage |
| Health and Wellbeing | The statement is underpinned by the four licensing objectives which are designed to encourage responsible use of licensed premises. |
| Risk Management and Health and Safety | None identified at this stage. |
| Equality and Diversity | As contained within the Statement at Section 6 |

7 Appendices

7.1 The following documents are to be published with this report and form part of the report:

- Appendix I: Draft Statement of Licensing Policy –June 2015

8 Background Papers

None.