

Committee: Licensing & Environmental Health

Agenda Item

Date: 12 June 2017

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Title: Licensing Act 2003 – Statement of
Licensing Policy - Revised

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Item for decision

Summary

1. In accordance with the requirements of the Licensing Act 2003 the Licensing Authority is required to review and publish its statement of licensing policy every 5 years. The committee is therefore asked to approve the following recommendations.

Recommendations

2. To approve the revised Licensing Policy Statement for the period 2017 to 2022 and agree for it to go out to consultation for a 12 week period.
3. To delegate the Assistant Director Housing and Health to approve any minor amendments to the policy as a result of the consultation, before being presented back to the Licensing Committee if there are amendments, and finally Full Council for approval and publishing.

Financial Implications

4. In the event that members do decide to review the Policy there will be costs involved in consultation and advertising but these can be met from within existing budgets.

Background Papers

5. The following papers were referred to by the author in the preparation of this report and are available for inspection from the author of the report.

Uttlesford's current Statement of Principle Policy document
Revised Guidance issued under sections 182 of the Licensing Act 2003 (April 2017 version)

Impact

- 6.

Communication/Consultation	There is a statutory requirement to consult prior to the adoption of a revised Licensing policy.
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Community Safety	This is encompassed in the licensing objective of public safety and the protection of children from harm
Equalities	There are no equality issues arising from this report
Health and Safety	Public safety is one of the licensing objectives promoted by the draft policy statement.
Human Rights/Legal Implications	In the event that the Licensing Policy is not consistent with the legislation it is susceptible to challenge by way of judicial review. In the event that the Policy is inconsistent with government guidance and no good reason has been given for departure therefrom the Policy would also be susceptible to such challenge and the Authority would be at greater risk of adverse costs on appeal if the court decided the issue based on government guidance.
Sustainability	None
Ward-specific impacts	None
Workforce/Workplace	None

Situation

7. The Licensing Act 2003 which has been in force since 2005 requires that the authority produces a Statement of Licensing Policy and reviews it at least every 5 years. The current policy was last reviewed in 2012 and approved by Full Council on 11 December 2012.
8. In accordance with the requirement to keep the Policy under review the Policy has now been updated for the five year period 2017 to 2022.
9. In exercising its duties under the Act the Licensing Authority must act in accordance with the general principles of public administration, and under a duty to promote the statutory licensing objectives of preventing crime and disorder: preventing public nuisance: protecting public safety; and protecting children from harm.
10. During the life of the current policy, it has proved satisfactory and there have been no challenges made to any parts of the Policy. This revision contains additional supportive information and is in accordance with the revised guidance issued by the Secretary of State under section 182 of the Licensing

Act 2003. It also contains relevant updates brought in by the Deregulation Act 2015, the Immigration Act 2016 and the Police and Crime Act 2017.

11. The Secretary of State's guidance however, requires Members to specifically consider the issue of a Cumulative Impact Policy and Late Night Refreshment Exemptions as part of the Licensing Policy process.
12. Cumulative Impact means the potential impact on the promotion of the licensing objectives of having a significant number of licensed premises concentrated in one area. It is open to Licensing Authorities to adopt a Cumulative Impact Policy, which creates a rebuttable presumption that applications for the grant or variation of licences or certificates which are likely to add to the cumulative impact will normally be refused, following relevant representations. Such a special policy needs to be set out within the Statement of Licensing Policy.
13. However, any decision to include a Cumulative Impact Policy within the Statement of Licensing Policy needs have an evidential basis. The Licensing Authority has not previously felt that there was any evidence of cumulative impact, and this was reflected by such statements in its previous Licensing Policies. Up to the point of this review, no evidence has been received by the Licensing Authority that indicates a Cumulative Impact Policy would be appropriate, and therefore no change has been made to the status quo.
14. Similarly, the Deregulation Act 2015 gives Licensing Authority powers to exempt certain premises, in certain circumstances, from the requirement to have premises licences to provide late night refreshment (the supply of hot food or drink between 23.00 and 05.00). These powers allow licensing authorities to choose to apply an exemption where they think it will be helpful to businesses and where there are no problems with anti-social behaviour or disorder associated with the night time economy.
15. Government guidance advises that licensing authorities should consider deregulation where possible. The decision to make an exemption is a licensing function that should be included in their statement of licensing policy. However, there is no obligation on a Licensing Authority to use the exemption powers.
16. The Licensing Authority has not received any comments from businesses that the current rules are too restrictive or costly, and the number of premises with Late Night Refreshment only licences is small, and therefore it is not considered appropriate to make any exemptions at this stage. The details of the types of premises that could benefit from any exemption, and the types of exemptions that could be made are set out in the draft policy for information.

17. Consultation on the draft policy will take place over a 12 week period after the licensing committee approval. The licensing team will consult with all the persons listed in s5(3) of the Act, being responsible authorities under the Act, all premises licensed in the district, local businesses, Councillors, and Town & Parish Councils.
18. The draft licensing policy statement will also be displayed on the Council's website throughout the consultation period. This will be accompanied by an invitation to submit relevant comments.
19. Once the consultation period is over all recommendations of amendment will be taken into account. If they are legitimate and follow legislation and statutory guidance they will be presented to the Assistant Director Housing and Health for approval and then coming back to this committee before going to Full Council for approval and thereafter be published.

Risk Analysis

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Risk	Likelihood	Impact	Mitigating actions
The recommended policy is contrary to the government guidance	1. Members have been given extracts of the relevant sections of the updated guidance and will have regard to it	3. There is a risk of judicial review and adverse costs orders on appeals	Members give sound reasons for any provisions of the statement of government guidance and Licensing Policy which they propose should be otherwise that in accordance with government guidance.
The council does not review its licensing policy prior to the next scheduled review	1. The licensing and environmental health committee have previously approved draft Licensing Act policies in a timely manner	3. The council would suffer reputational damage if its policy was seen not to be consistent with the legislation and may be the subject of adverse costs awards on	Members recommend a revised policy for consultation as soon possible and in the meantime recommend a statement to be published on the Councils website outlining the changes

		appeal.	
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- 1 = Little or no risk or impact
- 2 = Some risk or impact – action may be necessary.
- 3 = Significant risk or impact – action required
- 4 = Near certainty of risk occurring, catastrophic effect or failure of project.