

NORTH WEST LEICESTERSHIRE DISTRICT COUNCIL

COUNCIL – 25 MARCH 2014

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| Title of report | REVIEW OF STATEMENT OF LICENSING POLICY |
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| Purpose of report | To outline the policy proposed to discharge functions under the Licensing Act 2003 in North West Leicestershire, for consideration and approval |
| Council Priorities | Business and Jobs Homes and Communities |
| Implications: | |
| Financial/Staff | No additional financial or staffing implications |
| Link to relevant CAT | Business CAT |
| Risk Management | There is a risk that the Council's Statement of Licensing Policy is challenged. Legal advice has been sought in its preparation to mitigate the risk of challenge |
| Equalities Impact Assessment | Equality Impact Assessment already undertaken, issues identified have been actioned |
| Human Rights | Article 1 of Protocol 1 provides that everyone is entitled to the peaceful enjoyment of his possessions except in the public interest and subject to the conditions provided by the law |
| Transformational Government | This relates to the new ways in which council's are being asked to deliver their services |
| Comments of Head of Paid Service | Report is satisfactory |

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| Comments of Section 151 Officer | Report is satisfactory |
| Comments of Monitoring Officer | Report is satisfactory |
| Consultees | As required under section 5(3) of the Licensing Act 2003 – Listed at paragraph 4 |
| Background papers | <p>Equality Act 2010 http://www.legislation.gov.uk/ukpga/2010/15/contents</p> <p>Licensing Act 2003 – Statement of Licensing Policy – Issue 5 Statement of Licensing Policy - Licensing Act 2003 (Issue 5)</p> <p>DCMS – Guidance issued under Section 182 of the Licensing Act 2003 – June 2013 Section 182 Statutory Guidance</p> <p>Licensing Committee 11 September 2013 - Minutes & Report</p> <p>Licensing Committee 27 November 2013 - Minutes & Report</p> <p>Licensing Committee 26 February 2014 Minutes & Report</p> |
| Recommendations | THAT COUNCIL CONSIDERS AND APPROVES THE DRAFT STATEMENT OF LICENSING POLICY |

1.0 BACKGROUND

- 1.1 Section 5 of the Licensing Act 2003 requires a Licensing Authority to determine and publish a statement of its licensing policy at least once every five years.
- 1.2 A statement of Licensing Policy explains how the Licensing Authority will carry out its role under the Licensing Act 2003. The statement can be used:
- As a guide by members of the Licensing Authority in their decision making;
 - To inform applicants about how applications will be viewed and how a licensed premises is likely to be able to operate within the area of the Licensing Authority, albeit that each application will be examined and considered on an individual basis;
 - To inform residents and businesses about how applications will be viewed and how their needs will be addressed;
 - To support decisions made by the Licensing Authority when these decisions are challenged in a court of law.
- 1.3 The current policy (issue 5) was determined by Council on 26 October 2010 and came into force on 7 January 2011 and shall remain valid until 7 January 2016 unless amendments are necessary before this date.

1.4 A report was presented to Licensing Committee on 11 September 2013 providing notification of the review of the policy and explained the reasoning behind the decision to review the current policy only 2 years after it came into force. The reasons are briefly explained below.

2.0 DRIVERS RESULTING IN THE DECISION TO REVIEW THE CURRENT POLICY NOW

2.1 The Secretary of State for the Department for Culture, Media and Sport must issue and, from time to time, may revise Guidance to Licensing Authorities on the discharge of their functions under the Licensing Act 2003. Section 4 of the Act provides that, in carrying out its functions, a licensing authority must 'have regard to' the guidance. The Guidance is therefore binding on licensing authorities to that extent.

2.2 Amended Guidance was issued in October 2012. The purpose of the new guidance was to provide advice to licensing authorities in relation to the implementation of the Police Reform and Social Responsibility Act 2011 and the Live Music Act 2012. The draft policy reflects these changes introduced by the amended guidance.

3.0 PROPOSED CHANGES TO CURRENT POLICY

3.1 The draft policy sent to all consultees contained the following amendments:

- The profile of the District in relation to premises licensed under the Licensing Act 2003 has been explained in more detail.
- The insertion of an explanation of the Live Music Act 2012.
- The Licensing Authority has been added to the list of Responsible Authorities.
- The insertion of an explanation of an Early Morning Alcohol Restriction Order.
- The insertion of an explanation of a Late Night Levy.
- The draft policy sets out criteria and considerations which applicants should bear in mind when putting together their application. This improved guidance is expected to result in fewer representations being made reducing the need for hearings.
- To refresh the current special policy relating to cumulative impact in Ashby Town Centre.
- An amendment to the section on Temporary Event Notices to reflect legislative changes.

4.0 CONSULTATION PROCESS

4.1 Before a Licensing Authority can publish its policy it must consult with bodies/persons listed in section 5(3) of the 2003 Act. They are as follows:

- Chief Officer of Police for the area;
- Chief Officer of Fire & Rescue service for the area;
- Persons/bodies representative of local holders of premises licences;
- Persons/bodies representative of local holders of Club premises certificates;
- Persons/bodies representative of local holders of Personal licences;
- Persons/bodies representative of businesses and residents in its area.

4.2 The consultation period commenced on 11 July 2013 and ended on 7 October 2013.

4.3 A letter was sent to all consultees referring to a consultation document detailing structured questions and a draft policy.

Consultee Comments

- 4.4 The Council received representations from the following 9 consultees: Leicestershire Police, Leicestershire Fire & Rescue Service, Kegworth Parish Council, Castle Donington Parish Council, Measham Parish Council, Ashby Town Council, Street Action Team NWLDC, District Councillor NWLDC, Ashby Civic Society.
- 4.5 A table detailing all consultee comments is provided at Appendix 2. Due to the length and detail contained within the representation received from Leicestershire Police the full response is attached at Appendix 3
- 4.6 An amended draft of the policy was presented to Licensing Committee on 27 November for their consideration and comment. The following provides a summary of recommendations and comments made:
1. The introduction of an early morning restriction order is not considered appropriate
 2. The introduction of a late night levy is not considered appropriate
 3. That a special policy relating to cumulative impact in Ashby de la Zouch be retained
 4. The special policy should apply to all types of licensed premises
 5. The special policy should apply between 20:00 and 06:00
 6. The special policy area to remain unchanged – Consideration was given to extending the special policy area to include the Wetherspools – Shoulder of Mutton public house. In the absence of further information from the police evidencing crime or disorder issues with the premises, Committee members recommended that the premises continues to be outside of the special policy area.
 7. That the consultation process to remain unchanged
- 4.7 A further report was received from Leicestershire police (Appendix 4) providing additional information and recommending that due to crime and disorder issues, the cumulative impact zone in Ashby town centre be extended to include the premises trading as the ‘Shoulder of Mutton’ public house. Due to the detailed information contained within the report Licensing Committee were asked to consider extending the cumulative impact zone in Ashby.

Following a debate Licensing Committee recommended that the Shoulder of Mutton public house remains outside of the cumulative impact zone.

- 4.8 All representations have been considered and reviewed against the draft policy before being formally submitted to Council for approval. A final draft policy taking into account all comments made by consultees and recommendations made by Licensing Committee is at Appendix 1.

5.0 SUMMARY OF KEY ISSUES/CHANGES WITHIN DRAFT POLICY

5.1 Early Morning Restriction Order (EMRO)

No consultees have suggested an EMRO would be appropriate for the promotion of the licensing objectives. The draft policy states that ‘There are currently no EMRO’s in place within North West Leicestershire District’.

5.2 Late Night Levy

No consultees have suggested a late night levy would be appropriate for the promotion of the licensing objectives. The draft policy states that 'A Late Night Levy is not considered appropriate for the promotion of the licensing objectives.'

5.3 Retention of Special Policy (Cumulative Impact) – Ashby De La Zouch Town Centre.

Leicestershire Police have presented evidence supporting the retention of a cumulative impact policy. This view is supported by other consultees. The data submitted shows a rise in assaults in Market Street Ashby, prior to November 2005 when the first policy was introduced. Assault rose from 56 in 2002 to 87 in 2005. Following the introduction of the policy the number of assaults steadily decreased, with the exception of 2011. The following year also saw a fall in the number of assaults. Between 2005 and 2012 the number of assaults decreased by almost 50%.

The draft policy states that 'the Licensing Authority has determined that a special policy should apply in respect of Ashby de la Zouch town centre.'

5.4 Nature of Cumulative Impact Policy – Ashby De La Zouch Town Centre

The effect of the policy is the creation of a rebuttable presumption that applications for new premises licences or club premises certificates or variations will normally be refused, following relevant representations, unless the applicant can demonstrate in their operating schedule that there will be no negative cumulative impact on one or more of the licensing objectives.

Currently this rebuttable presumption to refuse applies to applications from **all types of premises** and applies to **all operating hours**. The review considered a move away from applying to all licensed premises to exempting lower risk premises such as Theatres, cafes and hotels. Also considered was the operating hours when the special policy should apply.

Types of Premises

The Statutory Guidance states that 'the impact can be expected to be different for premises with different styles and characteristics'. For example, while a nightclub or high capacity public house might add problems of cumulative impact, a small restaurant or a theatre may not'. The evidence submitted by Leicestershire Police does not breakdown the crime data by premises type. The police have expressed concern regarding exempting certain types of premises as the premises type is not always clear. For example, many restaurants and café offer a takeaway service, some public houses offer accommodation.

Hours

The evidence submitted by Leicestershire Police shows that crime levels begin to increase at 20:00

The draft policy states that 'This special policy applies to applications from **all types of premises** operating between **20:00 and 06:00**'.

5.5 Area covered by Special Policy on cumulative impact (CIZ) - Ashby De La Zouch Town Centre

Ashby Civic Society and Leicestershire Police have suggested an amendment to the area covered by the policy. Ashby Civic Society have suggested the area be extended to include the Royal Hotel and Bath Grounds (Station Road), the Plough Inn Public House (The Green) and the Wetherspoons trading as the Shoulder of Mutton (Derby Road). Leicestershire Police have suggested the area be extended to include the Wetherspoons Shoulder of Mutton (Derby Road).

The area covered by the special policy is shown by the map at Appendix 1 of the policy. No changes have been made to the area covered by the special policy relating to cumulative impact.

- 5.6 Consultation Process – A request has been received to add Parish Councils, Town Councils, residents and businesses within 50 metres of any application premises to the list of Responsible Authorities who must be notified of all applications.

The definition of a Responsible Authority is provided within the legislation. A licensing authority is unable to amend the definition. A Licensing Authority may provide a consultation / notification process which exceeds the statutory requirements by publishing an enhanced notification policy within its statement of licensing policy. Licensing Committee considered that NWLDC is not in a position to resource the proposed process of notifying all residents and businesses within a 50 metre radius of an application. NWLDC will continue to meet its statutory obligations regarding consultation and notification.

In addition to the statutory minimum NWLDC will continue to notify Parish Councils of applications.

- 5.7 Other comments made

A small amendment to a paragraph regarding fire safety certificates was suggested by Leicestershire Fire & Rescue. This amendment has been incorporated within the draft policy.

A stated case has brought into question the enforceability of noise related conditions requiring inaudibility. Implications arising from this case have been considered in the drafting of the policy. A move away from conditions requiring inaudibility to objective noise limits has taken place. In the case of new applications, if considered appropriate to add a condition relating to noise controls, specific noise limits are specified. Where a current licence contains a condition requiring inaudibility a process to remove and replace that condition with a specific noise limit will be considered should justified complaints relating to noise disturbance be received. An example would be following an application to review a licence.

Comments received relating to amendments to proposed licence conditions have been considered with the draft policy reflecting these changes.

- 5.8 Following receipt of a recent case whereby effective service of an application was disputed by an applicant it is considered necessary to insert a paragraph into the policy defining effective service and defining the Councils working day. This is inserted at paragraph 2.6 of the draft policy.