

Cheltenham Borough Council

Cabinet – 14 April 2015

Licensing Act 2003 Licensing Policy Statement

Accountable member	Councillor Andrew McKinlay, Cabinet Member Development and Safety
Accountable officer	Mike Redman, Director of Environmental & Regulatory Services
Ward(s) affected	All
Key/Significant Decision	No
Executive summary	<p>Section 5 of the Licensing Act 2003 requires the Council to review, determine and publish its Licensing Act 2003 Policy Statement every three years.</p> <p>The current policy statement was adopted by Council on 10 February 2012. Whilst it is not technically necessary to review the adopted policy statement until 2016, it was deemed appropriate to undertake an early review to reflect various changes in law, good practice and changes in the local licensing landscape.</p>
Recommendations	<p>Cabinet is recommended to:</p> <ol style="list-style-type: none">1. Note the amendments made to the existing policy, and2. Approve the draft amended policy for consultation.
Financial implications	<p>There are no financial implications arising from this report.</p> <p>Contact officer: Sarah Didcote, sarah.didcote@cheltenham.gov.uk, 01242 26 4125</p>
Legal implications	<p>The principal legal implications are set out in the report. The council has a statutory duty to have a statement of licensing policy and to keep it under review. It is important that the licensing policy statement provides an open and transparent policy regarding the council's functions under the Licensing Act 2003. The licensing policy statement forms an essential part of the decision making process for licensing applications.</p> <p>Contact officer: Vikki Fennell, Vikki.fennell@teWKesbury.gov.uk, 01684 272015</p>
HR implications (including learning and organisational development)	<p>The policy sets out a more prescriptive policy approach than previously. Workloads and any additional work this may cause should be carefully monitored and resourced where appropriate, though this may be achieved through working differently rather than it necessarily being additional work.</p> <p>Contact officer: Richard Hall, richard.hall@cheltenham.gov.uk, 01242 77 4972</p>

Key risks	As identified in Appendix 1
Corporate and community plan Implications	<p>Cheltenham has a strong and sustainable economy</p> <p>Communities feel safe and are safe.</p> <p>Our residents enjoy a strong sense of community and involved in resolving local issues.</p>

1. Background

- 1.1 Section 5 of the Licensing Act 2003 (“2003 Act”) requires the Council to review, determine and publish its Licensing Act 2003 Policy Statement (“policy statement”) every three years.
- 1.2 The current policy statement was adopted by Council on 10 February 2012. Whilst it is not technically necessary to review the adopted policy statement until 2016 (that is 4 years not 3!), it was deemed appropriate to undertake an early review to reflect various changes in law, good practice and changes in the local licensing landscape.

2. The Licensing Act 2003

- 2.1 The 2003 Act is the primary legislation that deals with the licensing requirements relating to:
- a) the sale by retail of alcohol,
 - b) the supply of alcohol by or on behalf of a club to, or to the order of a member of the club,
 - c) the provision of regulated entertainment, and
 - d) the provision of late night refreshment.
- 2.2 The licensable activities listed above are authorised through the issue of:
- a) a premises licence; or
 - b) a club premises certificate; or
 - c) a temporary event notice.
- 2.3 The council is obligated to promote the four licensing objectives when discharging its functions under the 2003 Act including setting policy. The licensing objectives are:
- a) the prevention of crime and disorder;
 - b) public safety;
 - c) the prevention of public nuisance; and
 - d) the protection of children from harm.

3. The Policy Statement

- 3.1 The draft proposed policy statement is attached at **Appendix 2** of this report.
- 3.2 The policy statement sets out the principles the council will apply when determining applications under the 2003 Act for up to the next five years. It also provides guidance to licence holders and applicants on how to make an application and advises them how the council will determine applications.
- 3.3 The draft amended policy reflects changes in primary legislation, case law and national guidance. Changes to the policy also draw from the council’s experience since the 2003 Act came in to force.
- 3.4 The profile of alcohol in particular has become a popular issue locally. Its availability has caused, and continues to cause, problems for the council and other regulatory partners in, for example, the prevalence of pre-loading, crime, disorder, street drinking, underage sales and public

nuisance.

- 3.5 Equally however, there is recognition that the trade in alcohol has benefits for the town particularly in relation to the economic contribution made through, for example, a vibrant and popular night-time economy that draws thousands of people on most nights and investment in the town by businesses selling alcohol.
- 3.6 This policy statement is a key document for the council in terms of how it seeks to address the challenges brought by the licensable activities whilst at the same time promoting the town as a safe place to visit and invest.
- 3.7 This policy statement also forms part of a wider night-time economy strategy to promote a greater diversity in the night time economy that is less focused on alcohol, supporting better management of licensed premises and public spaces, working to reduce alcohol related health harms by preventing vulnerability, promoting safe drinking limits and reducing pre-loading and working to promote a clean environment.
- 3.8 In the context of the wider night-time economy strategy, this policy statement sits alongside initiatives such as the adoption of the late night levy, the implementation of the Reducing Alcohol Related Violence (RARV) project, the alcohol coordination group and the REST outcomes and priorities.
- 3.9 Taking into account all of the measures above, the policy statement proposes a more proactive policy approach to the regulation of the licensable activities whereby the council is more proactive and prescriptive in shaping the licensing landscape in the town. For example, the proposed amended policy sets out measures to identify certain areas where more intensive intervention may be appropriate, proposes recommended core trading hours & admission times, better management of outside areas and seeks to introduce a best practice guide for drinks promotions.
- 3.10 This is a change from the current policy that is much more reactive in that it deals with matters on a case to case basis without being particularly prescriptive.
- 3.11 The amended new policy statement sets out a proposed policy vision to make Cheltenham a safe and clean town that offers a greater diversity in the night time economy that is not solely focused on alcohol and that protects the quality of life for residents. In order for the council to achieve this vision, it must become more proactive in shaping the licensing landscape in the town.

Measures Proposed

- 3.12 **Designated area of concern** – The policy statement is proposing to designate the town centre as an area of concern. As set out in the policy, there are areas of the borough where evidence does not suggest that they should be designated as Cumulative Impact Areas but nonetheless will require regular review to establish whether the concentration of licensed premises is considered to have begun to cause cumulative impact on one or more of the licensing objectives.
- 3.13 Adopting such an area will enable the council and other partners to monitor the number of licensed premises in the designated area and any risk factors that may indicate that the area is reaching a point when a cumulative impact is likely or imminent. It will also provide the Council and its partners an opportunity to put measures in place to address the concerns highlighted.
- 3.14 **Core Hours for Licensable Activities** – Whilst the council will avoid arbitrary restrictions on licensing hours, at the same time it recognises that later opening hours has brought increased levels of crime, disorder and nuisance.
- 3.15 The draft policy statement is therefore proposing core trading hours for licensed premises. The council believes that licensable activities carried on within these hours will generally not have a harmful impact on the licensing objectives, address the concerns raised by local residents and

businesses and are less likely to attract representations.

3.16 Latest admission times – Through the policy statement, the council does not want to encourage a practice whereby persons should seek to ‘top up’ their alcohol intake by seeking out those premises that are admitting customers at the latest times because persons moving between venues late at night can lead to crime, disorder and public nuisance.

3.17 The policy statement therefore proposes, amongst other proposals, to restrict the latest admission time for licensed premises.

3.18 Takeaway food premises – There is a propensity for takeaway premises open late at night to be associated with disorder as persons under the influence of alcohol having left, or in some cases being ejected from, late night venues congregate there.

3.19 As such, the policy statement proposes, amongst other proposals, to restrict the sale of alcohol at premises which are principally used for selling hot food for consumption off the premises.

3.20 Pavement Cafes and External Areas – Whilst the council wishes to promote a ‘cafe culture’ in Cheltenham because of the added life and vitality this brings to the town, there is also recognition of the fact that the use of such areas can cause nuisance to local residents and other premises in the vicinity. The policy statement therefore proposes to restrict the use of external areas to 23:00.

3.21 Code of Good Practice for Drinks Promotions – It is a known fact that the price of alcohol does have an effect on the amount people consume and that people are more attracted to premises that offer low cost alcohol. This can, and does, cause people to consume more alcohol than they would normally and can lead to crime, disorder and public nuisance issues.

3.22 The issue of cheap alcohol and preloading is a complex one. The council does not wish to unnecessarily impose operational restrictions on licensed premises, but equally recognises that action is required to deal with the problem of the availability of cheap alcohol.

3.23 To this end and as a first proportional step, the policy statement is proposing the adoption of a code of good practice for drinks promotions. Based on the good relationship the council has developed with the on-trade through the work of Cheltenham Safe, there is confidence that the trade will be receptive. There is however recognition that more work will be required with the off-trade in terms of dealing with drinks promotions and the prevalence of preloading and street drinking.

3.24 Film Classifications – The council has a statutory obligation to classify films for public screening that have not been classified by the British Board of Film Classification. The council has always had this statutory responsibility but never formalised its approach. The policy statement sets out a proposed approach.

3.25 Pool of Model Conditions – The council is also proposing to adopt a pool of model licence conditions as part of the policy statement. The purpose of the pool of model licence conditions would be to promote the use of clear, proportionate and enforceable conditions.

4. Statutory Guidance

4.1 Section 4 of the 2003 Act states that, in carrying out its functions, the Council must ‘have regard to’ guidance issued by the Secretary of State under section 182.

4.2 A copy of the relevant part of the statutory guidance for Members’ information can be found using the link detailed in the background papers.

5. Reasons for recommendations

- 5.1 To ensure that the Council complies with its duties under section 5 of the 2003 Act.
- 5.2 To ensure that the Council can effectively discharge its licensing function under the 2003 Act.

6. Alternative options considered

- 6.1 The Council can resolve not to adopt the revised policy statement. However this option would result in the Council failing to comply with its duty and function under the 2003 Act.
- 6.2 Alternatively, the Council can resolve to readopt its current policy without change but this is likely to result in the Council being unable to effectively discharge its licensing function under the 2003 Act.

7. Consultation and feedback

- 7.1 Section 5(3) of the 2003 Act stipulates a number of statutory consultees the Council must consult with when determining its policy statement. These are the chief officer of police, the fire authority, the representatives of premises and personal licence holders and club registration certificates as it sees fit, and other persons that are seen to represent businesses and residents in the area.
- 7.2 A list of consultees is attached at **Appendix 3**.
- 7.3 A further report will be submitted to Cabinet following the consultation outlining the feedback received and any amendments made to the policy statement as a result.

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Appendices	<ol style="list-style-type: none"> 1. Risk Assessment 2. Draft proposed policy statement 3. Chapter 13 of the Revised Guidance issued under section 182 of the Licensing Act 2003 (October 2014) 4. List of consultees
Background information	<ol style="list-style-type: none"> 1. Licensing Act 2003 2. Revised Guidance issued under section 182 of the Licensing Act 2003 (October 2014) - https://www.gov.uk/government/publications/explanatory-memorandum-revised-guidance-issued-under-s-182-of-licensing-act-2003 3. Cheltenham Borough Council's Licensing Act 2003 Licensing Policy Statement Approved by Council 10th of February 2012

The risk				Original risk score (impact x likelihood)			Managing risk				
Risk ref.	Risk description	Risk Owner	Date raised	Impact 1-5	Likelihood 1-6	Score	Control	Action	Deadline	Responsible officer	Transferred to risk register
	If the draft policy is not adopted, the Council will fail to comply with its duty under section 5 of the Licensing Act 2003.	Licensing & Business Support Team Leader	April 2015	2	3	6		Approval for consultation		Licensing & Business Support Team Leader	
	If the draft policy is not adopted, the Council risks not being able to effectively discharge its licensing function under the 2003 Act.	Licensing & Business Support Team Leader	April 2015	2	3	6		Approval for consultation		Licensing & Business Support Team Leader	
Explanatory notes											
<p>Impact – an assessment of the impact if the risk occurs on a scale of 1-5 (1 being least impact and 5 being major or critical)</p> <p>Likelihood – how likely is it that the risk will occur on a scale of 1-6 (1 being almost impossible, 2 is very low, 3 is low, 4 significant, 5 high and 6 a very high probability)</p> <p>Control - Either: Reduce / Accept / Transfer to 3rd party / Close</p>											