

This report will be made
public on 12 March 2018

Folkestone

Hythe & Romney Marsh

Shepway District Council



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DCL/17/39

To: Planning and Licensing Committee

From: Ben Geering, Head of Planning

Date: 20 March 2018

Subject: Licensing Act 2003 – Licensing Policy Statement Revision

Summary: This report sets out the proposed revisions made to our Licensing Policy Statement. This Policy will cover the period 2018-2023

Recommendations:

In accordance with the requirements of the Licensing Act 2003 the Licensing Authority is required to publish a statement of policy every successive five year period. Following a recent review amendments to our existing policy are proposed to ensure it meets corporate objectives and legislative best practice.

The Planning and Licensing Committee is therefore asked to approve the following recommendation:

1. **To receive and note the report.**
2. **To agree the draft revised Licensing Policy Statement for the period 2018-2023 to be consulted on for a 10 week period.**
3. **To delegate the Head of Planning in consultation with the chairman of Planning and Licensing Committee to approve any minor amendments to the Policy as a result of the consultation, before being presented to Full Council for approval. (See Appendices for the draft Licensing Policy Statement)**

1. Introduction

- 1.1 On 26th October 2016 Council adopted the current Licensing Policy Statement, proposed to cover the period 2016 to 2021, replacing the 2005 policy that had been reviewed without change in 2011.
- 1.2 This adopted policy contains additional supportive information in accordance with Section 13 of the Revised Guidance issued under section 182 of the Licensing Act 2003. It also contains the updates to the Licensing Act 2003 issued by the Home Office since 2011 and includes the relevant updates brought in by the Deregulation Act 2015.
- 1.3 Consultation on the policy was undertaken over a 10 week period following CMT and Licensing Committee approval. Consultation was undertaken with Responsible Authorities, Parish and Town Council's and local businesses.
- 1.4 The Licensing Act 2003 requires that the Council, in its role as a licensing authority, determines its Licensing Policy Statement with respect to the exercise of its licensing functions every five years. As such, it is not a requirement for the Council to review the current policy until 2021.
- 1.5 However, following a number of high profile licensing applications, together with an internal review of the current policy against best practice examples both locally and nationally Officers commissioned an early review of the current policy. This review has been carried out by the author of Canterbury's recently adopted Licensing Policy, who also acts as an independent expert Licensing Solicitor.

2. Requirements

- 2.1 The draft policy strictly adheres to the ethos of the Licensing Act 2003, namely it is a 'light touch' piece of legislation with the presumption of grant and the licensing objectives detailed in section 4 of the 2003 Act dictate every aspect of the application process, representations, hearings and appeals.
- 2.2 The draft policy is robust, transparent and efficient and is written in straightforward English to promote and assist license holders, applicants, responsible authorities, persons submitting representations, residents, public and enforcement agencies with a consistent approach. The policy includes numerous appendices that promote best practice and ensure a consistent approach is taken to all aspects of licensing.
- 2.3 Section 4 of the Licensing Act 2003 requires the Licensing Authority to carry out the functions under the Act so as to promote the licensing objectives. These are:
 - The prevention of crime and disorder
 - Public safety
 - The prevention of public nuisance
 - The protection of children from harm

Each of these objectives is considered to be of equal importance for the purpose of this policy.

2.4 The draft policy has a number of significant changes (detailed below) to the current policy so that it works in harmony with the Council's Corporate Plan. The review of the license has been undertaken alongside a refresh of the Licensing pages of the Council's website and the introduction of a Licensing Pre-Application Advice Service (to be introduced from April 2018). These changes seek to ensure the Council offers a 21st Century Licensing service that promotes the use of technology and self-service and ensures the community has access to information and the ability for their voices to be heard in decision making and the ongoing management of premises.

2.5 A copy of the final draft amended policy is attached as Appendix 1 to this document.

3. Significant changes to the current policy

3.1 **The inclusion of a code of conduct** will provide detailed guidance as to what is reasonable and proportionate to expect of applicants and license holders.

- It provides a comprehensive guide to applicants when preparing applications and in particular, how to draft an essential part of the form known as the operating schedule. A poorly drafted operating schedule will increase the likelihood of objections being lodged by both responsible authorities (e.g environmental protection, the police) and interested parties (eg residents).
- It assists persons making representations to lodge appropriate and proportionate objections in a timely fashion
- Improved applications and representations will reduce the number of sub-committee hearings required and if they are required, narrow the issues for consideration
- In accordance with the Council's preference for 'digital by default' it promotes customer self-service to complete and lodge applications./representations without repeated enquiries to officers
- Endorses the ethos of the Act in respect of 'light touch' and the presumption of grant

3.2 **A toolkit in the form of a 'full risk assessment template'** Applicants will be recommended to complete the assessment in support of their applications so as to:

- Allow the applicant to tailor the application to the individual merits of the application whilst providing clear direction as to what matters should be addressed by the operating schedule – for example CCTV provision within a town centre public house should be installed unless there is a very good reason not to do so
- Allow responsible authorities and interested parties to assess whether it is appropriate to seek a condition rather than logging an objection – for example the use of bins during certain hours only to reduce the impact of noise
- Allow officers and councillors to investigate with applicants why they have not adopted measures in circumstances that such measures would usually be expected
- Provide a comprehensive document that can consider cumulative impacts and identify how such impacts can be mitigated

3.3 **The introduction of a licensing forum** so that:

- the policy can develop in line with changes to legislation and or social issues and provide opportunities for proactive interaction and discussion between groups, businesses, residents, councillors and officers
- To promote, develop and review the policy so as to ensure it remains up to date and incorporates best practice

3.4 The use of intervention meetings to promote resolution, compromise and neighbourliness and ensure the correct balance is being met between the needs of residents and businesses –

- An intervention meeting provides the opportunity, particularly for residents to seek an early resolution with a premise license holder
- As an informal and voluntary process the meeting can resolve issues ahead of a formal review, ensuring parties are more likely to engage with each other with neutral support of the Licensing Officer rather than in the more guarded environment of a hearing based on evidence
- An intervention meeting will seek to resolve issues without the need for a licensing hearing, providing a cost effective mechanism for the Council, taxpayer, premises license holder and residents, with the aim that issues are resolved and that the number of review hearings is reduced
- A review meeting could resolve issues in a number of weeks, rather than months
- The process is voluntary and does not interfere with anyone's individual statutory rights, however as a voluntary process based on agreement allows for flexibility and negotiation
- The code of conduct and risk assessment template can be used to manage expectations and produce a realistic outcome for all parties

3.5 The inclusion of the Institute of Licensing's standard conditions to ensure that all conditions proposed, agreed or imposed are reasonable, proportionate and enforceable, removing inconsistencies between local premises, reducing risk of legal challenge and adopting a national approach.

3.6 Enforcement guidance is now included within the policy

- It is good practise to clearly state what enforcement policy is within the document
- The policy can be produced at hearings to demonstrate that the Council has taken a reasonable, proportionate and consistent approach when dealing with cases on an individual basis
- Reduces risk of litigation and arguments over process

3.7 Specified core hours for the district. Applications for hours within the core hours set out below in this policy will generally be granted, subject to not being contrary to other elements in the policy. Applications for hours outside of the core hours will be considered on their own merits, subject to other relevant policies and particular with regards to

- demonstration of the licensing objectives,

- whether there is residential accommodation in the proximity of the premises that would likely to be adversely effected by late opening or operations
 - the existing hours of activity and the past operation of the premises and hours of licensable premises in the vicinity
 - Whether customers and staff have access to adequate public transport when arriving at or leaving the premises
 - The capacity of the premises
 - The type of use proposed and activities that are taking place
 - Active measures that will be employed for a winding down period and arrangements for people to be collected from the premises or/and to travel home safely
 - Conditions may be imposed that restrict the sale of alcohol a considerable time before customers are required to leave the premises
 - The licensing authority may reduce hours, if necessary to meet licensing objectives
 - Applications should be precise in specifying the days in which nonstandard hours are sought. Nonspecific days should be covered by TENS or variation applications
- The proposed core hours are as follows:

3.8 Core opening hours when customers are permitted to be on the premises in **residential and residential/non-residential areas**; this includes 30 minutes 'drinking up' time:

For premises for the supply of alcohol for consumption on the premises:

- Monday to Sunday: 10:00 - 23:30

For premises for the supply of alcohol for consumption off the premises:

- Monday to Saturday: 08:00 to 23:00
- Sundays: 10:00 to 22:30

For premises for the provision of other licensable activities:

- Monday to Sunday: 09:00 - 23.30

Core opening hours when customers are permitted to be on the premises in **non-residential areas**; this includes 30 minutes 'drinking up' time:

For premises for the supply of alcohol for consumption on the premises:

- Monday to Thursday and Sunday: 10:00 - 23:30
- Friday, Saturday 10:00 – 01:00
- Sunday prior to a bank holiday Monday 10:00 – 01:00

For premises for the supply of alcohol for consumption off the premises:

- Monday to Saturday: 08:00 to 23:00
- Sundays: 10:00 to 22:30

For premises for the provision of other licensable activities:

- Monday to Thursday and Sunday: 10:00 - 23:30
- Friday, Saturday 10:00 – 01:00
- Sunday prior to a bank holiday Monday 10:00 – 01:00.

Clear justification and reasons for the core hours are set out within the policy, linking to the Councils wider corporate and strategic objectives and the important balance between the needs of residents and businesses.

4. Next Steps

4.1 Consultation will be undertaken with:

- All responsible authorities
- Businesses in general (including via Shepway Business Advisory Board)
- Councillors
- South Kent Coastal and Ashford CCG
- Residents, community groups and the public via the Council's website
- Licensing consultants who have submitted applications in the last 2 years
- Taxi and private hire representatives
- Town and Parish Councils
- All of Kent's licensing authorities

4.2A public notice will be published in the press, advising of a consultation period of 10 weeks, advising of how to participate in the consultation exercise.

4.3 Following consultation delegated authority is proposed to be given to the Head of Planning, in consultation with the Chairman of the Planning and Licensing Committee to make amendments to the policy, where required. The draft policy will then be required to be reported to full Council for adoption.

5. Implications

5.1 Legal Officer's Comments (DK)

Under section 4 of the Licensing Act 2003 the Council (as a licensing authority) must carry out its functions with a view to promoting the following licensing objectives:

- (a) The prevention of crime and disorder
- (b) Public safety
- (c) The prevention of public nuisance
- (d) The prevention of children from harm

The Council must ensure that its policy is based on these objectives and in accordance with section 5 of the Licensing Act, for each five year period, the Council must (a) determine its policy with respect to the exercise of its licensing functions, and (b) publish a statement of that policy before the beginning of each five year period. The policy must be kept under constant review by the Council.

5.2 Finance Officer's Comments (LW)

There are no financial implications arising from this report.

5.3 Diversities and Equalities Implications

There are no diversity or equalities implications arising from this report.

5.4 PR Implications (ML)

The Communications Team will help publicise the consultation through appropriate channels. A policy that addresses how to resolve instances of conflict between neighbours and licensed premises could help in protecting the council's reputation when disputes arise over issues such as noise or inappropriate behaviour.

1 Appendices:

Appendix 1 – Shepway District Council - Licensing Policy Draft Statement 2018-2023

2 Contact Officers and Background Documents

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The following published documents have been relied upon in the preparation of the report:

Licensing Act 2003
Revised Guidance issued under section 182 of the Licensing Act 2003 – March 2015
Deregulation Act 2015 – March 2015