

Revision of the Licensing Act 2003 Policy

Licensing, Item 6

Committee: Licensing Committee

Agenda Item

Date: 12 September 2007

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Title: Revision of the Licensing Act 2003 Policy

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Item for
decision

Summary

- Under the Licensing Act 2003, Licensing Authorities are required to determine and publish their licensing policy for each three year period, that started in February 2005. The Licensing Authority is therefore required to review its existing policy, consider whether any changes need to be made, and consult upon it, before publishing it in time for the start of the next three year period in February 2008.

Recommendations

- That the Committee consider the draft revised Licensing Policy appearing in the Appendix to this agenda and approve the same subject to such amendments as the Committee consider appropriate as a basis for consultation.
- That the Committee authorise officers to carry out a full consultation exercise with statutory consultees, the public, licensees in the District, recognised Trade bodies and Town and Parish Councils and report back to this Committee on the outcome of such consultation.

Background Papers

None

Impact

Communication/Consultation	When revising its Licensing Policy, the Licensing Act 2003 requires as a minimum consultation with the Police, Fire Authority, representatives of holders of premises licences, representatives of holders of club premises certificates, representatives of personal licences and such other persons as are considered to be representative of the businesses and residents in its area.
Community Safety	None
Equalities	None
Finance	None

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Human Rights	None
Legal implications	The Licensing Authority will have to have regard to its Licensing Policy in determining applications
Sustainability	None
Ward-specific impacts	None
Workforce/Workplace	None

Situation

- 1 The original licensing policy of this Council, consistent with the majority of other Essex Authorities, was derived from the model developed and agreed by the Essex Joint Licensing Officers' Forum and came into effect on the 7 February 2005
- 2 The Council reviewed its policy during 2005 following a judicial review finding that Canterbury City Council's policy (that had been closely based on the Essex model) was too prescriptive. In addition, following a motion at Full Council, the policy was also amended to provide that town and parish council's be advised directly of applications, along with nearby residents, which went beyond the basic statutory requirements of consultation under the Act.
- 3 The Council's policy is only valid for 3 years and needs to be reviewed in advance of February 2008. In addition, the Secretary of State for Culture Media and Sport has issued revised guidance under the Act, which necessitates consideration by Licensing Authorities of their licensing policies in light of the changes in guidance that have been made.
- 4 Once the Committee have approved a draft policy, consultation will be undertaken with the relevant Responsible Authorities, trade representatives, businesses and the residents of the District. Following consideration of the responses, this Committee will be asked to approve a revised policy to Full Council for adoption as the Licensing Policy for the District for the next three years.
- 5 The drafting of the revision to the policy has been achieved by a working party of Officers from the Essex Licensing Officer's forum, in the same way the original policy under the Licensing Act 2003 was drafted, taking into account the changes in the government's guidance.
- 6 The officers have not considered it necessary to make many changes, and the key differences are:
 - a. The Treatment of Interested Parties, the details that they should supply when making comments to the Council, that their personal details could

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be kept confidential in special circumstances, how they can be represented by a third party

- b. Authorisation of supplies of alcohol – replication of Government guidance with regards being able to show explicit authorisation of non-personal licence holders who sell alcohol
- c. Consideration of representations made by interested parties outside of the 28 day time limit, in special circumstances, in light of a recent House of Lords decision.
- d. Statement regarding flexible licensing hours.

7 The revised draft Policy has been produced at Appendix 1. Deletions and additions are clearly shown.

Risk Analysis

Risk	Likelihood	Impact	Mitigating actions
Members do not approve a draft policy as a basis for consultation	Low. Members have previously approved draft policies under the Licensing Act 2003 and the Gambling Act 2005 in a timely fashion	High. Unless consultation takes place promptly the Council will be unable to meet its statutory obligations regarding the adoption of a licensing policy	Members adopt the draft policy as a basis for consultation with or without amendments
Members adopt amendments to the draft policy which run contrary to government guidance	Low. Members took part in the consultation process on the draft government guidance and there have been no significant amendments made to the guidance as a result of the consultation.	Medium. Although a policy contrary to government policy would be susceptible to judicial review the Council responded promptly and appropriately when a high court decision suggested that the first	Any amendments Members may wish to see to the draft should be consistent with government guidance.

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		version of the licensing policy under the 2003 Act was unlawful.	
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