

<p><b>Cabinet</b></p> <p><b>20<sup>th</sup> September 2023</b></p>	 <p><b>TOWER HAMLETS</b></p>
<p><b>Report of:</b> Communities Directorate</p>	<p><b>Classification:</b> Unrestricted</p>
<p><b>Statement of Licensing Policy 2023 - 2028</b></p>	

<b>Lead Member</b>	Cllr Kabir Hussain – Lead Member Environment and the Climate Emergency
<b>Originating Officer(s)</b>	David Tolley, Head of Environmental Health and Trading Standards
<b>Wards affected</b>	All wards
<b>Key Decision?</b>	No
<b>Forward Plan Notice Published</b>	11/07/2023
<b>Reason for Key Decision</b>	Approval of the Statement of Licensing Policy is a decision reserved to full Council.
<b>Strategic Plan Priority / Outcome</b>	Boost culture, business, jobs and leisure

## Executive Summary

As a Licensing Authority the Council must prepare and publish a Statement of Licensing Policy at least every 5 years. The Statement of Licensing Policy is required to be agreed at full and adopted by the end of November 2023. The purpose of the policy is to define how the responsibilities under the Licensing Act 2003 are going to be exercised and administered.

A statutory consultation process has taken place between the 19<sup>th</sup> January 2023 and 13<sup>th</sup> April 2023.

Subject to agreement the Policy will be presented to Full Council for adoption under the provisions set out by the Council’s Constitution

## Recommendations:

The Mayor in Cabinet is recommended to:

1. Recommend to Full Council the adoption of the Statement of Licensing Policy at full Council which will take effect from 1<sup>st</sup> November 2023.

## **1 REASONS FOR THE DECISIONS**

- 1.1 All relevant local authorities are required under the Licensing Act 2003 (“the Act”) to prepare and publish a statement of licensing policy at least every 5 years.
- 1.2 The purpose of the policy is to define how the responsibilities under the Act are going to be exercised and administered.

## **2 ALTERNATIVE OPTIONS**

- 2.1 The Licensing Act 2003 places a statutory obligation upon the Council, as Licensing Authority, to determine and publish a statement of Licensing Policy. If the Council did not have a policy, it would likely be acting ultra vires with regards to any decisions it makes determining applications and notices under the Act.
- 2.2 The Secretary of State has issued guidance under section 182 of the Act. This details how licensing authorities discharge their functions under the Act. The Council must have regard to this guidance in carrying out its functions under the Act, including setting the Licensing Policy. Departure from the guidance without good reason could leave the Council at risk of judicial challenge.

## **3 DETAILS OF THE REPORT**

- 3.1 The Council’s current Statement of Licensing Policy was adopted by Full Council in September 2018 and came into force on 1<sup>st</sup> November 2018.
- 3.2 The London Borough of Tower Hamlets is a Licensing Authority under the Act. We must determine and publish a statement of our licensing policy at least every five years.
- 3.3 In doing so, the Council must carry out the statutory consultation laid down in the Act. It is open to the Council to consult more widely.
- 3.4 Following consultation, Cabinet must 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 premises 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 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, which is issued by the Secretary of State under section 182 of the Act. The current policy is compatible with this guidance.
- 3.8 The Statement of Licensing Policy 2023 – 2028 has been updated to take account of changes to relevant legislation and guidance over the last 5 years.
- 3.9 The statutory consultation requirements consists of :-
- The Chief Officer of Police for the Licensing Authority’s area.
  - The Fire and rescue authority for the Licensing Authority’s area.
  - Each Local Authority’s Director of Public Health (England).
  - Persons/bodies representative of local premises licence holders.
  - Persons/bodies representative of local club premises certificate holders.
  - Persons/bodies representative of local personal licence holders; and
  - Persons/bodies representative of businesses and residents in its area.

The full list of consultees is detailed in **Appendix One**. Letters were sent to all Premises, Club Premises Certificate and Personal Licence Holders.

- 3.10 A table of changes can be found in **Appendix Two** and the revised policy for adoption is detailed in **Appendix Three**.
- 3.11 A printout of the consultation document and survey questions can be found in **Appendix Four**. A report of the consultation survey can be found in **Appendix Five**.
- 3.12 The consultation survey was completed by 101 people, although there were 198 visits to the consultation site page. Most consultees agreed with the revised policy. However, this was not the case with respect to restrictions on the use of beer gardens or similar areas after a certain time and where the use of such area could result in public nuisance. The consultation sought views on the addition of conditions to cease the use of any outside areas after 9pm, where that was appropriate and proportionate to promote the licensing objective of prevention of public nuisance. The result from the online survey shows only 10% in favour of this time. The majority were in favour of a 10pm (29%) or 11pm (34%) cut-off time for the use of outside areas.

The 9pm restriction for outside areas is the same restriction placed upon Pavement Licences within the borough. The later was decided in consultation with the Council’s Environmental Health – Noise Team in the interest of preventing public nuisance. They also support the draft policy’s view of a 9pm restriction for outside areas. The draft policy has not been amended in respect of the proposed time for use of outside areas notwithstanding the above survey results. It should be noted that each premises licence or variation application will be considered on its individual merits.

3.13 The main changes to the policy are detailed below. These were considered during the consultation process:

- a) Addition of "Equality and Inclusion in Licensed Venues" section.
- b) Addition of Representations by Other Persons section to cover disclosure of personal details.
- c) Nitrous Oxide (NOx) - addition of conditions to be considered, where appropriate, to require refusal of entry/service to those using NOx.
- d) Drinks Spiking - guidance for applicants and licence and additional conditions to be consider, where appropriate, to prevent drinks spiking.
- e) Welfare and Vulnerability and Engagement (WAVE) - expectation that licences for alcohol for consumption on premises train staff in WAVE.
- f) Sexual Harassment in the Night Time Economy - encourage licence holders to sign up to Women's Night Safety Charter and refuse entry/service in the event of an act of misogyny, encourage applicants to discuss applications with the Councils VAWGs Team.
- g) Beer Gardens/outside areas - where issues are known, or suspected areas may be restricted after 9pm.
- h) Party Boats - addition of conditions applicants for party boats are expected to adopt.
- i) Online deliveries - conditions to be added where appropriate in relation to applications that include online alcohol sales.
- j) Clear expectation for applicants for early engagement with Environmental Health Noise and Police for Temporary Event Notices (TENs).
- k) Request that Risk Assessment be supplied with a Temporary Event Notice.
- l) Addition of expectation for applicants to add correct address for licence holder(s) including emails, and for licenced holder to notify Licensing where details change.

3.14 Some further changes were made to the draft Policy as a result of the consultation responses. These are summarised below:

- Encouragement for licence holders to sign up to the Tower Hamlets No Place for Hate (NPFH) Campaign.
- Paragraph added in reference to Martyn's Law and the ACT e-learning.
- Update to Prevention of Public Nuisance section, in view of providing what applicants should consider in their application to reduce any impact on residents.
- Creation of a Model Conditions Appendix,
- Changes to risk assessments wording as requested by the Metropolitan Police.

Copies of the written responses received can be found in **Appendix Six**.

3.15 An Equalities checklist has been undertaken as is at **Appendix Seven**.

## **4 EQUALITIES IMPLICATIONS**

- 4.1 The Equalities Impact Assessment has been reviewed in respect of this policy and no specific impacts have been identified. An additional section “Equality & Inclusion in Licensed Premises has been added to address the Public Sector Equality Duty and to link to the Council’s Equality Policy.
- 4.2 The policy states the types of criminal activity that may arise with licensed premises which the Licensing Authority will treat particularly seriously that relate to children and young people. This includes illegal purchase and consumption of alcohol by minors which impacts health, educational attainment, employment prospects and propensity for crime of young people; relating to grooming children; and relating to criminal activity particularly relating to gangs.
- 4.3 More females than men are prone to sexual harassment in the night-time economy. The policy sets out our expectations of licence holders relating to sexual harassment in the Night Time Economy by encouraging licensed venues to sign up to the Mayor of London’s Women’s Night Safety Charter. As well as the Women’s Night Safety Charter we encourage applicants and license holders to discuss applications with the Council’s Violence Against Women and Girls Service, who can provide advice and training to venues on preventing misogyny within licensed premises. In addition, license holders are expected to take a zero-tolerance approach misogyny within their venues where this is towards customers or employees. In practice this means that they are expected to refuse to serve persons who commit acts of sexual harassment, even in the first instance, and report the matter to the Metropolitan Police. The policy states that it is expected that all licensed venues which sell alcohol for consumption on their premises should train their staff in WAVE and adopt Ask for Angela or similar initiatives aimed at assisting vulnerability within alcohol licensed venues.
- 4.4 Females and gay men are more prone to drinks spiking than other groups. A YouGov poll in 2022 identified that nationally 10% of females said they had their drink spiked compared to 5% of males. 48% of those aged between 18-24 said they have had a drink spiked or know someone who has. However, it is those aged between 25 and 49 who are the most likely to say they have personally had a drink spiked (11%).
- 4.5 The policy makes an expectation on licence holders and applicants to have a zero-tolerance policy towards drinks spiking. This involves as a minimum ensuring all reports of spiking are acted upon and that all incidents of alleged spiking are recorded and reported to the police. Applicants for new and variations of exiting licences as well as those submitting TENs are expected to work with the Metropolitan Police in order to consider actions needed to prevent drinks spiking in their venues/events.
- 4.6 Teenagers and young adults are more likely to use psychoactive substances such as nitrous oxide (NOx). Misuse of nitrous oxide is associated with increased antisocial behaviour including littering, noise nuisance and vandalism, all of which are detrimental to residents’ quality of life and feelings of safety. Use of nitrous oxide is also a health concern and has other associated harms. The

policy places an expectation on license holders to refuse entry to any person seen using or selling NOx as a psychoactive substance. Refusals should also be entered into license holder's refusals logs. Please note since this policy was drafted, the Government has announced its intention to bring NOx within the control of the Misuse of Drugs Act 1971.

## **5 OTHER STATUTORY IMPLICATIONS**

- 5.1 This section of the report is used to highlight further specific statutory implications that are either not covered in the main body of the report or are required to be highlighted to ensure decision makers give them proper consideration.
- 5.2 Best Value: The Licensing Policy details the regulatory approach to the Council's functions under the Licensing Act 2003. The fees imposed for the licence/notices are set by government. The fees cover the cost of regulating and administering the borough's functions under the Act.
- 5.3 Crime Reduction: One of the key licensing objectives is to prevent 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.
- 5.5 Risk Management: There are no risk management issues with the revised policy or the consultation process.
- 5.6 Environmental and consultation implications: There are no negative environmental impacts about this policy or the consultation process.

## **6 COMMENTS OF THE CHIEF FINANCE OFFICER**

- 6.1 This report is seeking approval to adopt the Statement of Licensing Policy to cover the period 1<sup>st</sup> November 2023 until 31<sup>st</sup> October 2028. There are potential financial implications emanating from this report with regards to the introduction of the changes highlighted in paragraphs 3.13 and 3.14. The full financial implications are not envisaged to be material. The Service is funded by the licence application fees and it is anticipated that this will be sufficient to cover the additional cost. The Service will utilise the annual budgeting process if required.

## **7 COMMENTS OF LEGAL SERVICES**

- 7.1 The Council is a licensing authority by virtue of s.3 of the Act. S.5(1) requires the authority to determine and publish its Statement of Licensing Policy ("the Policy") in respect of each five-year period. During the period in which the

Policy is in force, the authority may review the Policy and make such revisions, if any, as it thinks appropriate.

- 7.2 Prior to determining the Policy, the authority must consult the bodies or persons specified in s.5(3). This has been complied with, as specified in paragraph 3.9 (above) and Appendix 1.
- 7.3 The principles of effective consultation require that: consultation be carried out when proposals are at formative stage; the consultees must be given sufficient and accurate information and reasons so as to be allow for proper consideration; adequate time be given for responding; the fruits of the consultation must be conscientiously taken into account when making the decision.
- 7.4 All licensing authorities must carry out their functions with a view to promoting the four licensing objectives, namely: the prevention of crime and disorder; the prevention of public nuisance; public safety; the protection of children from harm. In carrying out those functions it must also have regard to any guidance issued by the Secretary of State under s.182 of the Act and to the Policy.
- 7.5 S.5(6D) provides that in determining or revising its policy, the authority must have regard to any cumulative impact assessments (CIAs) published by it under s.5A of the Act. Such assessments apply in respect of any area where the authority considers that the number of relevant authorisations in respect of premises in the area is such that it would be inconsistent with its duty to grant any further authorisations in respect of premises in that area. This then creates a rebuttable presumption in favour of refusal of any relevant applications unless the applicant shows that they will not adversely impact upon the licensing objectives. Any such CIA must be reviewed at least every three years.
- 7.6 The Council currently has two such CIAs, in respect of Brick Lane and Bethnal Green. These were approved by the Council on 17<sup>th</sup> November 2021 and took effect on 18<sup>th</sup> November 2021. The Policy contains those cumulative impact assessment statements.
- 7.7 Section 149 of the Equality Act 2010 requires the authority, in the exercise of its functions, to have due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited by the 2010 Act, to advance equality of opportunity between persons who share a relevant protected characteristic and those who do not, and to foster good relations between those who share a relevant protected characteristic and those who do not. The relevant protected characteristics are age; disability gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation. The duty must be complied with at the time that the decision under consideration, in this case the recommendation to adopt the Policy, is taken. It is not a duty to achieve a particular result.
- 7.8 The decision to approve the Policy is expressly stated in the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 as being a function that cannot be the responsibility of the executive. The Full Council

must decide to approve the Statement. Cabinet only has power to recommend the Policy to full Council for a decision to be made on adoption.

## **Appendices**

- Appendix One: List of Consultees
- Appendix Two: Statement of Licensing Policy review – Table of Proposed Changes
- Appendix Three: Proposed Statement of Licensing Policy 2023 - 2028
- Appendix Four: Printout of Consultation Document and Survey Questions
- Appendix Five: Online Consultation Report (redacted)
- Appendix Six: Written consultation responses (redacted)
- Appendix Seven: Equalities Impact Checklist

## **Background Documents – Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2012**

None

### **Officer contact details for documents:**

N/A