

Part A

Report to: Licensing Committee

Date of meeting: Monday, 8 March 2021

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 At a meeting on 19 October 2020 the Licensing Committee asked officers to create a Cumulative Impact Assessment (CIA) in order to retain a Cumulative Impact Policy within the town centre.
- 1.3 A draft SLP and CIA were brought before the Committee on 14 January 2021 and it was agreed to put these documents out to consultation.
- 1.4 This report details the results of the consultation and any amendments that need to be made to the draft SLP and CIA as a result of the consultation.

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 follow legislation and Government guidance	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

Legal challenge from failure to specify evidence used in drawing up policy and the cumulative impact assessment	Failure to meet requirements under the Licensing Act and policy not being able to be implemented.	Scrutinise evidence obtained and presented, with reasons as to why the evidence is relevant	Treat	2
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Further legislation or reported cases arising during course of consultation and adopting policy	Policy may be outdated as soon as it is published	Monitor situation and, if necessary, take amendments to subsequent committee meetings	Treat	2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 Committee approves any amendments to the draft SLP and CIA as a result of the consultation.
- 3.2 That the Licensing Committee recommends that the new SLP, attached at appendix 1, and CIA, attached at appendix 2, be adopted by the Council, as the licensing authority, at its meeting on 16th March 2021.

Further information:

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Report approved by: Justine Hoy, Head of Community Protection

4.0 Detailed proposal

- 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 2017 amended the Licensing Act by allowing councils to publish a Cumulative Impact Assessment (CIA) 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. Officers have been working on reviewing the council's SLP in line with the s.182 Guidance before this deadline.
- 4.5 On 17 October 2020, the Licensing Committee agreed for officers to start looking into drawing up a CIA.
- 4.6 On 14 January 2021, the Licensing Committee agreed the draft documents that were to go out for public consultation. The documents that were to be consulted on were an amended SLP and the draft CIA.
- 4.7 The Committee is asked to consider approving the amended SLP attached at appendix 1 and the CIA attached at appendix 2 and recommending that the Council formally adopts this policy at its meeting on 16th March 2021. This is necessary

because it is the Council that are the licensing authority, and so the Council needs to be approve the policy.

5.0 Consultation

5.1 Method of consultation

5.2 The consultation ran from 18th January until 14 February 2021. The following parties were consulted directly by email:

- Hertfordshire Constabulary (mandatory)
- Hertfordshire Safeguarding Children Partnership Team
- Hertfordshire Fire & Rescue Service (mandatory)
- Hertfordshire County Council Trading Standards
- Home Office Immigration Enforcement
- Hertfordshire County Council Public Health (mandatory)
- Watford Borough Council Development Management
- Watford Borough Council Community Protection (for both the Licensing and Environmental Health teams)
- Watford Borough Council Events Team
- Watford Borough Council Economic Development
- Watford BID

5.3 The following parties were consulted directly by letter:

- 299 premises licence and club premises certificate holders *
- 543 residents within the town centre
- 21 residents' associations within the Borough

* All premises licence and club premises certificate holders were contacted, but it should be noted that some licence holders hold more than one licence so were only contacted once.

5.4 The consultation was published on the council's website with a link to a survey to assist in collecting responses. This page also included an explanation as to what is meant by the term 'cumulative impact' and a brief explanation of the current policy. All consultees were invited to contact the licensing team in writing either by email, letter, or via the online survey, with responses sent by email or via the survey being the preferred method.

5.5 A press release was also published in the Watford Observer on 30th January 2021 to highlight the consultation.

5.6 Residents in the town centre were contacted directly to seek their views on the proposed cumulative impact policy and to consult those residents that would no

longer be covered by this policy to ask what they would like to see replace the current policy.

- 5.7 Residents' associations were contacted and a press release issued in order to draw attention to the consultation. This included the town centre residents' association as representative of all residents within the town centre. This approach was a broad approach to include users of the town centre.

5.8 Survey responses

- 5.9 The responses to the survey are attached at appendix 3. The responses to the survey were broadly in support of the proposed policy, although some specific comments were received which officers wish to comment on. The responses to these are as follows.

- 5.10 Q3 Do you agree with the proposal NOT to change the approach to dealing with license issues relating to petrol stations and garages?

The respondents disagree with petrol stations being able to sell alcohol. The council must respect that it is legal for some petrol stations to sell alcohol, provided that they are not primarily used as a garage. Where a licence has been granted to a premises in the past, and that premises is now deemed to be primarily used as a garage, the licence will be of no effect. It is considered that the broad approach, including the option of requesting sales data as evidence to establish use, is appropriate. It should be noted that a ban on all petrol stations selling alcohol would need to be introduced by national legislation.

- 5.11 Q4 Do you agree with the proposal NOT to change the approach to dealing with licence issues relating to circuses?

One respondent advised that circuses must leave the area clean and tidy. The council must acknowledge that not all circuses require licences and this specific part of the policy focusses on the circumstances when circuses would require a licence. Litter controls may be appropriate to be attached to a licence through conditions, and any licence application would be subject to consultation where this issue can be raised. Officers advise that the last licence issued for a circus was in 2012 and there is no recent evidence that this is a significant issue.

- 5.12 Q5 Do you agree with the analysis of the Police data contained within the draft Cumulative Impact Assessment?

One respondent advised that the town is the sum of its components and must be considered as a whole. It is not proposed to extend a cumulative impact policy across the whole of the Borough. It is a legal requirement to publish the evidence upon which we base a cumulative impact policy, and no evidence has been received

from responsible authorities, such as the Police, or any other party to suggest that there are issues with cumulative impact in other areas of the Borough. The evidence upon which the policy is based can be scrutinised and this approach is considered reasonable in promoting the licensing objectives. Adopting an unreasonable approach may lead to the policy being challenged and even quashed.

5.13 Q8 Do you think that the four original Sensitive Licensing Areas should be retained?

One respondent raises concern over street drinking, and names a specific premises (redacted for the purpose of this report). Officers can advise that details of the premises have been passed to the Police and the council's Business Compliance Officer. Officers do wish to clarify that as a council we do work with the Police to address issues of anti-social behaviour, such as street drinking, and the Sensitive Licensing Areas do exist partly because of historical issues with street drinking.

5.14 Q9 Do you agree with the approach of the Sensitive Licensing Areas in that licensing officers will seek conditions to: minimise the risk of anti-social behaviour from the availability of high-strength alcohol to street drinkers; minimise the risk of nuisance from premises applying for significantly different hours to existing premises, and; minimise the risk of litter and other associated public nuisance from a concentration of late-night takeaways?

One respondent raises concern over littering, and names a specific premises (redacted for the purpose of this report). Officers can advise that details of this issue have been passed to Environmental Health and the council's Business Compliance Officer. Officers can advise that our pool of model conditions does include conditions to clean specified areas outside of premises, although each application must be considered on its own merits and conditions should be proportionate, and requiring each licence holder to clean the pavement for up to 50 feet from their premises may not be held to be appropriate or proportionate in each case.

5.15 Q11 If you are in support of creating a new Sensitive Licensing Area in the Town Centre (question 10), are there any other issues apart from minimising the risk of anti-social behaviour from the activities of street drinkers, the risk of nuisance from premises applying for significantly different hours to existing premises, and the risk of litter and other associated public nuisance from late-night takeaways that you would like to see addressed through policy for these areas?

One respondent raises concern over littering and customers using outside areas. As mentioned in the paragraph above, the pool of model conditions does include conditions regarding the cleaning of outside areas. It is a condition of pavement licences, although issued under a separate regime, that the relevant licensed areas should be kept clean.

5.16 Q16 Do you believe that the conditions laid out in policy LP8 are sufficient to promote the licensing objective relating to public nuisance?

One respondent advises that they want enforcement to be swifter and tougher. Officers do need to advise that there must be the evidence available to justify taking any enforcement action, and sometimes this does require evidence to be obtained and analysed, which can take time. The punishments are set by legislation or the courts if any party is convicted of an offence. The compliance policy for Community Protection, which includes licensing and Environmental Health, is due to be reviewed this year and this feedback is more appropriate for that policy and our general approach to enforcement and achieving compliance.

5.17 Q19 Do you agree with the proposal NOT to change the current approach to representations against applications?

Officers will take the comments about contacting having direct contact with the licensing team on board and making it easier to contact the licensing team and will review the webpage content and correspondence templates.

5.18 Q23 Please tell us any other comments on our policy

- Officers have taken on board the comments regarding mentioning homophobia only. The policy has been amended accordingly in order to promote equality generally and clarify the full position when identifying aggravating factors for a sub-committee to consider when a licence is up for review. These changes can be found in policy LP13 on page 39 of the policy at appendix 1. The proposed policy continues to go further than the Government Guidance; this only specifically highlights the organisation of racist activity or the promotion of racist attacks as requiring serious consideration when a licence is reviewed. The clarification that has been added is explicit and all-encompassing ensuring that the policy fulfils the council's duty under the Equality Act 2010.
- Issues with a particular location and street drinkers have been passed to the Police and the council's Community Safety Co-ordinator for information.
- With regards to the litter comments, officers have already covered in earlier paragraphs that the pool of model conditions includes conditions regarding cleaning the area immediately outside of their premises, as well as displaying signage for customers to dispose of their litter responsibly, which can be attached to a licence either voluntarily by the applicant, or by a licensing sub-committee should they consider it appropriate to do so. However, officers do need to advise that away from the immediate vicinity of the premises, the Government Guidance does state that people are responsible for their own actions, and if someone decides to litter in someone's garden it is the customer who is responsible for their actions and therefore is liable for any offence.

5.19 Responsible authority responses

- 5.20 The Police responded that they had no specific comments over the proposed policy, although they did add that the shape of the Night-Time Economy (NTE) post Covid-19 is unknown.
- 5.21 It is acknowledged that the shape of the town following Covid-19 is a valid and legitimate concern. Officers do wish to confirm that while the proposed policy does include a cumulative impact policy, it is possible for a licensing sub-committee hearing an application within this area to depart from the policy, and not all applications will be required to be determined by a hearing. Without reviewing this policy at this time, the council would lose the existing control over the town centre. It is not proposed to refuse all licensed premises and steps have been taken to identify where exemptions can be made, and what types of premises we are interested in attracting to the town centre as part of the NTE, which it should be noted is largely based upon our existing policy. The CIA must be reviewed at least every three years, and the SLP at least every five years, so neither policy is necessarily permanent and may be reviewed to take into account the changing nature of the town and its environment at any time.
- 5.22 Environmental Health responded that the Cumulative Impact Policy should be retained. They advised that the town centre area contains many residential premises and the current policy allows for sufficient controls to be put in place to limit the impact of premises that are applying to be licensed. The removal of the policy would make it more difficult to promote the licensing objectives, particularly in relation to public nuisance, in this part of the Borough.

5.23 Licence holders responses

- 5.24 One response was received from a club who hold a club premises certificate. It should be noted that this club does not fall within the town centre. They did not raise any specific concerns or comments on the proposed policy. Their response is attached at appendix 4

5.25 Other responses

- 5.26 One response was received from a resident who advise that they live on the High Street. They did raise some specific comments and queries which officers wish to address. Their comments are attached at appendix 5.
- 5.27 In response to the comments regarding busking and street entertainment, officers must first advise that busking is not licensable under the Licensing Act 2003, to which this policy specifically relates. However, such activities may require a licence or permission under other legislation, such as a street trading consent or street

collection permit if collecting for charity. These are different pieces of legislation and have their own separate policies. It should be noted that the council can not request any private land-owner to accept entertainers onto their land.

- 5.28 There are two specific elements regarding customers of pubs and bars frequenting Palace View. The first, relating to intoxicated customers, could be argued to support the approach for a cumulative impact policy within the town centre for drinking establishments selling alcohol because we do not wish to add to this problem. The comments do not name a specific premises, suggesting that it is the cumulative impact of more than one premises in the town centre. With regards to the comments about drug use, officers can advise that these comments have been passed to the Police.
- 5.29 Finally, with regards to their comments regarding delivery drivers, these comments have been passed to Environmental Health. With certain food premises being required to close to customers during the various lockdowns and tier restrictions, demand for delivery services has increased significantly. It must be noted that the comments concern drivers using this location all day, and there has been no suggestion that these drivers are only using licensed premises or not.

5.30 Miscellaneous changes

- 5.31 Following the close of the consultation, officers have updated the policy to take into account the details of the consultation, which were left out of the consultation copy. Some formatting and numbering changes have also occurred in order to bring consistency throughout the document. All changes made to the draft policy that was sent out for consultation are highlighted in the attached policy for clarity. Policy LP4, which concerns the council's Sensitive Licensing Areas, has also been amended following the results of this consultation. Further details can be found in paragraph 6.3.
- 5.32 Prior to starting the consultation, officers were asked if it would be possible to include maps of the various licensing policy areas within the SLP. This feedback has been taken on board and maps are now provided. These were not included within the original draft document because the maps had not yet been finalised, and the consultation would shape the final policy areas. It is not considered that these make a significant change to the SLP and the purpose of the maps is to help understand the policy.

6.0 Proposed policy

- 6.1 After considering the results of the consultation, the SLP has been amended where appropriate. There have been no changes made to the CIA. The SLP is attached at appendix 1. The CIA is attached at appendix 2.

6.2 Residents and businesses were specifically asked through the consultation whether a special policy be adopted for the following locations since it was proposed that they would no longer be covered by a cumulative impact policy:

- Albert Road South
- Church Street
- Clarendon Road, between The Parade and Beechen Grove
- George Street
- 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

6.3 The responses to the consultation do suggest that designating these locations as a Sensitive Licensing Area (SLA) is appropriate. There have been specific comments raised regarding litter and street drinking, which already are the focus of the SLA policy, as well as comments regarding adding extra roads and locations as and when needed. Although designating the areas as an SLA does not mean that there can be a presumption of refusal as there would be under a cumulative impact policy, this approach does focus on highlighting specific concerns for applicants to take into consideration when applying for licences within these areas, as well as highlight conditions that they may wish to volunteer. Although the council would not wish to force blanket conditions on all premises, we would consider this approach to be reasonable in promoting the licensing objectives, notwithstanding that each application would still need to be considered on its own merits, and any concerns over an application within these areas would be recommended to be raised with the applicant first in order to mitigate those concerns.

6.4 Specific mention has been made of the pool of model conditions in this report. Members are reminded that the pool of model conditions is a separate document to the SLP. It is drawn up by officers in consultation with the responsible authorities as well as using examples of good practice or discussions with other licensing authorities to address known or emerging issues. It is this pool of model conditions that officers will use when being consulted on applications within an SLA, and these conditions will be reviewed as and when needed in order to remain relevant and enforceable.

7.0 Implications

7.1 Financial

7.2 The Shared Director of Finance comments that any financial implications will be contained within existing budgets.

7.3 **Legal Issues** (Monitoring Officer)

7.4 The Group Head of Democracy and Governance comments that the legal implications are contained within the report and appendices.

7.5 **Equalities, Human Rights and Data Protection**

7.6 Under s149 (1) of the Equality Act the council must have due regard, in the exercise of its functions, to the need to –

- eliminate discrimination, harassment, victimisation and any other conduct prohibited by the Act
- advance equality of opportunity between persons who share relevant protected characteristics and persons who do not share them
- foster good relations between persons who share relevant protected characteristics and persons who do not share them.

7.7 As this is a change to an existing policy, an equalities impact analysis has been undertaken. The analysis is attached as appendix 6 to this report. The main conclusions of that analysis are that there are no significant impacts on any one particular group from the implementation of this policy. The application process is set out in legislation, including how applications are to be determined.

7.8 **Community Safety/Crime and Disorder**

7.9 Section 17 of the Crime and Disorder Act 1998 requires the council to give due regard to the likely effect of the exercise of its functions on crime and disorder in its area and to do all it reasonably can to prevent these. The prevention of crime and disorder is one of four licensing objectives that guides all licensing decisions, and which we must aim to address through policy and the implementation of the Licensing Act 2003. We have adopted a policy based on evidence from the Police with steps that we consider promote this licensing objective.

Appendices

Appendix 1 – Draft Statement of Licensing Policy (2021-2023)

Appendix 2 – Draft Cumulative Impact Assessment (2021-2024)

Appendix 3 – Online survey results

Appendix 4 – Response from Club Premises Certificate holder

Appendix 5 – Resident's response

Appendix 6 – Equalities Impact Assessment

Background papers

Results of the council's consultation on the proposed statement of licensing policy
Licensing Act 2003 (as amended)
Revised Guidance issued under section 182 of the Licensing Act 2003 (April 2018)
Watford Borough Council's Statement of Licensing Policy (2018-2023)