

This report will be made public on 3 November 2021



Report Number **DCL/21/32**

To: Planning & Licensing Committee
Date: 11 November 2021
Status: Non-Executive Decision
Head of Service: Ewan Green – Director of Place

SUBJECT: Licensing Policy Statement – Public Consultation

SUMMARY: The Licensing Authority is required to review and publish a Licensing Policy Statement for every successive five year period. A new draft statement was presented to the Planning and Licensing Committee on 24 August 2021 and the recommendation was agreed to proceed to public consultation. The consultation period is now ended. This report summarises the responses received, any amendments made to the policy statement and the final draft to be presented to Full Council for approval.

RECOMMENDATIONS:

1. To receive and note Report DCL/21/32.
2. To receive and note the consultation responses received.
3. To approve the final draft Licensing Policy Statement for the period 2021 to 2026 to be presented for approval by Full Council on 24 November 2021.

1 BACKGROUND

- 1.1 The Licensing Act 2003 requires that the Council (in its role as a Licensing Authority) to review its Licensing Policy Statement every five years. The current Policy has been in force since 2016. A new draft Licensing Policy Statement has been prepared for the next five year period to run from 2021 to 2026.
- 1.2 A full description of the actions taken to review and draft the new policy statement were set out in the previous report to this committee. In summary, the Council engaged the Night Time Industries Association (NTIA) to assist in the review of the policy statement and to carry out two stakeholder workshops in May 2021. Feedback from those sessions were incorporated into the draft policy statement, which was then presented to the Planning and Licensing Committee on 24 August 2021.
- 1.3 The Planning and Licensing Committee agreed that the draft policy statement should be presented for public consultation for the period of nine weeks ending on 27 October 2021. Responsible Authorities (e.g. the Police), Parish and Town Councils, Resident Groups and local businesses would be consulted and the draft policy statement made available on the website for public comments. The committee also agreed that the Director of Place was to be authorised to approve any minor amendments to the Policy as a result of the consultation.
- 1.4 The consultation period has now ended and this report outlines below the responses received at each stage.

2 CONSULTATION

- 2.1 In summary, the following consultations were carried out in preparation of the new draft Licensing Policy Statement.
 - Overview and Scrutiny Committee 30 March 2021 – initial feedback for preparation of the new policy statement.
 - Two Stakeholder Workshops and a meeting with the Folkestone Town Centre Working Group in May 2021. Feedback incorporated into the draft policy statement.
 - Planning and Licensing Committee 24 August 2021 – review of the draft policy statement prior to public consultation.
 - Public Consultation period from 25 August to 27 October 2021.
 - Overview and Scrutiny Committee 7 September – review and feedback on the ‘consultation’ draft policy statement.
- 2.2 An overview of the feedback from the **two stakeholder workshops** held in May.
 - Concerns raised about a lack of communication with key stakeholders.

- Concerns with regard to the quality of operators coming to FHDC.
- The need for operating standards, transport and dispersal considerations from new operators.
- Perceived lack of Policing and Licensing Enforcement.
- Requests for a Cumulative Impact Assessment.
- Lack of confidence in Licensing Sub Committee decisions against Licensing Objectives.
- Consideration for Zoning or Matrix System to identify key areas.

2.3 In response the draft Policy Statement included the following:-

- FHDC to establish a Licensing Forum in order to improve stakeholder engagement. It would meet twice a year and be open to licensed operators from a range of businesses, Licensing Team, Police, Resident Associations, Events, Heritage, and festival operators.
- Requirement for robust Operating Plans to consider community impact and to include the requirement for a Transport and Dispersal Policy in new applications.
- Recommended operating hours for different types of premises to be included (see 3.3. Licensing Policy Statement). Whilst legally each application needs to be considered on its merits, these standard hours provide a framework for the Licensing Sub Committee and gives guidance to applicants where requested hours extend outside of those recommended that additional actions may be required in relation to Operating Plans.
- Not to proceed with a Cumulative Impact Assessment (CIA) at this time as any assessment carried out would be distorted by the lack of night time trading during the pandemic lockdowns. To reconsider the need for a CIA, when businesses are able to achieve a sustained level of normal trading patterns.

2.4 An overview of the feedback from the **Planning and Licensing Committee** on 24 August 2021.

- *Sound Levels - Should there be a maximum decibel level included that premises can go up to?*

Response – there is no recommended overall decibel level for licensed premises as each premises has varying levels of sound proofing and other factors that affect how sound travels. Any noise complaints are looked at by EH and a decibel level may be set for live and/or recorded music.

- *Opening Times - It is very restrictive to specify opening times for cafes, restaurants, clubs etc. as some will have a mixed use. How will you deal with these when they apply?*

Response – the opening times are a guideline for what we would expect for the District, however, applicants can apply for any hours and every

application must be looked at on its own merit under the Licensing Act 2003. Premises with mixed use can apply for any hours they wish but must show how they plan to mitigate any potential noise nuisance or crime and disorder. For example, the Council will expect to see a more robust Operating Schedule for a café that wants to open until 2am and have live music.

2.5 An overview of the feedback from the **Overview and Scrutiny Committee** on 7 September 2021 with responses in consideration.

- *Could there be a Licensing Call-in process within the decision making process?*

Response – Legally, applications can only be reviewed within the licensing process via a Hearing and as such cannot be ‘called in’. Councillors can submit representations.

- *Cumulative Impact Assessment – Consultants could develop an IT model to support the process of undertaking an assessment. This could cover the whole district rather than the central areas of Folkestone and Hythe.*

Response – There is no immediate plan to carry out a Cumulative Impact Assessment but the use of consultants to assist the completion of an assessment would be considered.

- *Licensing Forum – ensure that ward councillors are invited, these forums need to be objective, with meaningful engagement. The forums will be held twice yearly rather than monthly.*

Response – It is hoped that the forum will attract a range of stakeholders and a good level of engagement. Councillors will be invited.

- *Enforcement – Stakeholders and residents can call-in licenses. The forum should provide further engagement on this.*

Response – The proposed licensing forum cannot ‘call in’ licenses. This would need to be done through formal representations and considered by the Licensing Sub Committee. The forum will be able to explain how representations are made and provide an opportunity to share intelligence and resolve issues in advance.

- *Early Morning Restriction Orders (EMRO) – the Council at present does not operate this order as there are very few premises it would apply to, however consideration would be given to EMRO if premises increased.*

Response – The Licensing Policy Statement includes the provision to apply EMROs at some future point if considered appropriate.

- *Alcohol delivery services (3.7.1 of the draft policy) – how is this monitored? There needs to be assurances that the delivery of alcohol is not handed to underage residents or doorstep delivered.*

Response – The Licensing Policy Statement requires premises to provide risk assessments and policies for delivery of alcohol, which includes prevention of underage ordering and age verification. We require that appropriate Challenge 25 ID verification is checked when the order is placed and when the alcohol is handed over at the delivery point.

- *Safeguarding – more emphasis needed on vulnerable adults with possible signposting to consultation or advice services.*

Response – This has been included in the latest draft Policy Statement under Appendix 1 – Good Practice for licensed premises and protocols and signposting information is being added to our website.

- *SIA registered staff – would there be a possibility to look at providing these services at cost to smaller businesses as and when required?*

Response – This would fall outside of the remit of the Policy Statement. A security company may be willing to have one contract that shares doors of small premises however it could be seen as a conflict of interest for the Licensing Authority to require SIA staff and to then offer the service itself.

- *Plastic containers (App 3) – alternatives to these should be highlighted.*

Response – The Policy Statement will be updated to note plastic containers (or ideally a suitable biodegradable alternative).

- *Corner shops – there seems to be many complaints connected with the result of off licence sales. It was mentioned that perhaps stronger regulations are needed.*

Response – The requirements in the Policy Statement related to off license sales are in line with current regulations. The council has increased the size of its Licensing Team and frequency of its licensing enforcement visits (including evenings and weekends). The council shares intelligence with the police about possible breaches of regulations by off licenses.

2.6 An overview of the **general responses** received during the period of **public consultation** and responses in consideration.

- *Vulnerable Adults - A member of the public was concerned that we did not have enough focus on vulnerable adults that are dependent on alcohol and that licence holders should be acting more responsibly to protect them.*

Response – To strengthen this point in the new policy statement we are adding the following bullet point to the policy under Appendix 1 Good Practice for Licensed Premises, Licensing Objective 2: Public Safety:

- ‘Have particular regard for those who appear to have a dependency on, or misuse of alcohol. You must refuse to serve these individuals, or those who have intent to supply others in the immediate proximity. Have a procedure in place that both identifies those who may present as misusing alcohol or could be at risk of doing so, that also supports a request from a carer, appropriate adult or community safety representative, and that an individual not be served due to a risk, health or wellbeing reason.’
- *Harassment - The Council’s Community Safety Specialist requested that we add further information to raise awareness of harassment in the Night Time Economy.*

Response – We are adding the following bullet point to the policy under Appendix 1 Good Practice for Licensed Premises, Licensing Objective 2: Public Safety:

- ‘Have a policy that responds to and addresses harassment in the venue and the immediate proximity, highlighting safety campaigns, identifying harassment behaviour and also addressing it. Providing appropriate support those who have been harassed and reporting to the appropriate agencies/authorities.’

2.7 The Leas Residents Association (LRA) responded in some depth to the public consultation, the following points have been highlighted from their response.

- *The Draft Statement of Licensing Policy 2021-2026 is acknowledged to be the most comprehensive statement on Licensing Policy the Council have made to date and should command wide support from a large tranche of Folkestone residents. It should help in the regeneration of the District and Folkestone in particular. The policy gives ‘clear and detailed instructions about the process and requirements of a successful licence application.’*

Response – These comments are welcome as the new policy statement has been drafted to reflect residents’ concerns and wider regeneration goals of the council.

- *Cumulative Impact Assessment - LRA would very much welcome a CIA to be undertaken for central Folkestone and the Harbour areas.*

Response – The Cumulative Impact Assessment will be considered once businesses return to a pre-pandemic level of operation as currently they are not at a level that would give a realistic overview of the impact of licensed premises.

- *Early Morning Restriction Order - LRA would welcome the introduction of an EMRO for the Old High Street and adjacent areas including Payers Park.*

Response - An Early Morning Alcohol Restriction Order (EMRO) enables licensing authorities to restrict sales of alcohol in the whole or a part of their areas for any specified period between midnight and 6am in order to promote the Licensing Objectives. EMROs are designed to address recurring problems such as high levels of alcohol-related crime and disorder in specific areas at specific times; serious public nuisance; and other instances of alcohol-related anti-social behaviour which is not directly attributable to specific premises. It is not felt that it would currently be appropriate to completely restrict the sale of alcohol from all premises in the Old High Street at a particular time as this would not solve the issue of people walking up and down the road and creating anti-social noise. We do not currently have any areas that have such high levels of crime and disorder and/or public nuisance that would justify closing existing businesses contrary to their granted premises licence. If it is felt that a particular premises is the cause of anti-social behaviour then this should be addressed on an individual basis.

- *'Night-time Economy' - LRA would prefer the term 'Night-time Economy' is not used but replaced with 'Late Night Economy' to better represent the commercial activity within the Central area of Folkestone.*

Response - Night-time economy (NTE) is a well-recognised term used to describe a wide range of activities from a trip to the theatre or a family meal to a night out at a club during the hours of 6pm to 6am. It is not felt that there would be any benefit to the Policy if this term were changed to Late-night economy.

- *Park Farm - It is suggested that a part of Park Farm Industrial area is designated for night time entertainment (such as night clubs) as this would avoid conflict with local residents.*

Response - The matter of Park Farm Industrial Estate being designated for night-time entertainment is a matter for the Planning Dept. If any applications for a Licence are submitted for this area we will of course consider them under the merits of the application.

- *Enforcement - In order to maintain an overall watching brief on anti-social behaviour occurring beyond the immediate vicinity of the licensed premises and between premises that hold late night licenses, where rowdy anti-social behaviour tends to cause the most disturbance to residents, it is strongly recommended that the Council considers what level of enforcement they will adopt and the precise number of staff and costs associated with this element of the Policy and publishes an addendum or separate proposals on its enforcement plans.*

Response - With regards to the late night level of Licensing enforcement, number of staff and costs, this is something that will be determined outside of the Licensing Policy. For information, within the last year we have employed an additional Licensing Specialist and are now undertaking regular out of hour/late night weekend visits to licensed premises, with approximately 225 visits to licensed premises every quarter. This is improving relationships with licence holders and giving

early warning signals as to where additional training or support needs to be given to improve their management of a premises.

- *HRA – They would like the policy to highlight the Council’s responsibilities under the Human Rights Act 1998 and the Anti-Social Behaviour, Crime and Policing Act 2014.*

Response - As a public authority the Council has a statutory duty to act in a way that is compatible with the Human Rights Act and in reaching any decisions the Council will act in accordance with that duty. It is not considered necessary for any Human Rights Act responsibilities to be explicitly highlighted in the body of the policy document.

Whilst the Council has statutory duties in respect of public nuisance and anti-social behaviour the responsibility for abating or taking enforcement action in respect of these matters is placed with the Environmental Protection and/or the Community Safety departments. Although incidents of anti-social behaviour and public nuisance may overlap with the functions of the Licensing Authority in upholding the four licensing objectives it is not considered necessary that consideration of these matters be explicitly referenced in the body of the policy document.

The right of an individual to quiet enjoyment of their property is a common law right ordinarily applicable to landlord and tenant relationships. This right does not serve to ensure that any person can enjoy their property without noise interruption; merely that a tenant has the right to enjoy their property without undue interference from their landlord. This common law right is not to be confused with Article 8 of the ECHR which provides that everyone has the right to respect for his private and family life, his home and his correspondence. This common law right does not form part of any licensing policy considerations.

- *Licensing Forum – LRA are very keen that the Council goes ahead with setting up a Licensing Forum and believe it would make a significant contribution to the four Licensing Objectives.*

Response - The Licensing Forum will be set up in 2022 and details shared with residents groups, licensed premises and responsible authorities.

2.8 Finally, we received the following **responses from Councillors** to the public consultation.

- *Vertical Drinking - There is concern that by ‘not encouraging applications for premises that offer predominantly vertical drinking’ we could be going against the creation of a thriving night time economy. Music venues are, almost exclusively, vertical drinking establishments. They do however promote culture, culture could be anything from classical music, to rock bands to house DJ's in a night club. Professionally run establishments can operate these types of venues and still respect the licensing objectives.*

Response – This point is noted and the policy statement has been amended with the following bullet point to read as follows:

3.2 The Licensing Authority wishes to encourage applications for creative and cultural venues to maintain the balance of development. When applications are made, they must demonstrate how the licensing objectives are to be promoted.

- *Enforcement - There must be sufficient resources to make the Policy work.*

Response – As mentioned above, the Licensing Team has an additional member of staff and a comprehensive programme of regular out of hours/late night visits is being undertaken.

- *Working with Kent Police - What engagement has been undertaken with Kent Police?*

Response - Joint late night working is undertaken with Kent Police when resources are available and regular communication between Licensing and Kent Police occurs twice-weekly to ensure there is a good understanding of any issues relating to licensed premises.

- *Community surveys about people's lived experience would be useful in the future to build relationships and trust with local residents.*

Response - The Licensing Forum will help residents convey any issues surrounding licensed premises but surveys may be undertaken in the future if deemed useful. We will continue to encourage residents to inform us of any issues or concerns about local premises, either by contacting our Out of Hours service, report issues via our website, by email, telephone or by submitting an application to Review a Premises Licence.

- *Sustainability - Can we give businesses advice/support about becoming more sustainable?*

Response - Advice and support can be given to businesses about being more sustainable but this will be separate to the Licensing Policy, most likely in conjunction with the Economic Development Team.

- *Where do bars fit into the business type in the table in 3.3?*

Response - The table in 3.3 has been amended so that 'Pubs' reads as 'Pubs/Bars'.

2.9 This concludes the summary of the comments/queries received during the different consultation stages and the council's responses and amendments made to the policy statement.

3 NEXT STEPS

- 3.1. Subject to approval by this committee, the final draft policy will be presented to Full Council on 24 November 2021 for approval.

4. IMPLICATIONS

4.1 Legal Officer's Comments (NM)

The Council must review and publish a revised Licensing Policy Statement before the expiry of the current 5-year period, by virtue of sub-section 5(1) of the Licensing Act 2003. It would be unlawful for the Licensing Authority to fail to comply with that mandatory requirement and leave it open to legal challenge. If the revised document referred to within this report is approved at Full Council on 24 November 2021 then the Council as Licensing Authority has fulfilled its statutory duties.

4.2 Finance Officer's Comments (TM)

There are no financial implications arising from this report.

4.3 Diversities and Equalities Implications (GE)

There are no diversity and equality implications arising from this report.

4.4 Communications Implications (JW)

Subject to the agreement of full council the new policy would be publicised externally using the council's usual communications channels.

4.5 Crime and Disorder Implications (SO)

Under s17 of the Crime and Disorder Act 1998 the Council has a duty to exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it can to prevent crime and disorder in its area.

5. APPENDICES

- Appendix 1 – Folkestone & Hythe District Council – Draft Licensing Policy Statement 2021-2026

6. CONTACT OFFICERS AND BACKGROUND DOCUMENTS

Councillors with any questions arising out of this report should contact the following officer prior to the meeting:

Briony Williamson, Licensing Specialist
Telephone: 01303 853475
Email: briony.williamson@folkestone-hythe.gov.uk

Background documents:

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

Licensing Act 2003
Deregulation Act 2015 – March 2015

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