

<b>Non-Executive Report of the: Licensing Committee 14<sup>th</sup> December 2017</b>	
<b>Report of: Ann Sutcliffe – Acting Corporate Director Place:</b>	<b>Classification: Unrestricted</b>
<b>Statement of Licensing Policy Review 2018</b>	

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

## **SUMMARY**

All local authorities have to determine and publish a Statement of Licensing Policy every 5 years. The determination and publishing of such is required to be undertaken by October 2018.

The purpose of the policy statement is to define how the responsibilities under the Licensing Act 2003 are going to be exercised and administered.

A statutory consultation process will take place and there will be the opportunity for the local community to comment on the proposed Statement of Licensing Policy.

Following consultation the reviewed policy will ultimately go to Council for adoption.

## **RECOMMENDATIONS**

1. Note the forward programme for consulting on the proposed Statement of Licensing Policy.
2. Note that the consultation should be based on the proposed changes detailed in Appendix Two.
3. To note the consultation to retain the current Cumulative Impact Zone in the Brick Lane area at Appendices 1 and 3

4. To note the consultation for a Cumulative Impact Zone for Bethnal Green Road/ Cambridge Health Road to Old Bethnal Green Road.

## 1.0 REASONS FOR THE DECISION

- 1.1 The Council is statutorily required to determine and publish its Statement of Licensing Policy every 5 years. As part of that process, statutory consultation takes place. This includes any Cumulative Licensing zones.
- 1.2 The Statement of Licensing Policy consultation will be based on the proposed changes outlined in Appendix 2. This will enable the new statutory provisions to be reflected in the reviewed Statement of Licensing Policy.

## 2.0 ALTERNATIVE OPTIONS

- 2.1 It is a statutory duty for the Council to determine and publish its Statement of Licensing Policy and there is no alternative option to this.
- 2.2 However, the Council does have the option of not retaining the Cumulative Impact Zone, which forms part of the Licensing Policy.

## 3.0 DETAILS OF REPORT

- 3.1 The Council's current Statement of Licensing Policy was adopted by Council in November 2013.
- 3.2 Tower Hamlets Council is a Licensing Authority under the Licensing Act 2003. As a Licensing Authority the Council must determine and publish its Licensing Policy every 5 years.
- 3.3 In determining the Policy, the Council must carry out the statutory consultation as provided by the Act.
- 3.4 Following consultation, Cabinet will be asked to consider the revised Statement of Licensing Policy and will be asked to recommend it to Council for adoption.
- 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 has to comply with guidance issued by central government. The current policy is compatible with this advice and guidance.

3.8 The proposed revised Statement of Licensing Policy for determination has taken into account 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 5 years.

3.9 The Statutory Consultation requirements consist of:-

- The Chief Officer of Police for the Licensing Authority area
- The Fire and Rescue Authority for the area
- Such persons as the Licensing Authority consider to be representative of holders of existing premises or personal licences
- Such persons as the Licensing Authority considers to be representative of holders of existing club premises certificates issued by the authority
- 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 current revision considers legislative changes to the current policy. The changes respond, in the main, to guidance and regulatory change from central government during the course of the 5 five years:

- Addition of Home Office Immigration Enforcement Unit as a responsible authority under the Immigration Act 2016
- The consideration of West Ham United having the Olympic Park as a home ground
- Consideration to maintain the Cumulative Impact Zone
- Removal of 'pool conditions' but add in reference to home office website
- Linking in street furniture and fly posting into the licence
- Consideration of fixed penalty notices and cautions as criteria for previous history of applicants.
- Clarification of the protection of children through underage sales
- To include the determination of the Late Night Levy consultation
- To append the Sexual Entertainment Venues Policy and Gambling Policy as part of the Licensing regime.
- Clarification on the rules and procedures involving Temporary Event Notifications
- Update of mandatory conditions

3.11 The time table for the draft policy for consultation is:

Date	Process
December 2017	Licensing Committee consulted

January 2018 – March 2018	Public/statutory consultation
April 2018- May 2018	Consultation feedback reviewed
June 2018	Mayors Advisory Board
July/August 2018	Cabinet to consider new policy
September/October 2018	Council agreement

- 3.12 The Public Health Team will be consulted and will be in a position to add further considerations in relation to maximum strength alcohol and pricing strategies.
- 3.13 At the conclusion of the consultation process a resource analysis will be undertaken to estimate any additional cost to the Licensing Service when implementing the new policy.
- 3.14 The existing Policy is attached at Appendix One the proposed changes to the Policy are outlined in Appendix Two.

#### Cumulative Impact Zone

- 3.15 As part of the Statement of Licensing Policy review, the impact of the Cumulative Impact Zone in the Brick Lane area has been considered. The Cumulative Impact Zone was introduced in November 2013 and is referred to in Appendix 3.
- 3.16 Since its introduction incidents of crime and antisocial behaviour linked to licensed premises within the Cumulative Impact Zone have seen an overall reduction despite the fluctuating figures .The figures below show the fluctuations in the numbers of crime and anti-social behaviour linked with licensed premises. .

Year	Number of ASB complaints in CIZ	Increase/Decrease in complaints (+=increase)
2012	510	-
2013	591	+ 81 more than 2012
2014	786	+195
2015	736	-50
2016	459	-177

- 3.17 The hotspot maps at Appendix 3 reflect the distribution of incidents of crime and antisocial behaviour (ASB) linked to licensed premises from December 2012 to December 2016.
- 3.18 In addition there has also been a reduction in total number of complaints received by Licensing and the Noise Team shown below:
- 01/12/2010 to 29/10/13 – 520 total complaints received by Noise and/or Licensing Teams (before the CIZ was introduced)

- 06/11/2013 to 01/11/16 – 190 total complaints received by Noise and/or Licensing Teams after the CIZ was introduced
- 3.19 Furthermore there are fewer premises licenses being granted within the Cumulative Impact Zone, 190 between 3rd August 2005 and 1st November 2013, and 63 granted between 25th November 2013 and 15th September 2016.
- 3.20 The incidents referred to in the table below occur in Spitalfields and Banglatown ward.

Year	Number of ASB complaints borough wide linked to licensed premises	Increase/Decrease in complaints (+=increase)
2012	622	-
2013	686	+64
2014	838	+152
2015	774	-64
2016	559	-215

- 3.21 Based on the number of incidents, consideration was given to proposing an expansion of the CIZ to encompass the whole of Spitalfields and Banglatown. However in producing our own hotspot maps of this area, which can be found in Appendix 5 (Hot Spot Maps a to e), shows there was insufficient evidence to support expanding the CIZ to encompass all of this ward.
- 3.22 Appendix 4 - Maps from the Metropolitan Police website also show that the whole of Spitalfields and Banglatown Ward (included in the CIZ) is categorised as high for antisocial behaviour, although it should be noted that this map is based on all incidents of antisocial behaviour and not necessarily those linked to licensed premises.
- 3.23 Therefore it is proposed to keep the current CIZ. Evidence detailed above in paragraphs 3.16 and 3.20 and the appendices support the retention of the CIZ in its current form. Retention of the current CIZ will assist the Council in reducing the cumulative impact on crime and antisocial behaviour linked to licensed premises within this area.
- 3.24 To enable the retention of the CIZ in its current form a consultation of businesses and other interested groups that may be affected by the CIZ must be carried out, this will form part of the consultation for the Statement of Licensing policy. Appendix 6 shows a hot spot map of the whole Borough identifying licensed premises and the reports of anti-social behaviour or crime linked to licensed premises between April 2016 and March 2017. Nearly 16% of these incidents occurred in the current cumulative impact zone.

- 3.25 It is possible to make an argument for an additional cumulative impact zone to be brought in to being within the Borough, along Bethnal Green Road from Valence Road to Cambridge Heath Road and up to Old Bethnal Green Road as shown in the hot spot map at appendix 7. Such a zone would capture approximately 52 licensed premises. Based on data from 999/101 calls to Police in 2016/17 there was 382 incidents linked to licensed premises, however, it should be noted that 15 of these were abandoned calls. This data detailed on appendix 8 breaks down this data type of incident and number of them recorded between April 2016 and March 2017. From this data the most common type of incident reported linked to licence premises the area was "Violence Against the Person".
- 3.26 As this new zone is small and is shown in Appendix 9, it could be argued that there is little point in bringing such an area with a cumulative impact policy and rely upon current initiatives as Best Bar None, Pub Watch and Community Alcohol Partnerships to address issues.
- 3.27 The consideration of Cumulative Impact Zones within the Licensing Policy Review draws the links between other strategies that the Council has approved with regards to the *Anti-social behaviour – A blue print for local action in Tower Hamlets*, the current consideration of the adoption of the late night levy and the report back on the Late Night Economy Scrutiny review. These strategies and reviews look at strengthening the action that can be taken to deal with anti-social behaviour and the consideration of having Cumulative Impact Zones will compliment these initiatives.
- 3.28 An Equalities Impact Assessment on the consultation and policy has been undertaken and is in Appendix 10.

#### **4.0 COMMENTS OF THE CHIEF FINANCIAL OFFICER**

- 4.1 The report sets out for noting the forward programme for consultation on the Statement of Licensing Policy. The responsibilities of the Licensing Service are exercised and administered within a gross expenditure budget of £352,500. The cost of the service is met by the fees received from licences. Income for 2017/18 is budgeted at £473,762 which is in line with the level of income achieved in previous years.
- 4.2 The report also considers the retention of the current Cumulative Impact Zone (CIZ) and introduction of a smaller CIZ along Bethnal Green Road to Cambridge Heath Road. A total of up to 33 licensed premises could potentially be impacted by this decision. The report is in favour of retention of the CIZ and highlights the role it has played helping to address anti-social behaviour issues within the Borough. The result of any decision made will not have an impact on the income budget. However, before a decision can be made, consultation will need to be carried. It is proposed that this is completed as part of the consultation on the Statement of Licensing Policy.

The costs of the consultation and proposed changes to the Policy can be met from the Licensing Services Budget.

## **5.0 LEGAL COMMENTS**

5.1 The Licensing Act 2003 ('the 2003 Act') established a single integrated system for licensing premises that are used for alcohol, entertainment and late night refreshment. Under this legislation, each local authority is known as the 'licensing authority' and is responsible for licensing alcohol, entertainment and late night refreshment in its geographical area.

5.2 The London Borough of Tower Hamlets is a Licensing Authority and section 5(1) of the 2003 Act requires the Council in respect of each 5 year period to determine its policy with respect to the exercise of its licensing functions, and to publish a statement of that policy before the beginning of the period. The Council's current Statement of Licensing Policy is effective from 1<sup>st</sup> November 2013 and therefore the fresh Policy needs to have been determined and published by 31<sup>st</sup> October 2018.

5.3 When preparing its licensing policy, the Council is required to have regard to the following:

- Promoting the 4 licensing objectives, 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;
- Statutory guidance issued by the Secretary of State; and
- The 2003 Act.

and the draft updated policy has been drafted taking these into account.

5.4 During the 5 years of the current policy, the Council has been required to keep its policy in respect of that period under review and make such revisions to it, at such times, as it considers appropriate. It is noted that during this 5 year period there have been a number of revisions to the guidance and regulation (see paragraph 3.10 of the report). No revisions to the existing Policy were made and these have therefore been incorporated in the replacement 5 year Policy to be determined and published next year.

5.5 Section 5(4) of the 2003 Act sets out who the Council is required to consult with. A list of such is set out in paragraph 3.9 of this report but missing from this list is each Local Health Board in respect of which any part is in Tower Hamlets.

5.6 As to consultation, the Council must also comply with its common law duty and which imposes a general duty of procedural fairness when exercising functions which affects the interests of individuals. This requires:



- (a) that the consultation be at a time when proposals are still at a formative stage and the proposals are still formative and the timetable in paragraph 3.11 addresses this;
- (b) the Council must give sufficient reasons for any proposal to permit intelligent consideration and response and paragraphs 3.10 and 3.15 to 3.27 1 sets these out; and
- (c) adequate time must be given for consideration and response and the timetable in paragraph 3.11 addresses this.

- 5.7 As to Cumulative Impact Zone (also known as special policies or saturation zones), these are a product of the Guidance to the Licensing Act 2003. The effect of having a cumulative impact policy generally means that any new premises licence applications or material variations which receive relevant representations will presume to be refused unless the applicant can show that granting the application will not add to the cumulative impact, i.e. a rebuttable presumption.
- 5.8 To introduce or retain a Cumulative Impact Zone there must be evidence that the high density of licensed premises in one area is having a detrimental effect or continuing to have a detrimental effect on one or more of the licensing objectives.
- 5.9 Pursuant to the Local Government Act 2000 and the Local Authorities (Functions and Responsibilities) (England) Regulations 2000, the determination of the statement of licensing policy under section 5 of the Licensing Act 2003 cannot be a function of the Council's executive. Consistent with this requirement, the Council's Constitution makes the licensing policy part of the budget and policy framework. The preparation of the policy must therefore comply with the Budget and Policy Framework Procedure Rules.
- 5.10 In its consideration of this Report and its recommendations, the Council must have due regard to the need to eliminate unlawful conduct under the Equality Act 2010, the need to advance equality of opportunity and the need to foster good relations between persons who share a protected characteristic and those who do not (the public sector equality duty). There is some information in the report relevant to these considerations in paragraph 6 below.

## **6.0 ONE TOWER HAMLETS CONSIDERATIONS**

- 6.1 An initial equalities analysis has been undertaken and no adverse impacts have been identified

## **7.0 BEST VALUE (BV) IMPLICATIONS**

- 7.1 The Council is fulfilling its best value duty by ensuring that staff resources are targeting the higher risk licensed premises. The report details how the Service

will operate its statutory function under the Licensing Act 2003 ensuring that licence holders are held to account whilst reducing burdens on well-run businesses. The statement of Licensing Policy allows Officers to use a range of interventions to seek compliance.

## **8.0 SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT**

8.1 There are no adverse implications.

## **9.0 RISK MANAGEMENT IMPLICATIONS**

9.1 The Council will be at risk of legal challenge if a properly consulted and adopted Statement of Licensing Policy is not in place by Autumn 2018.

## **10.0 CRIME AND DISORDER REDUCTION IMPLICATIONS**

10.1 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.

### **Linked Reports, Appendices and Background Documents**

#### **Linked Report**

NONE

#### **APPENDICES:**

Appendix 1 – Current Statement of Licensing Policy

Appendix 2 - Proposed Changes to the Statement of Licensing Policy

Appendix 3 – Current Cumulative Impact Zone hot spots over time

Appendix 4 – Metropolitan Police crime map

Appendix 5 – Spitalfields and Banglatown Ward hot spot map over time

Appendix 6 – Borough-wide antisocial behaviour complaints linked to licenced premises

Appendix 7 – Hot Spot map of Bethnal Green Road, Cambridge Health Road to Old Bethnal Green Road

Appendix 8 – 999/101 calls within the proposed CIZ

Appendix 9 – Outline of proposed CIZ for Bethnal Green

Appendix 10 – Equalities analysis

### **Local Government Act, 1972 Section 100D (As amended)**

#### **List of “Background Papers” used in the preparation of this report**

**List any background documents not already in the public domain including officer contact information.**

- **NONE.**

**Officer contact details for documents:**

- **N/A**