

COMMITTEE: COUNCIL REF NO: C/18/10
DATE: 28 NOVEMBER 2018
**SUBJECT: LICENSING ACT 2003: DETERMINATION OF
STATEMENT OF LICENSING POLICY**
PORTFOLIO HOLDER: COUNCILLOR A ROSS
HEAD OF SERVICE: IAN BLOFIELD

Short description of report content and the decision requested:

The Licensing Act 2003 requires the Licensing Authority to prepare a Statement of Licensing Policy setting out the basis on which it will perform its licensing functions. A policy statement has a life of up to five years, the current policy expires January 2019.

The Council is asked to adopt the Statement of Licensing Policy.

Ward(s) affected:

All

List of Appendices included in this report:

- a) Appendix 1 – Draft revised Statement of Licensing Policy (5th Edition)

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This report was prepared after consultation with:

Internal consultees

Lead Lawyer for Licensing and Litigation
Operations Manager, Public Protection
Head of Service

Chief Operating Officer

External consultees

None

The following policies form a context to this report:

(all relevant policies must also be referred to in the body of the report)

Building a Better Ipswich 2017

LIST OF BACKGROUND PAPERS AS REQUIRED BY LAW

(papers relied on to write the report but which are not published and do not contain exempt information)

OTHER HELPFUL PAPERS

(papers which the report author considers might be helpful – this might include published material)

- 1. Public Protection Enforcement Policy.**
- 2. Licensing Act 2003.**
- 3. Guidance issued under section 182 of the Licensing Act 2003 (revised April 2018).**
- 4. Decision from Licensing & Regulatory Committee on 16/10/2018, Ref No: LR/18/12. Subject: Licensing Act 2003: Determination of draft Statement of Licensing Policy.**

1. Introduction

- 1.1 Section 5 of The Licensing Act 2003 (the 2003 Act) requires a Licensing Authority to adopt a Statement of Licensing Policy (the 'Policy') setting out the basis on which it will perform its licensing functions.
- 1.2 This draft Policy must to be published before the Licensing Authority can carry out its functions under the 2003 Act. The Policy has a life of five years. At least once every five years, a new policy must be determined, following a statutory consultation process.
- 1.3 The current Policy was adopted by the Council in January 2014 after a period of consultation with stakeholders and the public and is the fourth version to be published since implementation of the 2003 Act in 2005. The current policy expires January 2019.
- 1.4 The draft Policy is prepared in line with the fundamental principles within the 2003 Act in accordance to guidance issued under section 182 published in April 2018 by the Home Office (the 'Guidance').
- 1.5 The Licensing and Regulatory Committee approved the consultation of the draft Policy, which included the Cumulative Impact Assessment during the committee meeting 24th July 2018 (LR/18/04).
- 1.6 The area covered by the Cumulative Impact Assessment remains unchanged and is contained within the draft Policy.
- 1.7 Following this consultation which closed on 27th August 2018, the draft Policy has been amended. The amended draft Policy was approved by the Licensing and Regulatory Committee on 16th October 2018.
- 1.8 The Council is asked to consider and adopt the draft Policy, to allow publication in January 2019.

2. Background

- 2.1 Since the publication of the 4th edition of the Policy in 2014, there have been several revisions to the Home Office Guidance issued under section 182 of the 2003 Act. There have also been legislative changes that impact on how the Licensing Authority performs its functions. The draft Policy reflects these changes, and is explained below.

The Legislative Reform (Entertainment Licensing) Order 2014

- 2.2 Makes the playing of live or recorded music to audiences of less than 500 people between 8am and 11pm exempt from being a licensable activity. (Draft Policy paragraph 2.3)

Deregulation Act 2015

- 2.3 Makes the showing of films on a non- profit basis at Community Premises exempt from being a licensable activity. (Draft Policy paragraph 2.3)
- 2.4 Makes a personal license valid indefinitely. (Draft Policy paragraph 15.1)

Policing and Crime Act 2017

- 2.5 Amended the 2003 Act, giving the Licensing Authority the power to revoke or suspend a personal license it has granted, when it becomes aware that the holder has been convicted of a relevant offence, foreign offence or required to pay an immigration penalty (Draft Policy paragraph 15.5)

Immigration Act 2016

- 2.6 Amended the 2003 Act to make, entitlement to work in the UK a condition of applying for a Personal License, Premises License to sell alcohol or offer late night refreshment, and licences must not be issued to people who are in the UK illegally. (Draft Policy paragraph 1.10)
- 2.7 Amendments also made the Secretary of State a Responsible Authority, with the Home Office Immigration Enforcement team exercising these responsibilities on the Secretary of State's behalf (Appendix 7 in Draft Policy)

Section 5 - Licensing Act 2003 and Part 14 of Home Office Guidance issued under section 182 of the 2003 Act (Revised April 2018) relating to Statement of Licensing Policy

- 2.8 This sets out what a Licensing Authority must do, to publish a Statement of Licensing Policy. Section 5(3) lists who must be consulted with prior to determining the policy. Part 14 of the Guidance explains further the process. This will be explained further under part 5 of this report (Consultations)

Cumulative Impact Assessment (CIA)

- 2.9 The current Statement of Licensing Policy (4th edition) has a CIA published within. As part of the review of the policy, information has been considered from various Responsible Authorities and other parties (Appendix 1-5 of Draft Policy).
- 2.10 This information has been summarised within the Policy (Draft Policy paragraph 25.13)

- 2.11 This information supports the continuation of the current CIA area, where the boundary area is described in the Policy (Draft Policy paragraph 25.17)
- 2.12 A map of this area is included as appendix to the Policy (Appendix 6 of Draft Policy)
- 2.13 The effect of this CIA is that it creates a rebuttable presumption, which means that applications for Premises Licences that provide 'on' and 'off' sales of alcohol and / or late night refreshments within the defined area will normally be refused unless the applicant can demonstrate in their operating schedule that they will not be adding to the cumulative impact.
- 2.14 Information provided by the IBC Licensing Team show that over the last three years of the 76 Premises Licenses issued, 58 were within the CIA area. Many of these were granted to venues where alcohol was only part of their offering E.g. restaurant's and convenience stores. (Appendix 5 of Draft Policy) Section 5A of the 2003 Act deals with CIAs and the same consultation process is required, as explained under part 5 of this report (Consultations)

3. Relevant Policies

- 3.1 Building a Better Ipswich 2017 underlying principle:
- Priority 1- A strong Ipswich economy – by regulating the quality of business that operate in Ipswich.
 - Priority 3- An enjoyable place to live, work and study – by regulating business and events especially those that operate as part of the night time economy.
 - Priority 6 Safe communities- by supporting the 'reduce the strength' campaign and working with business and partners to ensure safe licensing practices.
- 3.2 This Policy links to the Public Protection Enforcement Policy by clearly defining how the Council will take enforcement action in relation to licensing.

4. Consultations and responses

- 4.1 Section 5 of the 2003 Act and the Guidance prescribes who needs to be consulted before the Licensing Authority can determine its Statement of Licensing Policy and before publishing its Cumulative Impact Assessment.
- 4.2 The statutory consultees are:
- the Chief Officer of Police for the area;
 - the Chief Fire Officer for the area;
 - the Director of Public Health for the area;
 - representatives / local holders of:

- Premises Licences
- Club Premises Certificates
- Personal Licences
- Businesses and Residents

- 4.3 All Responsible Authorities were contacted, and the Councils consultations website was used, and promoted via Twitter and Facebook.
- 4.4 The Police were the only respondent to this consultation, and there only comment identified that on page 51, which was Appendix 7, the reference to 'Area Child Protection Committee' as the body responsible for protection of children from harm (number 6), was in fact now obsolete. It requested that it be changed to 'Suffolk Safeguarding Children Board' to reflect the current structure. Suffolk Constabulary confirmed they were still the point of contact for this function.
- 4.5 This amendment has been made to Appendix 7 of the Statement of Licensing Policy. The amended draft Policy is attached at Appendix 1.
- 4.6 The Licensing & Regulatory Committee on 16th October 2018 requested a slight amendment to the policy to include Modern Slavery, to reflect Ipswich Borough Councils commitment and adoption of the Charter Against Modern Slavery, part 14.1 of the Draft Policy has been amended to reflect this.
- 4.7 Following this amendment at part 14.1, the Licensing & Regulatory Committee on 16th October 2018 agreed to submit the draft policy to Full Council for consideration and adoption.

5. Risk Management

Risk Description	Consequence of risk	Risk Controls	Probability of risk occurring taking account of controls (scale 1-6) 1 – almost impossible 6 – very high	Impact of risk, if it occurred taking account of actions (scale 1 – negligible; 4 – catastrophic)	Actions to mitigate risk
Failure to review and publish a Statement of Licensing Policy in accordance with the Licensing Act 2003	Could expose the Council to legal challenge over its procedures for dealing with applications. Reputational damage.	Time scales to determine have to be coordinated with Committee time table, which has	2	2	Allow for sufficient time to publish a revised Statement of Licensing Policy by the

would prevent the Licensing Authority carrying out its functions		limited flexibility. Ensure views of those consulted are taken into account.			deadline of 31 January 2019.
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6. Environmental Impact Assessment

6.1 There is no environmental impact associated with this policy.

7. Equalities and Diversity Implications

- 7.1 Under the general equality duty as set out in the Equality Act 2010, public authorities are required to have due regard to the need to eliminate unlawful discrimination, harassment and victimisation as well as advancing equality of opportunity and fostering good relations between people who share a protected characteristic and those who do not.
- 7.2 The protected grounds covered by the equality duty are: age, disability, sex, gender reassignment, pregnancy and maternity, race, religion or belief, and sexual orientation. The equality duty also covers marriage and civil partnership, but only in respect of eliminating unlawful discrimination.
- 7.3 The law requires that this duty to have due regard be demonstrated in decision making processes. Assessing the potential impact on equality of proposed changes to policies, procedures and practices is one of the key ways in which public authorities can demonstrate that they have had due regard to the aims of the equality duty.
- 7.4 An Equality Impact Screening was undertaken. No negative impacts were identified.

8. Financial Considerations

- 8.1 The publishing of a Statement of Licensing Policy enables the Council to continue to act as a Licensing Authority which generates income in the form of application fees.

9. Legal Considerations

- 9.1 Section 5 of the Licensing Act 2003 makes it a legal obligation on Licensing Authorities to publish a Statement of Licensing Policy every five years.

- 9.2 The Act also prescribes who should be consulted as part of the adoption process as listed in 4.2 above.

10. Performance Monitoring

- 10.1 During the five-year period of the New Policy it will be reviewed and if required amended to reflect changes in legislation or guidance. Any revised policy will follow the consultation and adoption process as described in this report.

11. Conclusions

- 11.1 The Council must have a Statement of Licensing Policy in order to operate as a Licensing Authority under the Licensing Act 2003.
- 11.2 The draft fifth edition of the Statement of Licensing Policy and the Cumulative Impact Assessment contained within have now been the subject of consultation, and a slight amendment made as a consequence.
- 11.3 Council is now requested to consider and adopt this draft Policy to enable publication by January 2019.

12. Recommendations

- 12.1 That Council considers and adopts the proposed Statement of Licensing Policy (Appendix 1) before publication.**