

NORTH WEST LEICESTERSHIRE DISTRICT COUNCIL

LICENSING COMMITTEE – 27 NOVEMBER 2013

Title of report	REVIEW OF STATEMENT OF LICENSING POLICY
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Purpose of report	To consult with the Licensing Committee on the draft Statement of Licensing Policy
Council Priorities	Business & Jobs Homes & 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

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 2
Background papers	DCMS – Guidance issued under Section 182 of the Licensing Act 2003 – June 2013 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/209526/1167-A_Licensing_Act_2003_2_.pdf Equality Act 2010 http://www.legislation.gov.uk/ukpga/2010/15/contents Licensing Act 2003 – Statement of Licensing Policy – Issue 5 Statement of Licensing Policy - Licensing Act 2003 (Issue 5)
Recommendations	THAT LICENSING COMMITTEE CONSIDER AND COMMENT ON THE DRAFT STATEMENT OF LICENSING POLICY PRIOR TO CONSIDERATION AND ADOPTION BY COUNCIL ON 21 JANUARY 2014

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.

2.0 CONSULTATION PROCESS

2.1 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.

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

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

3.0 PROPOSED CHANGES TO CURRENT POLICY

3.1 The first draft of the 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 REPRESENTATIONS

4.1 The Licensing Authority has 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.

4.2 A draft policy taking into account all comments made by consultees is at Appendix 1.

4.3 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

4.4 Summary of Comments

4.4.1 Early Morning Restriction Order (EMRO) – No consultees have suggested an EMRO would be appropriate for the promotion of the licensing objectives

4.4.2 Late Night Levy - No consultees have suggested a late night levy would be appropriate for the promotion of the licensing objectives

Recommendation – An EMRO or late night levy are not considered appropriate for the promotion of the licensing objectives

4.4.3 Retention of Policy (Cumulative Impact) – Ashby De La Zouch Town Centre – Leicestershire Police has 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%.

Recommendation – That the special policy on cumulative impact be retained

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 introduction of an hour before which the policy would not 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. 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

Recommendation - That the special policy applies to applications for new premises

licences or club premises certificates or variations from all types of premises operating between 20:00 and 06:00.

- 4.4.4 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 Weatherspoons trading as the Shoulder of Mutton (Derby Road). Leicestershire Police have suggested the area be extended to include the Weatherspoons Shoulder of Mutton (Derby Road).

Recommendation – That the area (CIZ) be amended to include the premises trading as the Shoulder of Mutton. Due to its close proximity to the high density of licensed premises on Market Street, the suggestion to include the premises trading as the Shoulder of Mutton is supported. The suggestion to extend the area to include the Plough and the Royal Hotel is not supported due to the distances from the premises to Market Street and the lack of supporting information evidencing issues of crime and disorder or public nuisance.

- 4.4.5 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. 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.

Recommendation – To continue to consult and notify in accordance with the legislation and statutory guidance. In addition, to continue to notify Parish Councils of applications.

- 4.4.6 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.

5.0 ADDITIONAL AMENDMENTS MADE

- 5.1 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.

6.0 APPROVAL PROCESS

- 6.1 A procedural irregularity by a Licensing Authority in relation to the determination of Statement of Licensing Policy may be the subject of a challenge by way of judicial review to the Administrative Court.
- 6.2 A draft Statement of Licensing Policy will be taken to Council on 21 January 2014 for final approval and publication.