

Committee Name and Date of Committee Meeting

Cabinet – 23 December 2019

Report 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

Paul Woodcock, Strategic Director of Regeneration and Environment

Report Author(s)

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Ward(s) Affected

Borough-Wide

Report 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.

The Council'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.

In June 2019 Cabinet approved a two stage approach to consultation to develop the Policy. Following the initial consultation, the Council is now in a position to review and publish a revised Statement of Licensing Policy, and this report is presented to Cabinet for consideration, comment, and for approval to commence the formal consultation process on this revised Policy.

Recommendations

1. That approval be given to begin the second stage of public consultation, in line with the option agreed by Cabinet in June, in respect of the Council's Licensing Act 2003 Statement of Licensing Policy.
2. That Cabinet agree that Officers undertake a Cumulative Impact Assessment for the Wickersley area, to support the Licensing Act 2003 Statement of Licensing Policy.

List of Appendices Included

Appendix 1 Licensing Act 2003 Equalities Analysis Initial Screening

Appendix 2 Rotherham Metropolitan Borough Council Licensing Act 2003 DRAFT Statement of Licensing Policy

Appendix A: Pool of Model Conditions

Appendix B: Mandatory Conditions

Appendix C: Immigration Documentation

Appendix D: Guidance Notes for Applicants

Appendix E: Useful Contacts

Background Papers

Guidance issued under Section 182 of the Licensing Act 2003

(<https://www.gov.uk/government/publications/explanatory-memorandum-revised-guidance-issued-under-s-182-of-licensing-act-2003>)

The Public Health Burden of Alcohol and the Effectiveness and Cost-Effectiveness of Alcohol Control Policies An evidence review, Public Health England, 2016:

Woodhouse J., Alcohol licensing: cumulative impact assessments, House of Commons Library, Briefing Paper, Number 07269, 16 April 2019

Consideration by any other Council Committee, Scrutiny or Advisory Panel

No

Council Approval Required

No

Exempt from the Press and Public

No

Licensing Act 2003: Statement of Licensing Policy

1. Background

1.1 As the licensing authority under the Licensing Act 2003 (the Act) the Council is responsible for licensing:

- the sale and supply of alcohol;
- regulated entertainment such as live and recorded music, performances of theatre, dance, cinema and indoor sports;
- the sale of hot food and drink between 11 pm and 5 am.

1.2 Under Section 5 of the Act, a licensing authority must prepare a Licensing Act 2003 Statement of Licensing Policy (a 'Statement of Licensing Policy') which effectively sets out the principles it proposes to apply in exercising functions under the Act. This Statement of Policy must be published at least every five years.

1.3 The Statement of Licensing Policy contains a number of key objectives including:

- Providing applicants with a clear, consistent basis for submitting applications and notices in the Borough;
- Providing a clear, consistent basis for determining licensing applications in the Borough;
- Ensuring the relevant views of those affected by licensed premises are taken into consideration;
- Ensuring that local area issues are taken into account by licensed premises; and
- Supporting the wider strategies of the Council and the approach to licensed activities and premises across the Borough.

1.4 The Council'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.

1.5 The Council is now in a position to review the Statement of Licensing Policy, and this report is brought before Cabinet to consider the commencement of a formal consultation process. A draft copy of the proposed Statement of Licensing Policy and accompanying appendices is attached to this report at Appendix 2.

2. Key Issues

2.1 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.

- 2.2 The Statement of Licensing Policy seeks to strike a balance between the need to encourage a vibrant, dynamic and responsible entertainment industry as part of the regeneration of the Borough, and the need to ensure that concerns relating to health, safeguarding and 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. The Council want to work with partners and the licensing trade to provide a safe and diverse night time economy for all to enjoy.
- 2.3 The Council's Statement of Licensing Policy, whilst focused directly upon the Licensing Objectives, contributes significantly to a range of priorities and strategies, particularly those related to crime and disorder and health and well-being.

The four Licensing Objectives are:

- the prevention of crime and disorder;
- public safety;
- the prevention of public nuisance and;
- the protection of children from harm.

- 2.4 The sale and supply of alcohol in particular is key; not only to issues of crime and disorder, but also to mitigate critical public health concerns. The relationship between alcohol, health, social harms and crime is well documented. Critically, the development of the Policy will explicitly take account of the wider crime and public health agendas. The Council's Statement of Licensing Policy has a role to play in delivering a licensing approach that seeks to address these concerns and to focus on the prevention of harm at the earliest stages.
- 2.5 The way that licensable activities are managed on site can often influence the wider issues that arise through the sale and supply of alcohol or the provision of late night refreshments. The Statement of Licensing Policy can therefore direct how establishments are managed and operated, including setting standards for training around key priorities through to requirements for security staff and their training and accreditation.
- 2.6 It is recognised that the night time economy of Rotherham is changing and developing in new areas. It is important that the impact of this is fully understood, both in terms of the positive impact on local amenity and economy, and potential negative effects in relation to health, social harm and crime. Residents and businesses are therefore well placed to provide a view on the impact of licensable activities within their local areas. This is particularly so where the night time economy has expanded outside of the town centre. It is therefore important that residents have a say on issues related to their communities.
- 2.7 Highlighted below are some of the proposed key changes within the revised Statement of Licensing Policy:

2.8 Cumulative Impact Assessment

In support of the Statement of Licensing Policy, the Council is able to identify areas within the Borough where the further granting of licences or variations to licences could impact on the Council's obligations in respect of the Licensing Objectives. This would be through a 'Cumulative Impact Assessment' (CIA).

2.9 Following the CIA, consideration of a Cumulative Impact Zone can be made which could:

"...limit the number or type of licence applications granted in areas where the number of licensed premises is causing problems. Such problems typically include crime and disorder or public nuisance caused by large numbers of drinkers being concentrated in one area."

Section 3 of the Statement of Licensing Policy is proposed to include a Cumulative Impact Assessment, following consultation (see section 3 below).

2.9 Greater Use of Public Health Data

Additionally, the Council propose to make greater use of Public Health data to inform licensing decisions, which further supports the role of Cumulative Impact on tackling localised issues related to the harms caused by alcohol. This assessment would utilise the newly developed Public Health Alcohol Toolkit, to support Licensing decision making. The toolkit enables Licensing Officers to assess the prevalence of alcohol related problems in local areas, and to advise Licensing Committee as to the potential health impacts of a licensing decision on a local area.

2.10 Section 10 of the Statement of Licensing Policy sets out the proposed position, and will be finalised following public consultation.

2.11 Other Mandatory Conditions

The Council have also proposed the inclusion of a number of other conditions, following public consultation, including:

- Identification of sensitive locations, where the granting of further licenses or variations might have a negative impact on licensing objectives (sections 4 and 8 of the proposed Policy);
- Consideration of whether the restriction of sales of certain items, for example single cans of alcohol in certain areas, might benefit reductions of harms associated with consumption of excessive alcohol, including anti-social behaviour (outlined in Appendix A of the Policy – "Pool of Model Conditions");
- Training of licence holders, door supervisors, and other workers, and potential accreditation of door supervisors to Security Industry Authority (SIA) standards or equivalent (outlined in Appendix A of the Policy – "Pool of Model Conditions") ;
- Requirements for safeguarding measures relevant to licence holders and workers including criminal checks and appropriate training (outlined in Appendix A of the Policy – "Pool of Model Conditions").

3. **Options considered and recommended proposal**

- 3.1 The Council is statutorily obliged to publish a Statement of Licensing Policy and to consult on that Policy.
- 3.2 In June, Cabinet took the decision to undertake a two-stage consultation process. The first stage of the process has now been completed. This focused on broad issues associated with the impact of licensed premises on the Borough and in localities, and has informed the development of a draft policy.
- 3.3 The drafted policy is now subject to further formal public consultation, prior to adoption. This will then lead to a revised policy based on the outcome of the second stage of consultation.
- 3.4 However, there are further options to consider in relation to the creation of a Cumulative Impact Assessment (CIA) based on the first stage of consultation.
- 3.5 **Option 1:** To develop a CIA for the borough, recommending a Cumulative Impact Zone (CIZ) for Wickersley, based on the response from the first stage of consultation. This showed that residents in Wickersley had a significant number of concerns related to licensed premises; specifically bars, pubs and restaurants, and the associated impacts of these including noise, anti-social behaviour and crime. This assessment is proposed to be drafted alongside the second stage of consultation and further consultation sessions would be undertaken in the community to co-produce the draft assessment to be considered for adoption. This is the preferred option.
- 3.6 **Option 2:** To further consider a CIA across the borough which recommends a series of CIZs based on the response from the first stage of consultation. Several areas were mentioned in the first stage and this could be researched further to ensure that all areas where residents have concerns about licensed premises are taken into account. These would be drafted alongside the second stage of consultation. However, the current information does not support CIZs in areas other than Wickersley, where concerns were raised, and although this may change in the future, it is difficult to produce a strong evidence base for areas other than Wickersley at this stage.
- 3.7 **Option 3:** The Council may decide not to develop a CIA for the borough. This is an approach that can be taken under the Licensing Act if it is deemed that there are not any areas which have significant issues related to licensed premises. However, the first stage of consultation suggests that there are issues associated with licensed premises, particularly in Wickersley, and this approach would not give any further control over the consequent opening of licensed premises in the area.

4. **Consultation on proposal**

- 4.1 The first stage of consultation was completed between August and October 2019.
- 4.2 A total of 70 responses were received in the consultation period, with several key themes emerging including:

- Respondents were mainly interested in licensed premises concerning alcohol and the large majority of respondents focused on issues relating to licensed bars, pubs and clubs.
- 88.6% of respondents agreed or strongly agreed that the Council has a role in protecting residents from potential issues and harms associated with the consumption of alcohol.
- 95% of respondents agreed that the Council specifically should be taking steps to tackle problem drinking.
- 63.9% of respondents believed that there were issues with excessive drinking in the area where they lived. When analysing written responses about specific areas, Wickersley was most commonly referred to (33), followed by the Town Centre (19). These were by far the most common areas mentioned, with the next area being Eastwood (4).
- When asked about actions required to tackle issues and harms related to alcohol, a range of agencies were mentioned including: Licensing Service (12); Police (11); Planning (5); NHS (4).

4.3 As well as responses to the consultation, the Council undertook six drop-in sessions across the borough to allow residents to share their experiences of licensed premises.

4.4 Approximately fifty residents attended the session in Wickersley and identified a series of concerns regarding the density of licensed premises within the village, as well specific issues relating to a number of individual premises and their licence conditions. The other sessions across the borough had low attendance and no issues that would suggest specific local concerns were raised.

4.5 Before determining its final policy, the licensing authority must now 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
- Persons / bodies representative of businesses and residents in its area

The Council will engage with the persons listed above in different ways. Officers from other responsible authorities will be contacted and asked to consider the draft policy, whilst all licensed premises will receive written confirmation of the consultation and information regarding how they engage in the consultation process. The Council will further engage businesses and residents through the website, social media and press releases.

4.6 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.

- 4.7 In addition, responses to the consultation will be sought from the wider public to ensure that the Council's approach is fully informed at a local level.
- 4.8 The Council's Licensing Committee, who are responsible for considering and determining applications under the Licensing Act 2003, will be fully consulted as part of this approach.
- 4.9 The consultation is anticipated to be open for a further period of eight weeks, following the initial twelve week consultation which has been completed, allowing twenty weeks of consultation for the policy overall. The consultation will take the form of an online consultation, with written requests for responses directed to those stakeholders that the Council is statutorily required to consult with. Further to this, structured sessions will be organised in Wickersley, where a CIZ is recommended, to co-produce the most appropriate zone with residents prior to adoption by Council. A full timetable can be found in Section 5.4.
- 4.10 The consultation will be complimented with communication and marketing methods including the Council's website, neighbourhood working, intranet, social media and ward member briefings.
- 4.11 The responses received will be fully considered and will be used to inform the final Statement of Licensing Policy and Cumulative Impact Assessment.

5. **Timetable and Accountability for Implementing this Decision**

- 5.1 It is expected that the consultation will begin on 2nd January 2020.
- 5.2 The work to complete the Cumulative Impact Assessment will commence immediately after the decision to proceed, and will be informed by the findings of the consultation together with joint working with colleagues in Public Health.
- 5.3 It is expected that a final Policy, and the supporting Cumulative Impact Assessment, will be presented to Cabinet in March 2020 for consideration. If the Statement of Licensing Policy is recommended by Cabinet for adoption, Council must then pass a resolution stating this decision.
- 5.4 The current timetable for the implementation of this policy is as follows:

Monday 23 rd December	Cabinet approve consultation method
Thursday 2 nd January	Consultation opens
Thursday 27 th February	Consultation closes
Monday 23 rd March	Final policy is presented at Cabinet for adoption
Wednesday 25 th March	Final policy is presented at Council for adoption.

6. **Financial and Procurement Advice and Implications**

- 6.1 The costs of undertaking its statutory duties as a licensing authority, of which this consultation process and the proposed Cumulative Impact Assessment forms part, are contained within the Council's approved Licensing revenue budget, the costs of which are met by fees.

6.2 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, in accordance with the statutory requirements.

6.3 There are no procurement implications introduced as a result of this report.

7. **Legal Advice and Implications**

7.1 Section 5(1) 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 period.

7.2 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.

7.3 The Council should also have regard to the statutory guidance issued under Section 182 of the Act and in particular, Part 14, relating to Statement of Licensing Policy. Subject to statutory requirements, the extent of the consultation process is a matter for each local authority. All local authorities should however always give consideration to a full consultation, as a limited consultation may open the authority up to challenge. The extent of the consultation process will require consideration of a previous consultation and the length of time since that consultation.

7.4 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.

7.5 In determining or revising its policy, a licensing authority must have regard to any cumulative impact assessments published by it under Section 5A of the Act. The licensing statement must summarise the cumulative impact assessment and set out how the authority has had regard to in determining or revising its policy.

7.6 Section 5A of the Act sets out the requirements relating to any cumulative impact assessment, which must be adhered to. In particular, before publishing any cumulative impact assessment, the licensing authority must consult with those set out under Section 5(3) of the Act and for the purposes of such consultation, the licensing authority must provide those persons with the following information:

- The reasons why it is considering publishing a cumulative impact assessment;
- A general indication of the part or parts of its area which it is considering describing in the assessment;
- Whether it considers that the assessment will relate to all types of licensed premise within an area, or to only premises of a particular kind.

7.7 Where the licensing authority publishes a cumulative impact assessment, it must be kept under review.

7.8 The Council should also have regard to the statutory guidance issued under Section 182 of the Act and in particular, Part 14, relating to Statement of Licensing Policy, which sets out the relevant requirements of any cumulative impact assessment in more detail.

7.9 The authority must have regard to all relevant legislation and ensure that consultation process is followed correctly, in order to minimise the risk of any legal challenge.

8. Human Resources Advice and Implications

8.1 There are no direct HR implications arising from this report.

9. Implications for Children and Young People and Vulnerable Adults

9.1 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.

9.2 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.

9.3 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.

9.4 Statements of policy should also make clear that conditions which require children to be admitted in all circumstances cannot be imposed on licenses or certificates. Where the restriction of children is not appropriate, it remains a matter for the discretion of the individual licence holder, club or premises user.

9.5 The statement may include reference to model conditions that maybe used to promote the protection of children from harm.

10. Equalities and Human Rights Advice and Implications

10.1 Section 149 of the Equality Act 2010 imposes a public sector equality duty (PSED). This duty requires the authority to eliminate discrimination, advance equality of opportunity and foster good relations when exercising any of its functions.

10.2 In order to promote inclusion and to prevent exclusion, the Policy reminds applicants of their responsibilities under the Equality Act 2010 to ensure that everyone is treated fairly, with dignity and with respect. The Equality Act 2010 specifically covers nine protected characteristics:

- Age;
- Disability;
- Gender Reassignment;

- Marriage and Civil Partnership;
- Pregnancy and Maternity;
- Race (ethnic origin, nationality, skin colour);
- Religion and Belief;
- Sex/gender;
- Sexual orientation; as well as
- any other status as identified within the European Convention of Human rights and any other domestic or relevant UK or EU law.

10.3 An Equality Analysis screening assessment has been completed in accordance with the Council's Policy. Given that this report recommends going to consultation to consider changes to Policy, it is assessed that an Equality Analysis is not required at this stage as the changes to Policy are not as yet confirmed. However, once the consultation and Cumulative Impact Assessments are completed, the need for Equality Analysis will be revisited. A copy of the initial screening assessment is contained at Appendix 1.

10.4 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 impact 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.

11. **Implications for Partners**

11.1 Consultation responses will be sought from a number of partners and stakeholders.

11.2 Analysis and contribution to the development of the Statement of Licensing Policy and the Cumulative Impact Assessment will be required from colleagues in Public Health.

12. **Risks and Mitigation**

12.1 Failure to publish a Statement of Licensing Policy exposes the Council to legal challenge as a result of failing to comply with statutory requirements.

12.2 Failure to carry out the required consultation in accordance with the legislation and guidance is also likely to open the Council up to legal challenge.

12.3 In addition, the absence of an up to date policy may lead to inappropriate decisions being made in relation to licence applications.

12.4 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).

13. Accountable Officers

Paul Woodcock, Strategic Director Regeneration and Environment
Tom Smith, Assistant Director Community Safety and Street Scene

Approvals obtained on behalf of Statutory Officers:-

	Named Officer	Date
Chief Executive	Sharon Kemp	12/12/19
Strategic Director of Finance & Customer Services (S.151 Officer)	Judith Badger	01/11/19
Head of Legal Services (Monitoring Officer)	Bal Nahal	31/10/19

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