

Waverley Borough Council
LICENSING AND REGULATORY COMMITTEE
27 FEBRUARY 2023

Title:

**LICENSING ACT 2003 - REVIEW OF THE
COUNCIL'S STATEMENT OF LICENSING POLICY**

[Wards Affected: All]

Portfolio Holder: Cllr MacLeod, Portfolio Holder for Enforcement, Operations & Brightwells

Head of Service: Richard Homewood
Executive Head of Regulatory Services

Key decision: No
Access: Public

1.0 Purpose and Summary:

1.1 To approve for consultation the draft Statement of Licensing Policy 2023-2028.

2.0 Introduction

2.1. The Licensing Act 2003 came into effect on 25 November 2005. The Act introduced a new regime for the licensing of alcohol, regulated entertainment and late night refreshment, to be administered by the local licensing authority (within Waverley, this Council.) 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. During the five-year period, the policy must be kept under review and the licensing authority may make any revisions to it as it considers appropriate, for instance in the light of feedback from the local community on whether the licensing objectives are being met.

2.2 The Statement of Licensing Policy ('the Policy') is expected to set out, for the benefit of applicants, responsible authorities and members of the community how the Licensing Authority intends to exercise its powers under the Act, including:

- How the Licensing Authority will use its regulatory powers in relation to applications and reviews of licensed activities, to the extent that it is allowed by statute
- The Authority's approach to regulation
- A Scheme of Delegation.

The Policy must also comply with the statutory guidance issued under section 182 of the Act.

2.3 In determining the Policy, the Authority must conduct a statutory consultation as set out in the Act and which includes the following consultees:

- The Chief Officer of Police for the Licensing Authority area
- The Fire and Rescue Authority for the area
- Such persons as the Licensing Authority consider to be representative of the holders of existing premise and personal licences
- Such persons as the Licensing Authority consider to be representative of the holders of existing club premises certificates issued by the Authority
- Such persons as the Licensing Authority consider to be representative of businesses and residents in the Authority's area
- Director of Public Health.

2.4 The Council's current Policy has been in place since 01 August 2018 and will expire on 1 August 2023. In accordance with legislation the Statement of Licensing Policy must undergo a full review and public consultation.

2.5 The Statement of Licensing Policy has initially been reviewed and updated by officers to propose:

- Updated information regarding Waverley's population following the 2021 Census
- Reference to the revised (Dec 2022) statutory guidance
- Updates to the Council's vision/policies/partnerships/and weblinks/email addresses
- Addition of measures in line with updated Home Office strategy and other guidance to prevent spiking sexual harassment, together with the promotion of Pubwatch and the campaign 'Ask for Angela'
- Updating 'sources of information' organisations, websites and contact details
- General formatting/grammatical changes

2.6 A draft proposed Statement of Licensing Policy, incorporating the suggested amendments made by officers from the existing Statement of

Licensing is attached at **Annexe 1** for members to consider. The tracked changes are shown in coloured type. (Please note the differing colours do not reflect anything specific other than an amendment/change)

Statement of Licensing Policy - public consultation

2.7 If agreed, the consultation will be conducted through a written process to all Responsible Authorities, 4 x local Pub Watch Schemes, Citizens Advice Centers, Chambers of Commerce, Town and Parish Councils and via the Council's website.

2.8 The provisional timetable for the review and implementation of the Statement of Licensing Policy 2023-2028 is as follows:

- Commence review, write to consultees, and place consultation information on the Council's website on 03 March 2023
- Consultation period ends 19 May 2023 (11 weeks) - followed by:
- Licensing and Regulatory Committee considers the outcome of the consultation and determined whether the draft policy is recommended to Full Council for adoption 05 June 2023
- Full Council 18 July 2023
- Publication on Council's website 01 August 2023
- Policy comes into effect 01 August 2023

3.0 Conclusion

3.1 The Statement of Licensing Policy is ultimately set by full Council in line with legislation. The Committee is asked to note the contents of the report, and to consider and approve this draft Statement of Licensing Policy 2023-28 for statutory consultation

4.0 Recommendation

4.1. The Committee is asked to RESOLVE to

5.1.1 Approve the draft revised Statement of Licensing Policy for consultation

5.0 Reason for the recommendation(s)

5.1 In accordance with The Licensing Act 2003, the Council must have a Statement of Licensing Policy that it keeps under review, and that it must completely review and republish the Policy every five years.

6.0. **Relationship to the Corporate Strategy and Service Plan(s)**

6.1 The Statement of Licensing Policy and Principles under the Licensing Act 2003 whilst being a statutory duty of the Council helps to deliver the Council's strategic outcomes in promoting a thriving local economy, supporting business and employment, encouraging small businesses and promoting the health and wellbeing of our communities, helping to ensure that licensing activity is safe and controlled.

7.0 **Implications of decision(s)**

7.1 **Resource (Finance, procurement, staffing, IT)**

There are no immediate resource implications in this report; resources required to fulfil the Council's duties in respect of the licensing process are met from the existing budget.

7.2 **Risk management**

The Statement of Licensing Policy is in place to ensure public safety when using these services and to ensure the appropriate balances and mitigations are in place to minimise risk to public safety whilst enabling businesses to trade effectively, efficiently and legally.

The Statement of Licensing Policy is required to comply with the statutory guidance. Failure to do so would invite legal challenge to decisions on applications and reviews subsequently made under the Act.

7.3 **Legal**

Section 5(1) of the Licensing Act 2003 requires the Licensing Authority to prepare and publish a Statement of Licensing Policy every 5 years.

When determining its policy, the Council is exercising a licensing function and as such must have regard to the Guidance issued by the Secretary of State under section 182 of the Act. It must also give appropriate weight to the views of those persons/bodies listed in section 5(3) of the Act which it is required to consult before determining its policy.

Although the Guidance represents best practice, it is not binding on the Council. As long as the Guidance has been properly and carefully considered, licensing authorities may depart from it if they have reason to do so. In this event, they will need to give full reasons for their decisions, which must be consistent with the objectives of the 2003 Act.

The Council is required to have regard to the statement of licensing policy and make decisions in accordance with it. Licensing authorities may depart from their policy if the individual circumstances of the case merit such a decision in the interests of promoting the licensing objectives. In this event it is important that full reasons are given for departing from the published statement of licensing policy.

- Members should note that the 2003 Act imposes a duty on the Council, as the licensing authority, to carry out its functions under the Act with a view to promoting the four licensing objectives, namely
- The prevention of crime and disorder
- The promotion of public safety
- The prevention of public nuisance
- The protection of children from harm

The statement of licensing policy cannot seek to impose 'blanket' conditions. Each application must be considered on its own merits. Conditions can only be imposed on a licence if they are necessary to promote the licensing objectives in relation to the specific premises and are a proportionate response to the specific situation to be addressed.

Licensing is about regulating the carrying on of licensable activities within the terms of the 2003 Act. The statement of licensing policy should make clear that licensing law is not the primary mechanism for the general control of nuisance and anti-social behaviour by individuals once they are beyond the direct control of the individual, club or business carrying on licensable activities. However the Guidance also states that licensing law is a key aspect of such control and should be part of a holistic approach to the management of the evening / night-time economy. It is therefore desirable that the statement of licensing policy is in line with the Council's wider objectives and consistent with other policies.

Members should note that the statement of licensing policy should not be inconsistent with the provisions of the 2003 Act or obligations placed on the Council under any other legislation, including human rights legislation. Members should also note that the Council has a duty under section 17 of the Crime and Disorder Act 1998 when carrying out its function as a licensing authority, to do all it reasonably can to prevent crime and disorder within the Borough.

8.4 Equality, diversity and inclusion

The Licensing Policy sets out the framework within which decisions are made that impact crime and disorder, public safety, public nuisance and the protection of children from harm. There are no direct equality, diversity or inclusion implications in this report. Equality impact assessments are carried out when

necessary across the Council to ensure service delivery meets the requirements of the Public Sector Equality Duty under the Equality Act 2010.

8.5 Climate emergency declaration

There are no implications arising from the recommendations contained within this report in terms of meeting the Council's climate change obligations.

8.6 Consultation and engagement

The Statement of Licensing Policy will be subject to consultation with the public as set out above 2.8. before being finalised.

8.7 Other options considered

As licensing authority, the Council is required under the Licensing Act 2003 to draft, consult on, approve and publish a Statement of Licensing Policy which must be reviewed a minimum of every 5 years.

8.8 Governance journey

Under the Local Authorities (Functions and Responsibilities)(England) Regulations 2000, as amended, decisions relating to licensing matters cannot be the responsibility of an authority's executive. The 2003 Act provides that whilst the majority of the functions of the licensing authority are to be taken or carried out by its licensing authority, decisions relating to the statement of licensing policy cannot be delegated in such a way. The final decision on whether to adopt the statement of licensing policy must therefore be taken by the Council.

Annexes:

Annexe 1 – A draft revised Statement of Licensing Policy, incorporating the changes/amendments made by officers from the existing Statement of Licensing.

Background Papers

Licensing Act 2003 and revised Licensing Act Guidance Dec 2022

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Agreed and signed off by:

Legal Services: date

Head of Finance: date
Strategic Director: date
Portfolio Holder: date