

**LICENSING AUDIT & GENERAL  
PURPOSES COMMITTEE**

**24 SEPTEMBER 2018**

**HEAD OF ENVIRONMENTAL  
HEALTH & HOUSING SERVICES  
REPORT NO. EHH1824**

**CONSULTATION ON PROPOSED REVISION TO THE COUNCIL'S  
STATEMENT OF LICENSING POLICY**

**SUMMARY AND RECOMMENDATIONS:**

Under the Licensing Act 2003, the Council is obliged to prepare and publish a statement of licensing policy. Following various legislative changes and a review, a number of changes to the Council's licensing policy are proposed to ensure that it is current and up-to-date.

Following consideration by Cabinet, the revised licensing policy has been approved to go out to public consultation. The Committee is requested to consider the revised policy and, as part of the consultation process, make comments or recommendations for report to and consideration by Cabinet on determination as may be appropriate. A copy of the revised policy is attached at **appendix A**.

**1. BACKGROUND & INTRODUCTION**

- 1.1 The Licensing Act 2003 (the Act) regulates the sale and supply of alcohol, the provision of late night refreshment and a wide range of entertainments. Licensable activities are regulated through a personal and premises licence regime administered and enforced by the Council's Licensing team.
- 1.2 As a Licensing Authority under the Act, the Council is obliged to prepare and publish a statement of licensing policy every five years and to keep it under review. Whilst subject to statutory consultation requirements, this sets out the policies and arrangements the Council will apply and consider in exercise of its functions; particularly when making decisions on relevant licence applications and authorisations established under the Act.
- 1.3 The Council's current licensing policy was last reviewed in 2010. Whilst tailored to reflect local circumstances and guidance, this was itself developed from a framework policy prepared by the Hampshire & Isle of Wight Licensing Officers' Group in 2005.
- 1.4 Since this time, a number of legislative changes and changes to associated guidance issued by the Secretary of State have been published. Collectively, these factors have prompted a review of the Council's licensing policy. Consequently, a revised policy has been prepared which has been approved by Cabinet for public consultation. The last date for comments and representations for the consultation is given as the **19<sup>th</sup> October**. A copy of the revised policy is attached at **appendix A**.

- 1.5 Given its licensing role and responsibilities, the views of the Licensing & General Purposes Committee are sought on the proposed policy. Accordingly, the Committee is requested to consider the revised policy and make any comments or recommendations for report to and consideration by Cabinet as may be appropriate.

## **2. DETAILS OF THE PROPOSAL**

### **General**

- 2.1 The majority of proposed policy changes are made on the basis of legislative updates since the policy was last reviewed. An overview of these, together with other key issues and amendments are outlined below.

### **Legislative updates**

- 2.2 Since the policy was last reviewed the Licensing Act 2003 has been amended and/or supplemented by various legislative provisions. The policy has, where appropriate, been updated to reflect these changes as follows.

(a) **The Police Reform and Social Responsibility Act 2011**; including -

- (i) Changes to make the Licensing Authority and the local Health Board a responsible authority under the Act and enable them to make representations and/or apply for review of licences.
- (ii) The removal of the vicinity test so that any person who wants to make representations about or apply for review of relevant licences and applications can do so no matter where they live or work.
- (iii) Reduction of the evidential burden of representations from 'necessary' to 'appropriate' to promote the licensing objectives.
- (iv) Changes to the temporary event notice (TEN) arrangements; including –
  - The introduction of late TENs (i.e. TENs that can be served up to 5 days before a temporary event);
  - Changes to the TEN statutory limits (increasing the duration of each TEN from 48 hours to 168 hours);
  - Including Environmental Health as a responsible authority that, together with the police, can make representations to TENs;
  - Allowing the imposition of conditions to TENs in certain circumstances.
- (v) The suspension of premises based authorisations for failing to pay statutory annual fees.

(b) **The Live Music Act 2012**; including -

- (i) Removal of licensing requirements for unamplified live music taking place between 8am and 11pm in all venues\*;
- (ii) Removal of licensing requirements for amplified live music and other entertainments taking place between 8am and 11pm before audiences of no more than 500 persons on premises authorised to supply alcohol for consumption on the premises\* or workplaces;
- (iii) Removal of the licensing requirement for the provision of entertainment facilities; and
- (iv) widens the licensing exemption for live music integral to a performance of morris dancing or dancing of a similar type, so that the exemption applies to live or recorded music instead of unamplified live music.

\* Subject to the right of a Licensing Authority to impose conditions about live music following a review of a premises licence or club premises certificate.

(c) **The Anti-Social Behaviour, Crime and Policing Act 2014**; including changes to police closure order powers and associated arrangements for premises associated with nuisance or disorder.

(d) **The Deregulation Act 2015**; including -

- (i) Provisions that a personal licence no longer be time limited but has effect indefinitely.
- (ii) Changes to the TEN statutory limits (increasing the number of TENs that can be held in a calendar year from 10 to 15).

(e) **The Immigration Act 2016**; including –

- (i) Requirements for the Licensing Authority to undertake immigration and right to work checks for all personal licence applications.
- (ii) Provisions to make a personal and/or premises licence lapse in the event that the licence holder no longer retains a right to work.
- (iii) Making the Secretary of State a responsible authority.

(f) **The Policing & Crime Act 2017**; including –

- (i) Changes to the summary review process and the ability of licence holders to make representations on consideration of any interim steps.
- (ii) The suspension or revocation of a personal licence by the Licensing Authority where a relevant offence becomes known.

## **Licensing objectives**

2.3 Under the Act, a Licensing Authority must carry out its functions with a view to promoting the licensing objectives. There are four licensing objectives which form the basis of the Council's policy; namely –

- (a) the prevention of crime and disorder;
- (b) public safety;
- (c) the prevention of public nuisance; and
- (d) the protection of children from harm.

2.4 Whilst the Council maintains a separate pool of model conditions which it can apply, the revised policy also presents a list of relevant considerations appropriate to the promotion of the licensing objectives.

## **Classification of Films**

2.5 The proposed policy also outlines the arrangements for the Licensing Authority to make recommendations in respect of the restriction of children to any exhibition of film which has not been classified by the British Board of Film Classification (BBFC). This accords with mandatory condition requirements applicable to the exhibition of films.

## **Neighbourhood Notifications**

2.6 In a change to existing arrangements, it is proposed that the current policy of issuing neighbourhood notifications of applications be withdrawn. This is where the Licensing Authority notifies residents and businesses who share a boundary or frontage with any premises subject to application.

2.7 The proposal to withdraw the neighbourhood notifications policy is made on the basis that the Act places the onus of advertising applications on the applicant. There is no requirement for the Licensing Authority to advertise licence applications itself and there is some concern that doing so, may be seen as soliciting representations and therefore be subject to challenge.

2.8 The proposal also follows removal of the above mentioned 'vicinity test' and data that suggests 91% of representations against applications are made following sight of the statutory notices displayed by the applicant.

## **2.9 Cumulative Impact**

2.10 One of the key features of the 2010 policy review was the implementation of a special policy concerning the cumulative impact of licensed premises. At the time, the policy was implemented to restrict the grant and/or variation of premises licences in a defined area of Aldershot town centre and was based on the request of and evidence of cumulative impact provided by the Hampshire Constabulary.

2.11 Notably, the special policy was subject to annual review and, whilst invoked on a handful of occasions, lapsed after 12 months due to lack of continuing justification and evidence of an ongoing problem. Indeed, despite periodic calls for evidence, there has been no formal requests for and/or justifiable evidence to warrant the reinstatement of the special policy since. The revised policy makes a statement to this effect.

### **3. CONSULTATION**

3.1 Before adopting any revised policy, the Council must consult a number of statutory stakeholders and individuals who may be affected by any changes (e.g. the licensed trade and residents in its area). As there is no specified consultation period, it is intended to run the consultation until **19<sup>th</sup> October**.

3.2 Notably, and in accordance with Section 5 of the Act, a statement of licensing policy must be approved by full Council. Where appropriate, any material representations will therefore be reported back to Cabinet, before submission for final approval by Council.

### **4. IMPLICATIONS**

#### **Legal Implications**

4.1 By virtue of section 5 of the Act, the Council is obliged to prepare and publish a statement of licensing policy and to keep this under review. Any such policy must seek to promote the statutory licensing objectives (as detailed above) and must include a summary statement on any cumulative impact of licensed premises in the area. As a matter of common law, any policy must also be reasonable and proportionate and should, where appropriate, be justified on the basis of robust evidence.

4.2 Whilst there is no offence under the Act, application decisions based on the policy may be subject to challenge where it has not been suitably maintained, is not reasonable or proportionate or is not otherwise based on suitable justification or evidence.

4.3 Notably, in the absence of any special policy for cumulative impact, the proposed policy sets out the general considerations that both applicants, interested parties, responsible authorities and the Licensing Authority itself may take into account when considering applications made under the Act. This supports the general principle that the Licensing Authority will consider any matter for its determination objectively and on its own individual merits. Accordingly, when read in conjunction with any guidance offered by the Secretary of State the revised policy (which is subject to public consultation) presents a low risk update.

#### **Financial and Resource Implications**

4.3 There are limited financial implications associated with this report in respect of consultation and publication costs. It is however anticipated that these can be absorbed within existing budgets.

## **Equalities Impact Implications**

- 4.4 It is considered that the proposed revisions to the licensing policy present no specific impact on those with protected characteristics. The policy seeks to maintain equality of opportunity and recognises that subject to the requirements of the Act, nothing in the policy overrides or undermines the right of any individual or business -
- (a) to apply for one or more of the authorisations under the Act and, where appropriate, to have that application considered on its individual merits;
  - (b) to make representations on an application or to seek a review of an authorisation where provision has been made for them to do so; or
  - (c) who is aggrieved by the decision of the Licensing Authority to appeal against that decision to the Courts where provision has been made for them to do so.

## **5. CONCLUSIONS**

- 5.1 The Council is obliged to prepare and publish a statement of licensing policy based on a number of licensing objectives every five years. Following various legislative changes, the Council's policy has been due for review and a revised and updated policy has been prepared. While subject to various proposed changes, most of these reflect legislative amendments that have been introduced since the policy was last reviewed.
- 5.2 The key proposed changes concern immigration and right to work checks, changes to TENs arrangements and limits, the classification of films and the removal of existing neighbourhood notification policy. Any revised policy is subject to a period of formal consultation. Whilst a proposed timetable for consultation is outlined above, it is anticipated this will result in presentation to full Council for approval in December.

## **6. RECOMMENDATIONS**

- 6.1 The Committee is requested to consider the revised policy and, as part of the consultation process, make comments or recommendations for report to and consideration by Cabinet on determination as may be appropriate.

### **BACKGROUND DOCUMENTS:**

**HOME OFFICE (2018)**, Guidance issued under Section 182 of the Licensing Act 2003. April 2018.

**RUSHMOOR BOROUGH COUNCIL (2010)**, Statement of Licensing Policy.

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