

Summary Sheet

Council Report

Licensing Committee – 30th October 2017

Title

Licensing Act 2003 – Statement of Licensing Policy

Is this a Key Decision and has it been included on the Forward Plan?

Yes

Strategic Director Approving Submission of the Report

Damien Wilson, Strategic Director of Regeneration and Environment

Report Author(s)

Alan Pogorzelec, Licensing Manager, Community Safety and Street Scene

Ward(s) Affected

All

Summary

Section 5 of the Licensing Act 2003 requires a licensing authority to prepare and publish a statement of its licensing policy at least every five years.

Rotherham MBC's Statement of Licensing Policy was last published in 2011, and was therefore due for review and republication in 2016 – however this review did not take place due to the Council's focus on taxi and private hire licensing.

The Council is now in a position to review and publish a revised Statement of Licensing Policy, and this report is brought before the Licensing Committee for consideration and comment prior to the commencement of the formal consultation process.

Recommendations

1. To note the attached Licensing Act 2003 Statement of Licensing Policy (and associated appendices).
2. To provide any comments on the Policy to the Licensing Manager for inclusion in the final consultation version.

List of Appendices Included

- Rotherham MBC Licensing Act 2003 Statement of Licensing Policy
- Appendix 1 – Pool of Model Conditions
- Appendix 2 – Mandatory Conditions
- Appendix 3 – Immigration documentation

Background Papers

The following documents have been considered when preparing this report:

- Guidance issued under section 182 of the Licensing Act 2003.

Consideration by any other Council Committee, Scrutiny or Advisory Panel

None

Council Approval Required

No

Exempt from the Press and Public

No

Licensing Act 2003 – Statement of Licensing Policy

1. Recommendations

- 1.1. To note the attached Licensing Act 2003 Statement of Licensing Policy (and associated appendices).
- 1.2. To provide any comments on the Policy to the Licensing Manager for inclusion in the final consultation version.

2. Background

- 2.1 As the licensing authority under the Licensing Act 2003 (the Act) the council is responsible for licensing:
 - (a) the sale and supply of alcohol;
 - (b) regulated entertainment such as live and recorded music, performances of theatre, dance, cinema and indoor sports;
 - (c) the sale of hot food and drink between 11 pm and 5 am.
- 2.2 Under section 5 of the Act, a licensing authority must prepare a Statement of Licensing Policy which effectively sets out the principles they propose to apply in exercising their functions under the Act. This Statement of Policy must be published at least every five years.
- 2.3 Rotherham MBC's Statement of Licensing Policy was last published in 2011, and was therefore due for review and republication in 2016 – however this review did not take place due to the Council's focus on taxi and private hire licensing.
- 2.4 The Council is now in a position to review and publish a revised Statement of Licensing Policy, and this report is brought before the Licensing Committee for consideration and comment prior to the commencement of the formal consultation process.

3. Key Issues

- 3.1 The statement of Licensing Policy has certain key objectives:
 - Provides applicants with a clear, consistent basis for submitting applications and notices in the Borough
 - Provides a clear, consistent basis for determining licensing applications in Rotherham

- Ensures the relevant views of those affected by licensed premises are taken into consideration
- Ensures that local area issues are taken into account by licensed premises and
- Supports the wider strategies of the Council and the approach to licensed activities and premises across the Borough.

3.2 The adoption of the Policy is a legal requirement. The overarching ethos of the policy is to ensure that the licensing objectives are met throughout the Authority and that communities are not undermined by crime and disorder as result of licensed activities or premises.

3.3 The licensed entertainment and hospitality industry is a major provider of full time, part time and casual employment and it makes a significant contribution to the local economy. It fulfils an important social and community role, providing facilities for both residents and businesses and provides vital support for related sectors such as retail and tourism.

3.4 The Licensing Statement of Policy forms an essential part of the Council's integrated approach to alcohol related issues and the provision of regulated entertainment. It seeks to strike a balance between the need to encourage a vibrant and dynamic entertainment industry as part of the regeneration of the Borough, and the need to ensure that concerns relating to public disorder are effectively addressed. The policies in this Statement aim to contribute to making the Borough as a whole, and its town centre in particular, pleasant, safe and prosperous places in which to live, work, learn and relax. We want to work with partners and the licensing trade to provide a safe, diverse and family orientated night time economy for all to enjoy.

3.5 The aim of the new policy is to support business and regeneration across the Borough, whilst protecting the public and ensuring that the four licensing objectives are met. This will result in a safe, varied and regenerated economy within Rotherham.

4. Options considered and recommended proposal

4.1 The options are limited as the requirement for such a policy is set out in the legislation, although there is considerable discretion as to the content of the statement.

4.2 The recommended proposal is for the Licensing Committee provide comments in relation to the proposed policy prior to submission to the Council's Cabinet and the commencement of formal consultation.

5. Consultation

- 5.1 Any comments made by the Council's Licensing Board will be incorporated into the proposed policy prior to submission to the Council's Cabinet.
- 5.2 In addition, before determining its policy, the licensing authority must consult the persons listed in section 5(3) of the 2003 Act. These are:
- the chief officer of police for the area;
 - the fire and rescue authority for the area;
 - the local authority's Director of Public Health;
 - persons / bodies representative of local premises licence holders;
 - persons / bodies representative of local club premises certificate holders;
 - persons / bodies representative of local personal licence holders; and
 - persons / bodies representative of businesses and residents in its area.
- 5.3 The views of all these persons or bodies should be given appropriate weight when the policy is determined. It is recognised that in some areas, it may be difficult to identify persons or bodies that represent all parts of industry affected by the provisions of the 2003 Act, but licensing authorities must make reasonable efforts to do so. Licensing authorities should note that the terms of the 2003 Act do not prevent them consulting other bodies or persons.

6. Timetable and Accountability for Implementing this Decision

- 6.1 Following review of the draft policy by the Licensing Committee, the policy will be amended as appropriate and then submitted to the next meeting available meeting of the Cabinet Member for Waste, Roads and Community Safety.
- 6.2 Once approved by the Cabinet Member, it is proposed that a twelve week consultation period commences (as per Government guidance). Once responses have been incorporated into the revised policy, the policy will be presented to Cabinet with a view to obtaining final approval from the Council. It is expected that the policy will be introduced in mid-2018.

7. Financial Implications

- 7.1 The costs of undertaking the statutory duties as a licensing authority are met within the Licensing revenue budget.
- 7.2 Fee levels are set at a level to provide full cost recovery of all licensing functions including the preparation and publication of a statement of licensing policy, but this will be based on the statutory requirements.

8. Legal Implications (including procurement)

- 8.1 Section 5 of the Licensing Act 2003 requires a licensing authority to determine its licensing policy with respect to the exercise of its licensing functions and to publish this before the beginning of each five year the period.
- 8.2 Section 5(3) of the Act lists those persons that must be consulted by a licensing authority in relation to a proposed statement of licensing principles.
- 8.3 Section 5(4) of the Act requires an authority to keep the statement under review and to make such revisions to it, at such times, as it considers appropriate, again subject to the same consultation requirements. The authority must publish a statement of the revisions (to the policy) or the revised statement if revisions are made and approved.

9. Human Resources Implications

- 9.1 There are no human resource implications arising from these proposals.

10. Implications for Children and Young People and Vulnerable Adults

- 10.1 The protection of children from harm is one of the Licensing Objectives, however a statement of licensing policy should not seek to limit the access of children to any premises unless it is appropriate for the prevention of physical, moral or psychological harm to them.
- 10.2 It may not be possible for licensing policy statements to anticipate every issue of concern that could arise in respect of children in relation to individual premises and therefore the individual merits of each application should be considered in each case.
- 10.3 A statement of licensing policy should make clear the range of alternatives which may be considered for limiting the access of children where that is appropriate for the prevention of harm to children.
- 10.4 Statements of policy should also make clear that conditions requiring the admission of children to any premises cannot be attached to licences or certificates. Where no licensing restriction is appropriate, this should remain a matter for the discretion of the individual licence holder, club or premises user.
- 10.5 The statement may include reference to model conditions that maybe used to promote the protection of children from harm.

11. Equalities and Human Rights Implications

- 11.1 Section 149 of the Equality Act 2010 imposes a public sector equality duty (PSED). This duty requires the authority (inter-alia) to eliminate discrimination, advance equality of opportunity and foster good relations when exercising any of its functions.
- 11.2 In order to promote inclusion and to prevent exclusion, the Policy reminds applicants of their responsibilities under the Equality Act 2010. In seeking to support a community in which diversity is encouraged, the Council will expect all applicants to take steps to ensure that no person is treated differently on the grounds of race, colour, religion, ethnic or national origins, age, sex, sexual orientation or disability.
- 11.3 A full Equality Impact Assessment will be undertaken prior to the submission of the final report to Cabinet.
- 11.2 The Human Rights Act 1998 requires UK legislation to be interpreted in a manner consistent with the European Convention on Human Rights. It is unlawful for the Council to act in a way that is incompatible (or fail to act in any way that is compatible) with the rights protected by the Act. Any action undertaken by the Council that could have an effect upon another person's Human Rights must be taken having regard to the principle of proportionality: the need to balance the rights of the individual with the rights of the community as a whole. Any action taken by the Council which affects another's rights must be no more onerous than is necessary in a democratic society. The matter set out in this report must be considered in light of the above obligations.

12. Implications for Partners and Other Directorates

- 12.1 There are no specific implications for partners and other directorates introduced by this report.

13. Risks and Mitigation

- 13.1 Failure to publish a Licensing Act Statement of Licensing Policy exposes the Council to legal challenge as a result of failing to comply with statutory requirements.
- 13.2 In addition, the absence of a up to date policy may lead to inappropriate decisions being made in relation to licence applications.

13.3 In order to mitigate this risk, it is proposed that the Statement of Licensing Policy be introduced as soon as possible (ensuring that all statutory processes are observed).

14. Accountable Officer(s)

Karen Hanson Assistant Director, Community Safety and Street Scene
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