

Cheltenham Borough Council
Council – 10 February 2012
Adoption of Licensing Act 2003 Policy Statement

Accountable member	Cabinet Member Housing and Safety - Councillor Klara Sudbury
Accountable officer	Director of Culture and Wellbeing - Sonia Phillips
Accountable scrutiny committee	Social & Community Overview and Scrutiny Committee
Ward(s) affected	All
Key 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 the 30th of March 2009 and in order for the Council to comply with its statutory duty a revised policy must be adopted by the Council no later than March 2012.</p>
Recommendations	That Council RESOLVE to adopt the proposed draft revised policy statement attached to have immediate effect.

Financial implications	<p>There are no financial implications arising from this report. Income receivable from the licensing arrangements detailed in this policy is included in the council's medium term financial strategy.</p> <p>Contact officer: Sarah Didcote, sarah.didcote@cheltenham.gov.uk, 01242 26 4125</p>
Legal implications	<p>There is a statutory requirement upon the council to have a licensing policy statement and to review the policy statement every three years. The policy has been reviewed in light of the statutory guidance.</p> <p>Contact officer: Sarah Farooqi, sarah.farooqi@tewkesbury.gov.uk, 01684 27 2693</p>
HR implications (including learning and organisational development)	<p>There are no HR implications arising as a direct result of this report.</p> <p>Contact officer: Julie McCarthy, julie.mccarthy@cheltenham.gov.uk, 01242 26 4355</p>
Key risks	As outlined in Appendix 1
Corporate and community plan Implications	<p>We attract more visitors and investors to Cheltenham</p> <p>Communities feel safe and are safe</p>

Environmental and climate change implications	None
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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 Full Council on the 30th of March 2009.
- 1.3** In order for the Council to comply with its statutory duty under section 5 of the 2003 Act, a revised policy must be adopted by the Council no later than March 2012.

Licensing Act 2003

- 1.4** 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.
- 1.5** 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.
- 1.6** The Council is obligated to promote the four licensing objectives when discharging its functions under the 2003 Act with the. These 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.

The Policy Statement

- 1.7** The draft proposed policy statement is attached at **Appendix 2** of this report.
- 1.8** The policy statement sets out the principles the Council will apply when determining applications under the 2003 Act for the next three years. It also provides guidance to licence holders and applicants on how to make an application and advises them how the Council determines applications.
- 1.9** As a result of the fact that the primary legislation and case law, as it relates to the scope of the draft policy statement, has largely remained unchanged since the adoption of the current policy statement, revisions have been minimal. A breakdown of these is attached at **Appendix 3** of the

report.

Statutory Guidance

- 1.10** 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.
- 1.11** Listed below (1.12 to 1.22) are relevant extracts from the guidance.

Fundamental Principles

- 1.12** All statements of policy should also begin by stating the four licensing objectives, which the licensing policy should promote. In determining its policy, a licensing authority must have regard to this Guidance and give appropriate weight to the views of consultees. The Guidance is important for consistency, particularly where licensing authority boundaries meet. (para 13.13)
- 1.13** While statements of policy may set out a general approach to making licensing decisions, they must not ignore or be inconsistent with provisions in the 2003 Act. For example, a statement of policy must not undermine the right of any individual to apply under the terms of the 2003 Act for a variety of permissions and to have any such application considered on its individual merits. (para 13.14)
- 1.14** Similarly, no statement of policy should override the right of any person to make representations on an application or to seek a review of a licence or certificate where provision has been made for them to do so in the 2003 Act. (para 13.15)
- 1.15** Statements of policies should make clear that:
- licensing is about regulating licensable activities on licensed premises, by qualifying clubs and at temporary events within the terms of the 2003 Act; and
 - the conditions attached to various authorisations will be focused on matters which are within the control of individual licensees and others with relevant authorisations, i.e. the premises and its vicinity. (para 13.16)
- 1.16** Whether or not incidents can be regarded as being "in the vicinity" of licensed premises is a question of fact and will depend on the particular circumstances of the case. In cases of dispute, the question will ultimately be decided by the courts. But statements of licensing policy should make it clear that in addressing this matter, the licensing authority will primarily focus on the direct impact of the activities taking place at the licensed premises on members of the public living, working or engaged in normal activity in the area concerned. (para 13.17)
- 1.17** A statement of policy should also make clear that licensing law is not the primary mechanism for the general control of nuisance and anti-social behaviour by individuals once they are away from the licensed premises and, therefore, beyond the direct control of the individual, club or business holding the licence, certificate or authorisation concerned. Nonetheless, it is a key aspect of such control and licensing law will always be part of a holistic approach to the management of the evening and night-time economy in town and city centres. (para 13.18)

Duplication

- 1.18** Statements of licensing policy should include a firm commitment to avoid attaching conditions that duplicate other regulatory regimes as far as possible. Chapter 10 provides further detail on this issue. (para 13.19)

Standard Conditions

- 1.19** Statements of policy should also make it clear that a key concept underscoring the 2003 Act is for conditions to be tailored to the specific premises concerned. This effectively rules out standardised conditions, as explained in paragraph 10.13 of this Guidance. However, it is acceptable for licensing authorities to draw attention in their statements of policy to pools of conditions which applicants and others may draw on as appropriate. (para 13.20)

Enforcement

- 1.20** As part of their statement of policy, the Government strongly recommends that licensing authorities should express the intention to establish protocols with the local police and the other enforcing authorities as appropriate on enforcement issues. This would provide for a more efficient deployment of licensing authority staff, police officers environmental health officers, and others who are commonly engaged in enforcing licensing law and the inspection of licensed premises. (para 13.21)
- 1.21** In particular, these protocols should also provide for the targeting of agreed problem and high risk premises which require greater attention, while providing a lighter touch for low risk premises which are well run. In some local authority areas, the limited validity of public entertainment, theatre, cinema, night café and late night refreshment house licences has in the past led to a culture of annual inspections regardless of whether the assessed risks make such inspections necessary. The 2003 Act does not require inspections to take place save at the discretion of those charged with this role. The principle of risk assessment and targeting should prevail and inspections should not be undertaken routinely but when and if they are judged necessary.
- 1.22** This should ensure that resources are more effectively concentrated on problem premises. (para 13.22)

2. Reasons for recommendations

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

3. Alternative options considered

- 3.1** The only alternative would be for the Council not to adopt the policy statement. However this option would result in the Council failing to comply with its duty and function under the 2003 Act as outlined under point 3 above.

4. Consultation and feedback

- 4.1** On the 29th of July 2011 the Licensing Committee approved a draft policy statement for consultation.
- 4.2** 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.
- 4.3** A list of consultees is attached at **Appendix 4**.
- 4.4** In light of the above a consultation was undertaken between the 3rd of August and the 26th of October 2011.

- 4.5** The consultation was undertaken in accordance with the Consultation Guidance published by the Cabinet Office.
- 4.6** During the consultation period five responses were received. A copy of the comments and officer response is attached at **Appendix 5**.
- 4.7** On the 2nd of December 2011 the Licensing Committee gave consideration to the abovementioned comments and responses and resolved to approve and recommend adoption of the draft policy by Full Council.

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Appendices	<ol style="list-style-type: none"> 1. Risk Assessment 2. Draft Proposed Policy Statement 3. Breakdown of Amendments 4. List of Consultees 5. Consultee Comments & Officer Response
Background information	<ol style="list-style-type: none"> 1. Licensing Act 2003 2. Amended guidance issued under section 182 of the Licensing Act 2003 (October 2010) 3. Licensing Committee Friday, 29th July, 2011 report "Review of Licensing Policy Statement" (and appendices) 4. Licensing Committee Friday, 2nd December, 2011 report "Review of Licensing Policy Statement" (and appendices)

The risk				Original risk score (impact x likelihood)			Managing risk				
Risk ref.	Risk description	Risk Owner	Date raised	Impact 1-4	Likelihood 1-6	Score	Control	Action	Deadline	Responsible officer	Transferred to risk register
1.	If the draft policy is not adopted, the Council will fail to comply with its duty under section 5 of the Licensing Act 2003.	Senior Licensing Officer	February 2012	2	6	12		Adoption of the draft policy statement.	30/03/12	Senior Licensing Officer	
	If the draft policy is not adopted, the Council risks not being able to effectively discharge its licensing function under the 2003 Act.	Senior Licensing Officer	February 2012	2	3	6		Adoption of the draft policy statement.	30/03/12	Senior Licensing Officer	