

Part A

Report to: Licensing Committee

Date of meeting: Monday, 19 October 2020

Report author: Senior Licensing Officer (AY)

Title: Review of Licensing Act 2003 Statement of Licensing Policy

1.0 Summary

1.1 In its role as the licensing authority under the Licensing Act 2003 the council has a duty to prepare, and keep under review, a Statement of Licensing Policy (SLP). This policy was last reviewed in 2018.

1.2 The council is required to review its policy in accordance with the Government's statutory guidance and legislation.

1.3 The Licensing Act sets out four licensing objectives which must be taken into account when a local authority carries out its functions. They are:

- prevention of crime and disorder
- public safety
- prevention of public nuisance
- protection of children from harm

1.4 This report sets out the options available to the authority to review the policy and to confirm the principles of the consultation for reviewing the policy.

2.0 Risks

2.1

Nature of risk	Consequence	Suggested Control Measures	Response (treat, tolerate, terminate or transfer)	Risk Rating (combination of severity and likelihood)
Legal challenge from failure to properly adopt the policy or	Failure to meet requirements under the Licensing Act and policy not being able to be implemented.	Ensure that the policy is reviewed and adopted before 1 April 2021.	Treat	2

follow legislation and Government guidance				
Legal challenge from failure to properly consult	Negative perception of council and its licensing functions, and challenge through the courts.	Carry out consultation in accordance with legal requirements under the Licensing Act 2003 and in accordance with the Government's published principles of consultation.	Treat	2
Policy is unreasonable, irrational, discriminatory etc.	Legal challenge through the Courts	Ensure that the results of the public consultation are taken into account in the final Statement of Licensing Policy.	Treat	2
Further legislation or reported cases arising during course of consultation and adopting policy	Policy may be outdated as soon as it is published	Monitor situation and, if necessary, take amendments to subsequent committee meetings	Treat	2

3.0 Recommendations

- 3.1 That the licensing authority draw up a Cumulative Impact Assessment to retain a Cumulative Impact Policy within the town centre.
- 3.2 That the Cumulative Impact Assessment, and a proposed policy, be brought before the Licensing Committee in January 2021 for approval. Consultation on the policy would start after the January Committee and run until mid to late February. The results of the consultation and the final Cumulative Assessment, policy and equalities impact assessment being considered by the committee in March 2021

Further information:

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Report approved by: Justine Hoy, Head of Community Protection**4.0 Background**

- 4.1 The council is the licensing authority under the Licensing Act 2003 for alcohol, regulated entertainment and late night refreshment within the Borough. It is required to prepare, consult and keep under review a Statement of Licensing Policy (SLP) that sets out how it approaches its responsibilities under the Act, so that applicants, other statutory bodies and local bodies can ascertain its general approach to particular situations.
- 4.2 In preparing its SLP, the council must have regard to the statutory guidance published under the Act by the Secretary of State. This is known as the s.182 Guidance and was most recently updated in April 2018.
- 4.3 The Policing and Crime Act 2017¹ amended the Licensing Act by allowing councils to publish a Cumulative Impact Assessment to support a Cumulative Impact Policy, in order to specifically publish the evidential basis for such policies. Before this Act, the concept of cumulative impact had been covered by the s.182 Guidance but not specifically by legislation. Many councils, including Watford, had adopted Cumulative Impact Policies on the basis of the guidance.
- 4.4 The relevant sections of the Policing and Crime Act came into force on 6 April 2018. The s.182 Guidance was amended to state that there were no transitional provisions for Cumulative Impact Policies and as such any such policy should be reviewed within 3 years of the enactment of the legislation. This 3 year window expires on 6 April 2021. This report is concerned with the reviewing of the council's SLP and its Cumulative Impact Policy in line with the s.182 Guidance before this deadline.
- 4.5 This report sets out the options available to the council in reviewing the policy, as well as details of the proposed consultation and timescales.

5.0 Existing Cumulative Impact Policy

- 5.1 The existing Cumulative Impact Policy is Policy LP3 of the licensing authority's SLP – Creating a Family Friendly Town Centre. It is a Cumulative Impact Policy because it states that the licensing authority will have the starting point of refusing an application within the area when relevant representations have been received against an application for a pub, night-club or bar (as defined in policy LP1) within

¹ <https://www.legislation.gov.uk/ukpga/2017/3/contents>

the policy area. Without this policy, all applications would be assumed to be granted, with refusals being made only on the merits of the individual application. A Cumulative Impact Policy does not mean that the licensing authority must refuse all applications, and applicants do have a right to argue for their application and any sub-committee considering an application within the policy area may depart from the policy if they see fit to do so and with good reasons.

5.2 The policy applies to the town centre, and specifically states that it covers the following locations:

- Albert Road South
- Church Street
- Clarendon Road, between The Parade and Beechen Grove
- George Street
- High Street (between The Parade and Beechen Grove)
- King Street, between High Street and Exchange Road
- Market Street, between High Street and Exchange Road
- New Street
- Wellstones
- Queens Road, between High Street and Beechen Grove
- The Parade

5.3 The existing Cumulative Impact Policy only applies to pubs, night-clubs or bars which sell alcohol for consumption on the premises within the areas outlined above. It does not apply to premises who only wish to provide the licensable activities of the provision of regulated entertainment, late night refreshment, or the supply of alcohol for consumption off the premises only.

5.4 The rationale and justification for this policy within the town centre is covered in the existing SLP which was last reviewed in 2018.

6.0 **Cumulative Impact Assessment**

6.1 The Licensing Act 2003 was amended so that any licensing authority has the discretion to publish a 'Cumulative Impact Assessment'. If published, this document must set out that the licensing authority considers that the number of relevant authorisations within the specified area is such that it is likely that granting any further licences in respect of the relevant location(s) would be inconsistent with the promotion of the licensing objectives. This document must also publish the evidence considered by the licensing authority in adopting the policy. This is a more detailed approach.

6.2 For the avoidance of doubt, the term 'authorisations' refers to both premises licences and club premises certificates. Please note that temporary event notices are not covered. When referring to granting any further authorisations, this includes

variations to existing licences or certificates, even those in force before the policy is adopted.

6.3 It is a legal requirement that before publishing a Cumulative Impact Assessment, the licensing authority must put the document out for consultation. The consultees are the same consultees who are required to be consulted on the licensing authority's SLP. The Licensing Act confirms that the following bodies must be consulted:

- the chief officer of police for the licensing authority's area
- the fire and rescue authority for that area
- each Local Health Board for an area any part of which is in the licensing authority's area
- each local authority in England whose public health functions within the meaning of the National Health Service Act 2006 are exercisable in respect of an area any part of which is in the licensing authority's area
- such persons as the licensing authority considers to be representative of holders of premises licences issued by that authority
- such persons as the licensing authority considers to be representative of holders of club premises certificates issued by that authority
- such persons as the licensing authority considers to be representative of holders of personal licences issued by that authority
- such other persons as the licensing authority considers to be representative of businesses and residents in its area.

6.4 When consulting on a Cumulative Impact Assessment, the Licensing Act 2003 states that the licensing authority must provide the consultees 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.

6.5 Should the licensing authority wish to continue with a Cumulative Impact Policy for the town centre as per the existing policy (or such parts of the town centre or wider Borough as may be identified), the licensing authority will be required to consult on a Cumulative Impact Assessment and publish such a document. The SLP will need to be amended to take into account the Cumulative Impact Assessment and make reference to this document.

7.0 **Options Available**

7.1 Officers advise that the following options are realistically available to the licensing authority with regards to reviewing the SLP:

1. Remove the Cumulative Impact Policy for the town centre and replace it with nothing.
2. Remove the Cumulative Impact Policy for the town centre and replace it with a separate special policy.
3. Consult on, and publish, a Cumulative Impact Assessment and based on that assessment decide whether to continue with a Cumulative Impact Policy for the town centre, amend it or remove it.

7.2 Failure to review the policy would mean that the existing Cumulative Impact Policy would not be able to be enforced after 6 April 2021.

7.3 Officers propose that the nature of the town centre does suggest that a distinct policy is appropriate for the reasons that the town centre does have a diverse night-time economy and its own unique environment when compared to the rest of the Borough. Officers are aware that there was some support for retaining the Cumulative Impact Policy when the SLP was last reviewed in 2018, and can advise that such a policy has been in place for the town centre since at least 2008. Officers are not in receipt of specific comments from businesses or residents that the policy needs to either be abolished or amended, although it is acknowledged that residents tend to comment on individual premises rather than policy.

7.4 Officers would advise that should there not be the evidence available to publish a Cumulative Impact Assessment which confirms the legal basis for continuing with a Cumulative Impact Policy, then it will not be possible to continue with such a policy.

7.5 The s.182 Guidance gives the following examples of evidence that may be considered:

- local crime and disorder statistics, including statistics on specific types of crime and crime hotspots;
- statistics on local anti-social behaviour offences;
- health-related statistics such as alcohol-related emergency attendances and hospital admissions;
- environmental health complaints, particularly in relation to litter and noise;
- complaints recorded by the local authority, which may include complaints raised by local residents or residents' associations;
- residents' questionnaires;
- evidence from local and parish councillors; and
- evidence obtained through local consultation

Due to the nature of such evidence, such as crime statistics, anti-social behaviour trends, health-related issues and litter and noise complaints, this evidence may be able to be obtained from the responsible authorities such as the Police and council departments.

- 7.6 The s.182 Guidance also suggests that licensing authorities may wish to conduct their own specific surveys or studies of the night-time economy in order to establish evidence. Given the restrictions in place due to the pandemic, officers would suggest that this option is not viable since it would not return accurate results.
- 7.7 The existing SLP does make reference to Sensitive Licensing Areas (Policy LP4). Should a Cumulative Impact Policy not be available for the town centre, it may be possible to propose making the town centre a unique Sensitive Licensing Area. This could be used to highlight expectations of applicants or concerns or trends that the licensing authority would wish to address or discourage. However, the application would not be able to be assumed to be a refusal should it not meet the policy. More details on the specific concerns or possible conditions or types of premises that would be preferable could come from consultation with residents and partners.

8.0 Proposal

- 8.1 Officers propose that the licensing authority draw up a Cumulative Impact Assessment to see if there is evidence to support a further Cumulative Impact Policy within the town centre.

9.0 Implications

9.1 Financial

- 9.1.1 The Shared Director of Finance comments that there are no financial implications in the report.

9.2 Legal Issues (Monitoring Officer)

- 9.2.1 The Group Head of Democracy and Governance comments that the legal implications are set out in the body of the report.

9.3 Equalities, Human Rights and Data Protection

- 9.3.1 A full impact assessment on the outcomes of any review and consultation will be undertaken prior to any policy changes.

Appendices

None

Background papers

The following background papers were used in the preparation of this report. If you wish to inspect or take copies of the background papers, please contact the officer named on the front page of the report.

Licensing Act 2003

Revised Guidance issued under section 182 of the Licensing Act 2003 (April 2018)