

**Meeting** Executive

**Portfolio Area** Communities, Community Safety and Equalities

**Date** 12 February 2020



## LICENSING ACT 2003 - REVIEW OF STATEMENT OF LICENSING POLICY

### NON KEY DECISION

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### 1 PURPOSE

- 1.1 To consider the Council's draft Statement of Licensing Policy as required under the Licensing Act 2003 (the Act).
- 1.2 To note that the draft Statement of Policy was considered by the Council's General Purposes Committee at their meeting on 30th January 2020.

### 2 RECOMMENDATIONS

- 2.1 That the Executive notes the report and agrees the proposed Stevenage Borough Council Licensing Act 2003 Statement of Licensing Policy 2020-2025 (attached at Appendix A).
- 2.2 That the Executive recommends the Stevenage Borough Council draft Licensing Act 2003 Statement of Licensing Policy 2020-2025 to the Council for adoption.

### **3 BACKGROUND**

- 3.1 The Council is the licensing authority for the purposes of the Act and consequently is under a duty to prepare a Statement of Licensing Policy that it proposes to apply in exercising its functions under the Act. Section 5 of the Act requires licensing authorities to publish such a policy every five years in accordance with prescribed requirements
- 3.2 The Statement of Licensing Policy sets out the general approach the Council will take when carrying out its regulatory role under the Act and promoting the four licensing objectives:
- The prevention of crime and disorder
  - Public safety
  - The prevention of public nuisance
  - The protection of children from harm
- 3.3 Each objective is of equal importance. There are no other statutory licensing objectives, so that the promotion of the four objectives is a paramount consideration at all times.
- 3.4 However, the legislation also supports a number of other key aims and purposes. These are vitally important and should be principal aims for everyone involved in licensing work. They include:
- protecting the public and local residents from crime, anti-social behaviour and noise nuisance caused by irresponsible licensed premises;
  - giving the police and licensing authorities the powers they need to effectively manage and police the night-time economy and take action against those premises that are causing problems;
  - recognising the important role which pubs and other licensed premises play in our local communities by minimising the regulatory burden on business, encouraging innovation and supporting responsible premises;
  - providing a regulatory framework for alcohol which reflects the needs of local communities and empowers local authorities to make and enforce decisions about the most appropriate licensing strategies for their local area; and
  - encouraging greater community involvement in licensing decisions and giving local residents the opportunity to have their say regarding licensing decisions that may affect them.
- 3.5 Licensing authorities are responsible for administering the Act and this function is delegated to the council's General Purposes Committee. The Committee is responsible for considering and proposing the authority's licensing policy through developing a statement of licensing policy prior to its approval by the licensing authority (Full Council), and for taking decisions on specific licence applications or issues.

- 3.6 Statutory guidance for licensing authorities is issued by the Secretary of State under Section 182 of the Act, often referred to as ‘Section 182 guidance’. Licensing authorities have a duty to have regard to this guidance and it should be adhered to unless there is good reason to depart from it. The Section 182 guidance is a comprehensive and useful tool describing the discharge of functions under the Act, including processes for hearings, and is updated periodically.
- 3.7 In shaping a policy, the licensing authority must have regard to the Section 182 guidance as well as giving appropriate weight to the views of the local community. Whilst there is a certain amount of flexibility in setting an approach to making licensing decisions, this cannot be inconsistent with the provisions in the Act. The statement cannot create new requirements for applicants outside of the Act, or override the right of anyone to make an application under the Act, make representations or seek a review of a licence.
- 3.8 The policy takes on additional significance in the event that an applicant challenges or appeals the Council’s decision on a specific application. At this point the Magistrates court will adopt the licensing authority’s policy as if it were its own.
- 3.9 The Policy seeks to strike a balance between the interests of licence holders, applicants and residents in the promotion of the licensing objectives defined by the Act. Additionally, it outlines the licensing authority’s expectations of licence holders in promoting the licensing objectives, whilst advising on the licensing authority’s obligations under the Act, including its interpretation of the Act and/or Statutory Guidance where necessary. The Statement is designed to offer appropriate protection for residents and a streamlined approach to regulation that eases unnecessary burdens on businesses.

## **4 REASONS FOR RECOMMENDED COURSE OF ACTION AND OTHER OPTIONS**

### **Proposed changes**

- 4.1 A limited number of additions and amendments to the existing Statement of Licensing Policy were consulted upon. In all major respects however the format of the new policy reflects that of its predecessor and is in line with central government and Local Government Association guidance and best practice.
- 4.2 The draft policy can be found at Appendix A; all additions or variations from the 2014-2019 policy have been highlighted in grey. There are no changes to the intent or direction in the proposed 2020-2025 policy.
- 4.3 In summary the proposed changes are as follows:
- Licensable activities have been described more fully, earlier in the document.
  - Responsible authorities under the Act have been elaborated.

- Reference has been made to the Council's new cultural strategy.
- The sections relating to cumulative impact, early morning restriction orders and late night levy have been rationalised.
- The section relating to mandatory conditions has been revised and updated.
- Reference has been made to the Council's policy and procedures in respect of child sexual exploitation.
- The section on enforcement has been revised to reflect guidance and outline the proportionate and risk-based approach to be adopted.
- The section relating personal licences has been revised to reflect current requirements in respect of right to work.
- Reference has been made to the Council's policy and procedures in respect of modern slavery.

### **Consultation**

- 4.4 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;
  - each local authority's Director of Public Health in England (DPH) or Local Health Board in Wales for an area any part of which is in the licensing authority's area,
  - 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.
- 4.5 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 Act, but licensing authorities must make reasonable efforts to do so.
- 4.6 To comply with this requirement, the licensing authority published the draft Policy on a dedicated webpage on the Council's website with details of the consultation period and an explanation of how to make a representation. The page was available between 13th December 2019 and 19th January 2020.
- 4.7 Consultation responses were specifically invited by letter or email from all responsible authorities, all premises licence holders within the Council's area and all organisations listed in Appendix B.
- 4.8 As a result of the consultation exercise only one response was received from the British Beer and Pub Association (BBPA). They stated that they are

encouraged to see mention of partnership working, particularly with regard to Pubwatch both locally and nationally. The Association's specific comments were as follows:

- The Challenge 21 scheme should be highlighted as an example of an initiative that venues can use to ensure that under-age alcohol sales are prevented.
- The need to undertake consultation prior to implementation of an Early Morning Restriction Order or Late Night Levy.
- Clarification required of the Council's policy with respect to recovery of annual fees.

All of these comments have been acknowledged and incorporated in the draft policy attached at Appendix A. The full text of the BBPA response is reproduced at Appendix C.

- 4.9 The draft Statement of Policy was considered by the Council's General Purposes Committee at their meeting on 30th January 2020; the Committee was broadly supportive of the revised policy. Members requested that the section of the policy which describes the Temporary Event Notice (TEN) process be expanded to include a description of the limitations which are placed on TEN applications (this can be found at Paragraph 19.5 of the policy). They also agreed that the title and references to the policy should more appropriately be "Licensing Policy 2020-2025" to reflect the anticipated timing of the adoption of the policy.
- 4.10 Section 5 of the Licensing Act 2003 requires licensing authorities to publish a statement of licensing policy every five years in accordance with prescribed requirements. The adoption of the statement of licensing policy is a non-executive function by virtue of the Act and Statutory Guidance and is reserved for Full Council.
- 4.11 The only alternative option would be to adopt a policy that differs in content and/or extent from the document proposed here, but this would necessitate a further period of consultation. An alternative policy has not been considered as the one proposed here achieves an effective balance between ensuring the promotion of the licensing objectives and avoiding being overly prescriptive or prohibitive to applicants and licence holders.

## **5 IMPLICATIONS**

### **Financial Implications**

- 5.1 Fees under the Licensing Act were fixed by government regulations in 2005 and have not been reviewed since. Premises and club premises licence fees are based on the rateable value of the premises. Whilst the fees set by statute were intended to provide full cost-recovery, they no longer reflect the true costs incurred in administering the Act. The Local Government Association continues to lobby government to encourage review of the fee structure.

### **Legal Implications**

- 5.2 The Licensing Authority has a statutory duty to produce a Statement of Policy under the Licensing Act 2003. Inadequate implementation of the Act would result in lack of clarity and direction for businesses and residents.

### **Equalities and Diversity Implications**

- 5.3 An Equalities Impact Assessment was carried out in connection with the previous review, when no significant impacts were identified to any individuals or businesses. The Assessment has been reviewed in light of the proposed Policy renewal.

### **Climate change implications**

- 5.4 Licensing officers work with premises licence holders to encourage them to meet carbon reduction responsibilities in respect of their business.

### **Safeguarding children implications**

- 5.5 One of the four licensing objectives is the protection of children from harm. The proposed policy states in detail how the licensing authority expects those with responsibilities under the act to meet this objective.

## **BACKGROUND DOCUMENTS**

**All documents that have been used in compiling this report, that may be available to the public, i.e. they do not contain exempt information, should be listed here:**

- BD1 Licensing Act 2003
- BD2 Revised Guidance issued under section 182 of the Licensing Act 2003 (April 2018)
- BD3 Licensing Act 2003 Statement of Policy 2014-19

## **APPENDICES**

- A Licensing Act 2003 draft Statement of Policy
- B List of organisations consulted
- C Consultation response from the British Beer and Pub Association