

Committee Name and Date of Committee Meeting

Cabinet – 23 March 2020

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)

Alan Pogorzelec, Licensing Manager
alan.pogorzelec@rotherham.gov.uk

Ben Mitchell, National Management Trainee
ben.mitchell@rotherham.gov.uk

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 hackney carriage and private hire licensing.

In December 2019, Cabinet approved the second, formal stage of consultation on a drafted policy. This consultation has now concluded, and the outcome of the consultation has informed a finalised Statement of Licensing Policy, which is presented to Cabinet for consideration and recommended for approval.

Alongside the Licensing Policy, a Cumulative Impact Policy has been drafted and consulted upon which includes a Cumulative Impact Assessment for a part of Wickersley. This is also presented to Cabinet for consideration and recommended for approval.

Recommendations

1. That Cabinet recommend to Council that the proposed Licensing Act 2003: Statement of Licensing Policy 2020-2025 be adopted.
2. That Cabinet approve the Cumulative Impact Policy which details a Cumulative Impact Assessment for a specific area in Wickersley.

List of Appendices Included

- Appendix 1 Equality Impact Assessment
- Appendix 2 Licensing Act 2003 Statement of Licensing Policy 2020-2025
 - Appendix A Pool of Model Conditions
 - Appendix B Mandatory Conditions
 - Appendix C Entitlement to work information
 - Appendix D Guidance notes for applicants
 - Appendix E Useful Contacts
- Appendix 3 Cumulative Impact Policy
- Appendix 4 Summary of consultation response

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

Cabinet Report, 10th June 2019, Review of Licensing Act 2003 Statement of Licensing Policy

Cabinet Report, 23rd December 2019, Review of Licensing Act 2003 Statement of Licensing Policy

Consideration by any other Council Committee, Scrutiny or Advisory Panel
Overview and Scrutiny Management Board – 18 March 2020

Council Approval Required

Yes

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 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 has undertaken a two-stage consultation process outlined in Section 4 of this report. A revised policy has been written and consulted upon, which is brought before Cabinet to consider. A draft copy of the Statement of Licensing Policy is attached to this report as Appendix 2.

2. Key Issues

2.1 Public Health Data

Public Health is considered a 'Responsible Authority' under the Licensing Act 2003. As a responsible authority, Public Health have an important and meaningful contribution to make to licensing decisions. However, the impact on health is not currently mentioned as part of any licensing objective in the legislation, which makes it challenging for Public Health to fully engage with licensing decision making.

However, the Council believe that Public Health has an important role to play within Licensing and should be encouraged to influence the process within the boundaries of the available legislation. Through consultation, 67% of respondents agreed that issues related to public health should be considered when a licensing decision is being made. When asked if the Council should assess problems associated with alcohol consumption before determining a licence application, 92% of respondents agreed that this should be undertaken.

Public Health has created a 'licensing toolkit', which uses a wide range of data from a variety of responsible authorities and assigns a risk rating to neighbourhoods at a 'Lower Super Output Area' scale. These equate to neighbourhoods with around 1000 residents. Data sources have been chosen due to their relevance to the licensing objectives, alongside contextual factors such as health data. This tool could therefore be used to inform decision makers of the risk of any application for a licence within a specific area.

The Council is proposing that this toolkit is made available to all responsible authorities and members of the public through the Joint Strategic Needs Assessment website, to allow representations to be made if appropriate, with the assistance of data to evidence. The Council believes that this will not only give Public Health a meaningful role in the licensing process but will also make data about the health impacts of alcohol more easily accessible to the public when licence applications are being considered.

2.2 **Model Conditions**

As part of the Statement of Licensing Policy, the Council is able to create a document with a list of 'model' conditions, which gives guidance to applicants and responsible authorities as to the type of conditions that could be placed onto a licence. This list is not exhaustive and other conditions may be granted where appropriate. However, it is a useful tool to show the range of conditions which are considered by the Council to be examples of best practice.

The Council currently has a pool of model conditions attached as an appendix to the existing policy. Through the first stage of consultation a number of themes emerged such as:

- The Council's role in protecting residents from the harms associated with alcohol.
- The Council being seen as the key authority to take steps to prevent problem drinking.
- Residents reporting problems of excessive drinking, especially street drinking, in some areas.
- A minimum price for alcohol, or restriction of cheap alcohol in some areas.

These themes led to the Council drafting a series of new model conditions to address some of these concerns. These have now been consulted upon through the second stage of consultation.

70% of respondents believed that, in areas where there are issues with excessive, or street, drinking, a condition banning the sale of single cans of alcohol in off-licensed premises should be considered.

76% agreed that the Council should require further training for licensees, door staff and employees in some circumstances around protecting vulnerable people from harm, safeguarding and counterterrorism. 92% of respondents agreed, or strongly agreed, that staff working in licensed premises should be required to undertake safeguarding training and have a Basic Level DBS check in some circumstances, for example if children are allowed in a venue at all times.

Public Health, through their formal response to the consultation, also suggested some best practice guidance for licensed premises, predominantly on-licensed premises, to reduce the direct and indirect harms caused by the consumption of alcohol.

Through the consultation, the following model conditions are proposed to be added to the already existing pool. The full list of model conditions is contained within Appendix A of the policy.

1. The Council consider it good practice for licence holders, door supervisors and other staff to take part in a variety of training sessions, which could include but is not limited to: Safeguarding Children; Safeguarding Vulnerable Adults; Crowd Safety; and Counterterrorism
2. Single Can Sales can contribute to the harms relating to alcohol misuse, and particularly contribute to the harm caused to children and young people. Conditions may therefore be necessary to prevent sales of single cans of alcoholic drinks in areas where risk of harm is identified to be high.
3. Premises should promote and provide a good range of low alcohol and alcohol-free drinks to enable customers to choose drinks with lower alcohol volume. These should be readily available and of a similar price to alcoholic equivalents.
4. In order to promote responsible drinking, the premise will commit to not promote reduced price drinks.
5. A premise should have a process where staff can discreetly provide details and signposting to local alcohol or domestic abuse support services.
6. That the premise takes part in the 'Ask for Angela' scheme being rolled out by the Council and South Yorkshire Police.
7. It is strongly recommended that persons employed on licensed premises, especially those providing facilities and or entertainment for children and youths, receive appropriate training covering the safeguarding of children and other vulnerable groups and, if appropriate, have the necessary DBS checks.

2.3 **Cumulative Impact Assessment (CIA) – Wickersley**

Where appropriate, the Council can identify areas within the Borough where the granting of further licences, or variations to licences, is likely to impact on the Council's obligations to the licensing objectives. The Council must then produce a CIA for each of these areas. This is an evidence-based tool which sets out the reasons why the Council believes that the cumulative impact of premises within the area specified is undermining the licensing objectives. If the CIA is implemented, it must specify a Cumulative Impact Zone (CIZ) where the CIA will apply.

Cabinet took the decision that a CIA should be drafted for Wickersley, to identify whether there was sufficient evidence to implement a CIZ. Rotherham Town Centre was also considered by the Council but has been discounted as responsible licensable activity is being promoted in this area, as part of the ongoing regeneration and Town Centre Masterplan. Furthermore, there are only a small number of residential properties in the area, meaning it is unlikely that the cumulative impact of these premises will create significant disturbance and, subsequently, undermine the licensing objectives. However, a regular review of CIAs will be undertaken to identify if any other areas of Rotherham would benefit from this piece of legislation.

In the second stage of consultation, the Council have consulted at length with Ward councillors, licensees, residents and other responsible authorities, and have concluded that there is more than enough evidence, as required by the statutory guidance, to proceed with implementing a CIZ in Wickersley. The Cumulative Impact Policy, which includes the assessment for Wickersley, is attached to this report as Appendix 3.

Data from the Police, the NHS and Public Health suggests that Wickersley has a high saturation of licensed premises, and that the density of these premises has a negative impact on crime and anti-social behaviour, as well as putting health at risk through an increase in ambulance call-outs directly related to alcohol consumption.

The Council has attended separate meetings with licensees and residents to inform them of a CIA being drafted. These groups were given an indication of what types of premises would be affected, the specific area which is currently proposed, and a summary of the evidence as to why the Council believe a CIA is needed.

Therefore, the Council is proposing to implement a CIA in Wickersley. This is currently the only area where the Council believes a CIA would be appropriate, but this position will be reviewed regularly by the Licensing Service and Public Health.

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. Both of these stages have now been completed. The first stage focused on broad issues associated with licensed premises, whilst the second stage gave the opportunity to comment on a drafted policy, alongside consulting on whether a Cumulative Impact Policy should be implemented.
- 3.3 The Cumulative Impact Policy has been consulted upon and a draft is attached to this report as Appendix 3.
- 3.4 The Statement of Licensing Policy has now been revised based on the second stage of consultation which was concluded in February. There are now further options for the Council to consider.
- 3.5 **Option 1:** The Council could approve both the Licensing Act 2003 Statement of Licensing Policy and Cumulative Impact Policy, which would then be subject to endorsement by Council.
- 3.6 **Option 2:** The Council could approve the Licensing Act 2003 Statement of Licensing Policy, but not approve the Cumulative Impact Assessment contained within the Cumulative Impact Policy. The Statement of Licensing Policy would then be subject to endorsement by Council.
- 3.7 **Option 3:** The Council could decide to not approve either the Licensing Act 2003 Statement of Licensing Policy, or the Cumulative Impact assessment contained within the Cumulative Impact Policy.
- 3.8 The preferred option is Option 1. This option takes into account the responses received to both stages of consultation and reflects the views of forums, groups and boards that were attended through the consultation process, alongside the views of the public. The proposed changes detailed in this report reflect the views of the public, the Council and its partners, and would form a policy that had a positive impact on licensed premises across the borough.

4. **Consultation on proposal**

- 4.1 The Council have carried out a full review of the policy, through a two-stage consultation process as agreed by Cabinet in June 2019. A total of twenty weeks of consultation have been carried out by the Council to review this policy, which has informed the final policy attached as Appendix 2.
- 4.2 The first stage of consultation focused on the broad issues associated with licensed premises and a total of 70 responses were received. The majority of respondents were concerned with the licensing of alcohol premises, and believed the Council had a role in protecting residents from the harms associated to alcohol. 50% of all respondents cited Wickersley as an area where there were issues with excessive drinking.

- 4.3 Based on the first stage of consultation, a revised policy was drafted which was approved by Cabinet in December 2019. This revised policy included several proposed changes such as increasing the use of public health data when making licensing decisions, whilst also expanding the number of model conditions which are appended to the policy. These conditions included restricting the sale of single cans of alcohol in certain areas, and further training for licensees and staff around safeguarding.
- 4.4 Cabinet also took the decision to undertake a Cumulative Impact Assessment for Wickersley, based on the concerns of residents which were detailed in the first stage of consultation. The Council is able to publish a Cumulative Impact Policy, which allows the Council to identify areas within the borough where granting further licences, or varying existing licences, would impact on the Council's obligations to the Licensing Objectives.
- 4.5 The second stage of consultation received 44 responses between January and February 2020. The responses to the consultation have been considered in Section 2 of the report, and a full summary of the consultation responses can be found in Appendix 4.

In the second stage of consultation, the following boards, committees, forums and partners were also consulted:

- Licensing Committee
- Health and Wellbeing Board
- Safer Rotherham Partnership Board
- South Yorkshire Police
- South Yorkshire Fire and Rescue Authority
- Public Health

- 4.6 Three drop-in sessions were also arranged for members of the licensed trade and members of the public. Four members of the licensed trade attended these sessions to ask specific questions about the impacts on their premises.
- 4.7 A resident's meeting was also arranged in Wickersley to consult about the introduction of a Cumulative Impact Assessment. Approximately thirty residents attended this session, along with representatives of Wickersley Parish Council.
- 4.8 The Council attended Wickersley Licence Watch to consult with licensees in Wickersley about the introduction of a Cumulative Impact Assessment. At this meeting, the Council outlined the reasons as to why it was considering implementing a Cumulative Impact Assessment, the area that this assessment would cover, and the types of premise that the Council is currently considering.

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

- 5.1 If Cabinet endorse the Licensing Act 2003 Statement of Licensing Policy, and Cumulative Impact Policy, these must be adopted by Council.

5.2 If Council then adopt these policies, the policies would be implemented following the standard call-in period. It is proposed that the Council implement the policy on 1st May 2020.

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

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

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

6.3 Fee levels in respect of the Licensing Act 2003 are set by Statute, so the Council has no discretion over fee levels for the areas covered by this Act.

7. **Legal Advice and Implications**

7.1 Section 5(1) of the Licensing Act 2003 requires a licensing authority to determine its Statement of 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 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.

7.4 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 relevant authorisations or only to relevant authorisations of a particular kind.

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

7.6 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 requirements in relation to the Statement

of Policy, including consultation requirements, and the relevant requirements of any cumulative impact assessment in more detail.

7.7 The Council must have regard to all relevant legislation and all consultation responses must be conscientiously considered when forming the Statement of Licensing Policy and the Cumulative Impact Policy, in order to minimise the risk of any legal challenge.

8. **Human Resources Advice and Implications**

8.1 There are no direct procurement implications arising from the recommendations detailed in 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 includes reference to model conditions that may be 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 A full Equality Impact Assessment has been completed in accordance with the Council's Policy and 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 Ward Priorities**

11.1 This policy will apply directly and equally to all wards within the borough.

11.2 The associated Cumulative Impact Policy details an area of Wickersley which is proposed to become a Cumulative Impact Zone and takes in areas of both Wickersley and Hellaby wards. This CIZ could limit the number of new or varied licences being granted in the area, dependent on the individual merit of each application.

12. **Implications for Partners**

12.1 Consultation engaged a wide range of partners and stakeholders. It is recognised that enforcement and compliance is often carried out with partners such as South Yorkshire Police, HM Revenue and Customs and South Yorkshire Fire and Rescue.

12.2 Analysis and contribution to the development of the Statement of Licensing Policy and the Cumulative Impact Assessment has been obtained from colleagues in Public Health, who make an important contribution to the Licensing process.

13. **Risks and Mitigation**

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

- 13.2 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.
- 13.3 In addition, the absence of an up to date policy may lead to inappropriate decisions being made in relation to licence applications.
- 13.4 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).

14. 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	09/03/20
Strategic Director of Finance & Customer Services (S.151 Officer)	Judith Badger	05/03/20
Head of Legal Services (Monitoring Officer)	Bal Nahal	05/03/20

*Report Author: Alan Pogorzelec, Licensing Manager
alan.pogorzelec@rotherham.gov.uk*

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