

<p>Non-Executive Report of the:</p> <p>Licensing Committee</p> <p>13th September 2018</p>	
<p>Statement of Licensing Policy 2018 - 2023</p>	
<p>Report of: Ann Sutcliffe – Acting Corporate Director</p> <p>Place:</p>	<p>Classification:</p> <p>Unrestricted</p>

<p>Originating Officer(s)</p>	<p>David Tolley: Head of Environmental Health and Trading Standards</p>
<p>Wards affected</p>	<p>All</p>

Summary

All local authorities have to review their existing Statement of Licensing Policy every five years. The Statement of Licensing Policy is required to be agreed at full Council by October 2018. This is one of the responsibilities that the Council has to enable the administration of licences under the Licensing Act 2003.

The purpose of the Statement of Licensing Policy is to define how the responsibilities under the Act are going to be exercised and administered.

A statutory consultation process has taken place between the 12th January and 10th April 2018.

The reviewed Statement of Licensing Policy will ultimately go to full Council for adoption.

RECOMMENDATIONS

Members of the Licensing Committee are recommended to:-

- 1 Note the proposed the Statement of Licensing Policy that will be put before full Council on the 19th September 2018.

1. REASONS FOR THE DECISIONS

- 1.1 The Council is statutorily required to review its Statement of Licensing Policy every five years. As part of the review a statutory consultation must take place.

2. ALTERNATIVE OPTIONS

- 2.1 Council does have the option not to review its Statement of Licensing Policy but the Council will be open to legal challenge for not having a properly consulted and adopted policy.

3. DETAILS OF THE REPORT

- 3.1 The Council's current Statement of Licensing Policy was adopted by Full Council in October 2013.
- 3.2 Tower Hamlets Council is defined as a Licensing Authority under the Licensing Act 2003. As a Licensing Authority we must review our Licensing Policy every five years and publish the outcome of that review.
- 3.3 We must, as a minimum carry out the statutory consultation laid down in the Act.
- 3.4 Following consultation, Cabinet has consider the revised Statement of Licensing Policy and full Council must adopt the Statement of Licensing Policy.
- 3.5 The Licensing Act 2003 gives local authorities a range of responsibilities relating to licensing. The Statement of Licensing Policy states how the Council will exercise its authority.
- 3.6 This policy covers the following:
- How the Licensing Authority will use its regulatory powers in relation to applications and reviews of the activities it regulates, to the extent it is allowed by statute.
 - The main licensing objectives for the authority which are set by legislative requirements.
 - The Licensing Authority approach to regulation
 - The scheme of delegation
- 3.7 The Statement of Licensing Policy is prescribed by central government in its guidance to Local Authorities. The policy produced has to comply with guidance issued by central government. The current policy is compatible with this advice and guidance.

- 3.8 The current review has taken into account of the legislative changes that will affect the policy. The changes respond in the main to guidance and regulatory change from central government during the course of the last five years.
- 3.9 The statutory consultation requirements consists of :-
- The Chief Officer of Police for the Licensing Authority area
 - The Fire Authority for the area
 - Such persons as the Licensing Authority consider to be representative of holders of existing licences
 - Such persons as the Licensing Authority considers to be representative of holders of existing clubs
 - Such other persons as the Licensing Authority considers to be representative of businesses and residents in its area
 - Director of Public Health
- 3.10 The full list of consultees is detailed in Appendix One. All licence holders were written to. General comments from groups and forums have been summarised in Appendix Two. The online submissions are summarised in Appendix Three.
- 3.11 The statutory changes are outlined in Appendix Four and the revised policy for adoption is detailed in Appendix Five.
- 3.12 The consultation documents will be presented to the Licensing Committee and noted by them.
- 3.13 The following are relevant issues that have been raised in the consultation process and will need to be determined by Members.

Framework Hours: The current framework hours in the policy give an indication of the desired opening hours of premises, however each case is considered on its merits. The current hours are:

Sunday 0600hrs to 2230hrs
Monday to Thursday 0600hrs to 2330hrs
Friday and Saturday 0600hrs to midnight

Guidance has been published under section 182 of the Licensing Act 2003 that addresses the issue of framework hours. They should operate in such a way that does not restrict discretion and recognise that shops, stores and supermarkets should normally be free to provide sales of alcohol for consumption off the premises at any times when the retail outlet is open for shopping unless there are good, evidential reasons to restrict these hours. There must be a justification provided if change is considered appropriate, however, 40% of the 64 respondents wanted a reduction. The current responses may not justify the change from a locality perspective.

Suggested action is to retain the current framework hours.

Increase the voluntary consultation area: Some consultees responded that they would like to have a greater voluntary consultation area of more than 40 meters from the applicant premises. The majority were content with the current consultation zone for new applications. If this was to be extended there would be a cost implication for the licensing team.

Suggested action is to retain the current consultation area.

Touting: The majority of the consultees agreed with the touting condition, in that this mainly affects Brick Lane. It must be noted that there is currently a Public Spaces Protection Order in place in this area that is also being used to tackle touting.

Suggested action is to maintain the enforcement action against touting with partners.

Street Furniture: The majority of consultees agreed with the inclusion of a condition on relevant licences that ensures compliance with street furniture provisions in relation to public and private land. It is recognised that street furniture may encourage inappropriate street drinking.

Suggested action is to include this condition where relevant.

Cumulative Impact Zones (CIZ): Consultees expressed a view that the current CIZ in Brick Lane should be maintained in its current format Appendix Six. In addition there was strong support for an additional CIZ within the Bethnal Green area as outlined in Appendix Seven The CIZ's will have an impact on those applying for licences or variations to existing licences that offer alcohol sales or late night refreshments.

There is a desire from resident groups that the CIZ is implemented rigorously and that applicants must demonstrate conclusively that their operations will not adversely add to the impact on the area. The CIZ creates a rebuttable presumption that where relevant representations are made the applications are refused unless the applicant can satisfactorily demonstrate that they will not have an adverse cumulative impact on the area.

Due to recent legislative changes, the CIZ's would need to be re-consulted and reviewed every three years

Suggested action is to maintain the Brick Lane CIZ and to implement a Bethnal Green CIZ.

Olympic Park Football Condition: an additional condition was supported that dealt with premises that are known to have football followers. On match days drinks are to be supplied in plastic containers and registered door staff employed.

Suggested action is to utilise this condition where necessary.

Late Night Refreshment Exemption: Consultees agreed not to extend the late night refreshment exemption that has been proposed in the 2015 Deregulation Act 2015. Thus, all premises that offer late night refreshment after 23.00 are required to be licensed.

Suggested action is to retain licensing for late night refreshment premises.

3.14 In addition there have been some proposed changes to the draft Statement of Licensing Policy after consultation, which strengthens or clarifies the Statement of Licensing Policy objectives and introduces statutory changes, namely;

- Promotion of responsible drinking by Pub watches
- The need for licence holders to ensure wholesale alcohol purchases are checked for HMRC compliance.
- Disposable drink containers to be made of recyclable materials
- Licence holders to take a proactive stance against violence against women and girls. The policy to include references to violence against women and girls in that adequate information is provided on safe travel and staff is trained in relation to harassment and intervention techniques.
- Extending the protection of children objective to include wider harms as strong language and sexual expletives.
- Increasing the remit of protection of children from harm to explicitly detail sexual exploitation. To enable the Council to request that certain premises have a Challenge 25 scheme and relevant age verification processes.
- Clarification on the planning regimes
- Clarification on the determining of licences within the Cumulative Impact Zones
- Procedures for absent designated premises supervisors.
- Acknowledgement of the statutory changes that makes the Immigration Service a Responsible Authority.
- The policy details the type of criminal activity whereby the revocation of a licence is expected, even for a first offence.
- Where fly posting is an issue in the area, conditions may be attached that prohibits the licence holder engaging in such activities.
- To add in a new reference to the Late Night Levy that was introduced on the 1st January 2018.
- Update to Temporary Event Notification process due to legislative change

3.15 There was also a request from several residents groups and others that the following should be considered:

- Cumulative Impact Policy should be more rigorously enforced at the decision making process when determining an application.

- Adopting a policy on restricting hours of operation for outside areas of licensed premises
- Better communication with neighbouring Boroughs,
- Restricting hours of use for outside green spaces.
- Preventing large capacity venues in Brick Lane and Spitalfields;
- Reducing or restricting licensable hours during the week, Sundays and Bank Holidays, as well as religious holidays and when near to residential premises;
- Issues relating to Off Licences having a wider effect than the immediate area and calls for these to be reduced in the CIZ.

3.16 In light of these comments:

- Changes were made to the Cumulative Impact Policy to make the Policy clear in terms of what is expected of applicants, and what the Licensing Authority's position is in relation to applications for licences within the cumulative impact zones. This gives better clarity on the rebuttable presumption and responsibility of applicants.
- With respect to restricting the hours of use for outdoor areas, or on certain days, and restricting large capacity venues; each application must be determined on its own merits as per the Secretary of States Guidance under section 182 of the Licensing Act 2003, as such restricting hours or types of venues etc. would need to be a case by case basis.
- Though not in the policy the Licensing and Safety Team have met with the neighbouring Boroughs to discuss issues raised in the consultation and we have agreed to regular meetings moving forward. These will need to be formalised with a terms of reference to give clarity for discussing such matters as cross boundary licensing issues.
- Again though not in the policy we have considered the comments relating to off- licences in the CIZ and will be carrying out some unannounced compliance visits to these premises this financial year.

3.17 The current Statement of Licensing Policy remains current until October 2018. It is proposed that this policy is replaced on the 1st November 2018.

4. EQUALITY IMPLICATIONS

4.1 An equalities impact assessment has been undertaken (Appendix Eight) and no adverse impacts have been identified.

5 OTHER STATUTORY IMPLICATIONS

- 5.1 Best Value: recent legislation, such as the Localism Act 2010 has encouraged communities and the Local Authority to work in partnership. An informed Statement of Licensing Policy and well managed business will result in a reduction of enforcement and regulatory action, thus reducing costs for these Services.
- 5.2 Risk Management: The Council will be at risk of legal challenge if a properly consulted and adopted Statement of Licensing Policy is not in place by the end of October 2018.
- 5.3 Crime Reduction: One of the key licensing objectives is to prevent licensed premises from being a source of crime and disorder. The policy supports and assists with crime and disorder reduction by controlling those who manage premises open to members of the public and imposing conditions on relevant premises licences.
- 5.4 Safeguarding: The Statement of Licensing policy takes into account of safeguarding children and violence against women and children.

6. COMMENTS OF THE CHIEF FINANCIAL OFFICER

- 6.1 There are no specific financial implications emanating from this report that sets out the review of the Council's Statement of Licensing Policy. The Policy must be reviewed every five years and set out the responsibilities for the Licensing Service under the Act. The responsibilities are exercised and administered within a gross expenditure budget for 2018-19 of £363,051.

7. COMMENTS OF LEGAL SERVICES

- 7.1 The Council is a Licensing Authority under the Licensing Act 2003 ("the Act"). Section 5(1) of the Act requires the Licensing Authority to determine and publish its policy with respect to the exercise of its licensing functions. The requirement is for the Council to prepare and publish its statement of licensing policy in respect of each 5 year period. The Council is required to have regard to the policy in the exercise of its licensing functions, to keep the policy under review.
- 7.2 The Act specifies a minimum level of consultation which the Council must carry out before determining its licensing policy for a 5 year period. Section 5(3) of the Act requires specified persons and bodies to be consulted, as referred to in paragraph 3.9 of the body of the report.
- 7.3 When determining its' licensing policy, the Council is required to have regard to the following:

- Promoting the four licensing objectives, (a) the prevention of crime and disorder; (b) public safety; (c) the prevention of public nuisance; and (d) the protection of children from harm
- Statutory guidance issued by the Secretary of State in accordance with S182 of the Act (April 2018)

7.4 The Licensing Policy of the Authority may include a statement that there is a potential impact on the promotion of the licensing objectives of a significant number of licensed premises concentrated in one area. The community impact assessment (CIA) must set out the evidence for the authority's opinion. Within 3 years of publication or on review of the CIA, the Authority must consult with the bodies referred to in Section 5(3) of the Act to consider whether there has been a change in its opinions. Any revision of the CIA must be published. There is an obligation to regularly review any special policy included in the Licensing Policy to assess whether it is still needed. This will include the Cumulative Impact Policy. Following consultation, comments on the current CIZ in the Brick Lane area, the expansion of the CIZ for the whole of Spitalfields and Banglatown and on the creation of a new CIZ along Bethnal Green Road from Valence Road to Cambridge Heath Road and up to Old Bethnal Green Road.

7.5 The following changes in legislation are included in the proposed new policy:

7.6. With effect from 6.4.2017 the Immigration Act 2016 amended Section 2A Licensing Act 2003 so that any individual applying for a personal licence must be entitled to work in the UK. The application will be rejected if they are not entitled to work in the UK. The licensing authority must be satisfied that an individual who applies for a premises licence is entitled to work.

7.7 If an applicant's immigration permission to live or work in the UK is time limited, a personal licence may be granted but becomes invalid when the immigration permission expires.

7.8. Since 1.4.2017, the Secretary of State has been a Responsible Authority in respect of premises licensing to the sale of alcohol or late night refreshment. Enforcement of this role will be undertaken by the Home Office Immigration Enforcement on behalf of the Secretary of State. The enforcement powers will be in respect of the prevention of crime and disorder licensing objective.

7.9 Since 1.4.2017, businesses which sell alcohol will need to ensure that the UK wholesalers that they buy alcohol from have been approved by HMRC under the Alcohol Wholesaler Registrations Scheme (AWRS).

7.10 In accordance with the Local Government Act 2000 and the Local Authorities (Functions and Responsibilities (England) Regulations 2000, functions relating to licensing are to be exercised by Full Council. Full council has delegated some of these functions to the Licensing Committee and officers but the adoption of the of licensing policy is a matter for full council.

7.11 *Report authors should contact Legal Services for comments when the report is in its final form.*

8 **APPENDICES**

Appendix One: List of Groups/Organisations Consulted
Appendix Two: Summary of Written Responses
Appendix Three: Summary of On Line Responses
Appendix Four: Proposed Changes to the Statement of Licensing Policy
Appendix Five: Draft Statement of Licensing Policy
Appendix Six: Map of Cumulative Impact Zone at Brick Lane
Appendix Seven: Map of Cumulative Impact Zone at Bethnal Green
Appendix Eight: Equalities Impact Assessment Checklist

Local Government Act, 1972 Section 100D (As amended) List of “Background Papers” used in the preparation of this report

Statement of Licensing Policy Review: Cabinet Paper agreeing the extent of the consultation

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<http://democracy.towerhamlets.gov.uk/ieListDocuments.aspx?CId=720&MId=7701>