



Report of Joanne Waller, Head of Community Protection

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Electoral division(s) affected: Countywide

Purpose of the Report

- 1 This report seeks Council's approval of the revised Statement of Licensing Policy, following the recommendation of the General Licensing and Registration Committee.

Executive summary

- 2 Following public consultation, the current statement of licensing policy was revised. Where it was possible and appropriate to do so, the suggestions and recommendations of respondents were incorporated into the revised statement.
- 3 The policy has been reformatted and updated creating a policy document which provides applicants, licensees, Members, officers and the public with much more guidance, information, recommendations and direction in relation to licensing matters.
- 4 The policy changes aim to improve the quality of applications by assisting applicants to clearly and comprehensively demonstrate how they can promote the licensing objectives through their licensed business activities. They will also help responsible authorities and other persons when considering and assessing proposed and existing licensed premises under the 2003 Act.
- 5 On 7th October 2019 the revised policy was considered and accepted by the General Licensing and Registration Committee for recommendation to Council for adoption. Members of the Council are now asked to consider and adopt this newly revised licensing policy.

Recommendation(s)

- 6 Members of Council consider the current policy, the comments received during consultation and the revised statement of policy.
- 7 Members of Council approve and adopt the revised statement of policy.

Background

- 8 The Licensing Act 2003 requires licensing authorities to prepare and publish a statement of their licensing policy at least every five years. The policy must be kept under review and the licensing authority may make such revisions to it as it considers appropriate. Durham County Council adopted the current Statement of Licensing Policy on 29th October 2014. It must be revised, adopted and published by Wednesday 30th October 2019.
- 9 The need to revise the current policy stems from the statutory timetable set in legislation. The current policy was deemed as being fit for its purpose however, it was recognised that improvements could still be made to the document and the review presents an opportunity to make several appropriate and desirable changes to the existing statement of policy.
- 10 The Statement of Licensing Policy fulfils two principal purposes; firstly, it provides advice to businesses and the public on the Council's overall position concerning the Licensing Act 2003. Secondly, it provides a decision-making framework for the Council via its Licensing Committee to exercise its functions under the Act. As such the policy must balance the legitimate needs of businesses and demand for leisure and cultural activities alongside the need to protect those adversely affected by activities.
- 11 Failure to achieve the correct balance could lead to a policy being either overly prescriptive or open to challenge or alternatively ineffective in the protection of residents through a failure to promote the licensing objectives effectively.
- 12 The Policy seeks to promote the following four licensing objectives:
- the prevention of crime and disorder
 - public safety
 - the prevention of public nuisance; and
 - the protection of children from harm.
- 13 These are the only licensing objectives and no other objectives exist for England and Wales.

Statutory consultation

- 14 Prior to consultation, the Consultation Officers Group (COG) process was engaged. In accordance with the Government's Code of Practice on Consultation, 12 weeks was allocated for the consultation and for the return of

responses. In addition to direct communications on the subject, the review was also advertised and publicised on the Council website.

- 15 A presentation for Members on Licensing Policy development took place in April, to which all members of the GLRC were invited, and officers also met with various representatives of the responsible authorities and Parish Councillors during the consultation period.
- 16 The consultation ran between Monday 11th February and Friday 3rd May 2019. In addition to the named statutory consultees, many other individuals, agencies and organisations considered to be affected by the policy were identified and their comments invited. The list of consultees that were communicated with directly in connection with this policy review are shown in Appendix 2.
- 17 All the responses received during the 12-week period were recorded. The Police submitted two responses after the close of the consultation. The late responses provided by the Police were accepted and added to the other responses received.
- 18 In total the Council received 28 separate responses. The respondents, their responses and associated commentary and information provided by the Licensing Manager are shown in Appendix 3. Officer comments relate to the relevance and appropriateness of the responses in terms of policy inclusion. Some of the responses or parts of the responses were relevant and appropriate for policy development.
- 19 To create the revised policy, all recorded responses were considered and the merits of each were judged against the legislation and statutory guidance.
- 20 Information that was relevant for policy development was identified. From the relevant information, that which was useful for policy development was identified highlighting practical, realistic suggestions, recommendations; material that could make a positive contribution to future policy.
- 21 The current policy and the salient responses were compared with a sample of several policy statements published by other licensing authorities.
- 22 Licensing Services also utilised the services of an undergraduate intern from Durham University under a formal 9-week working agreement. The intern produced a report '*Revising the Durham County Council Licensing Policy: An Investigation into Good Practice associated with the Promotion of the Four Licensing Objectives*'. This report is shown as

appendix 4 and involved comparing DCC's policy with other licensing authorities' policies.

- 23 In choosing the councils, 6 notable characteristics were selected and licensing authorities which were like Durham County for each of the 6 features were chosen. These characteristics were: local authority type, heritage, population size, student population, crime rate, and proximity.
- 24 The information and results of this external study were also considered and helped to shape the content and layout of the revised draft policy.

Categories of review responses

- 25 Of the responses that were relevant, those that provided tangible, identifiable suggestions or specific issues for consideration can be grouped under the following headings:
- **The advertising and publication of licensing applications** – responses commenting on current arrangements and calling for improved methods of alerting the public to applications under the Act. (Mostly in relation to Durham City licensed premises)
 - **Licensing hours** – responses about current policy and the existing 'framework hours' and calling for a less permissive, more restrictive approach, shorter licensing hours, a stricter implementation of framework hours and efforts to reign-in existing terminal hours. (Mostly in relation to Durham City licensed premises)
 - **Controls over the number of licensed premises in Durham City** – responses on current policy and highlighting the number of licensed premises, the number of applications and the effects of both on the promotion of the licensing objectives in Durham City. Calls for a Cumulative Impact Policy (CIP) or special policy and a late-night levy (LNL) to deter late opening; that respondents believed would address several problems they identified as being associated with too many licensed premises.

Main changes to current policy

- 26 During the consultation phase leading up to the revised statement of policy there were calls from the Durham City MP and from the City of Durham Parish Council for a special policy or CIP for Durham City. To find out whether a CIP is necessary the council are carrying out a

cumulative impact assessment (CIA). That process will take several months to complete.

- 27 As a result, this (possibly interim) revised policy statement will have to be reported to Council in time for adoption by the end of October. However, alongside this reporting process a CIA is being undertaken. It is not possible to complete the CIA in time to inform the revised policy by October 2019. If the result of the CIA is that a CIP is needed for Durham City, we will then modify this revised version of the policy and take it back to Council to incorporate a CIP.
- 28 Irrespective of whether the need for a CIP is identified by the CIA, it is anticipated that the CIA will assist the council and others by highlighting any problems and issues of concern within the City, thereby aiding the identification of possible solutions or remedial steps that could be applied.
- 29 Before turning to those matters that have been included in the revised statement of policy, in addition to the CIP, the situation regarding the framework hours must also be subject to further consideration before any recommendations may be made to GLRC and Council.
- 30 Although criticisms about the current framework hours were received, few respondents provided any alternative suggestions. The proposals on terminal hours for licensed premises that were received varied
- 31 Of the responses that were received from responsible authorities, the subject of terminal trading hours for licensed premises was not raised.
- 32 In the absence of any comments from those officers and organisations that have responsibilities and influence in connection with the investigation and control of public nuisance and crime and disorder, it is difficult to make a case for changes to the current framework hours.
- 33 Members of the General Licensing Committee were asked to consider the existing framework hours. They found them to be appropriate and made no changes to them.
- 34 The following revisions have been included in the updated policy document:
 - (i) Changes to layout, format, syntax – to improve the look and structure of the policy for clarity and readability purposes

- (ii) Information concerning possible future changes resulting from the CIA
- (iii) Addition of a version history table
- (iv) Expanded content table and guide
- (v) Expanded introductions to and explanations of the Licensing Act 2003 and the council's role within that legislative framework. Increased prominence of the four licensing objectives which form the bedrock of the licensing function, our main aims and enhanced description of the County of Durham in context.
- (vi) Greater explanation in connection with the way in which we implement licensing policy in the County, providing important information about the context in which the policy sits and how it is used for the administration of the licensing function and its relationship to other strategic, policy and regulatory regimes.
- (vii) Clearer descriptions of the application of the licensing policy highlighting several licensing principles, practices and processes that support and underpin the licensing function of the council.
- (viii) Guidance on the application and operation of the policy in practice detailing the types and use of licensing conditions that may be attached to licences to control the use of premises where licensable activities take place, thereby safeguarding and promoting the licensing objectives.
- (ix) Increased clarity on the means used by the council to promote the four licensing objectives with some reference to specific circumstances and situations such as licensed premises operating in and close to sensitive areas.
- (x) Improved information about the practical application of licensing looking at the methods and standards of operating licensed premises that may be used to promote the objectives and to encourage excellent standards of management by licence and certificate holders.
- (xi) Greater focus on each of the licensing objectives in turn, detailing with the use of examples how applicants and licence holders may practically demonstrate their understanding of and commitment to the promotion of the objectives at their premises.
- (xii) Clear descriptions and explanations of what the council expects, recommends, requires, considers and encourages and why.
- (xiii) Enhanced information on the purpose and use of the policy including detailed explanations of the use and purpose of operating schedules, licence conditions, GDPR, self-assessment activities and risk assessments, enforcement and monitoring activities and compliance

- (xiv) New information and guidance on the licensing of large-scale events, single-use plastics at licensed premises, counter terrorism complaints and appeals
- (xv) Updated information concerning responsible authorities contact details
- (xvi) More background information and data on public health matters associated with alcohol consumption in the County
- (xvii) Updated guidance on children in licensed premises
- (xviii) Enhanced glossary information
- (xix) More information for residents and other persons explaining how residents and businesses can have their say in respect of licence applications and the operation of licensed premises in their area
- (xx) New appendix with suggestions, recommendations and practical examples of what may be included in applications and operating schedules to ensure that the licensing objectives are promoted
- (xxi) Greater clarity in connection with planning and development control issues and the links between planning and licensing regimes.
- (xxii) New appendix showing links to other important and relevant strategies and policies that may be of help/interest and contain further details of schemes available in Durham which applicants and licensees can participate in to assist in carrying out the objectives
- (xxiii) Policy to refuse to grant licenses to sell alcohol for late-night takeaway premises

35 A copy of the draft revised policy that includes all the proposed revisions is attached in Appendix 5.

Options

- 35 Following consideration of the information presented in the table of responses and the current policy statement, Council may give support to the revised statement of policy and the associated proposals as they have been presented and agree to adopt the policy unchanged.
- 36 Council may give support to some of the proposals and reject others with reasons. This may therefore necessitate further revision prior to adoption.
- 37 Council may reject the revised statement and associated policy proposals in full. Under these circumstances, unless an alternative policy was put forward, the current policy would require re-adoption.

Main implications

- 38 Supporting the proposals in full. This will allow the process to continue with the revised policy adopted by Council on October 23rd, 2019.
- 39 Supporting the proposed revision of the policy statement in part. This option, with the less-than-full support being offered, depending on the exact nature and extent of any required changes, may necessitate modifications to be made to the draft policy prior to re-submission to the Council.
- 40 Rejection of the proposal. This would require a detailed explanation of the committee's decision to withhold support for revised policy statement. Because of the timescales involved, rejection of the proposals would likely result in a failure to produce a revised statement of policy for adoption by Council by the prescribed date. Under these circumstances the existing policy would be presented to Council for re-adoption.

Conclusion

- 41 The current licensing policy requires revision and re-adoption by the end of October 2019. The current policy has been consulted on in accordance with statutory requirements and all the responses received have been considered.
- 42 Relevant information, suggestions and recommendations have been used together with information from other sources to draft a revised licensing policy. This policy together with the consultation response information was presented for consideration by Members of the GLRC. Following the recommendation of GLRC, this policy is now presented to Council for adoption.
- 43 Some matters raised during the consultation period have necessitated the carrying out of a CIA. The outcome of the CIA may lead to further revision of the policy following its adoption by Council, however that is not a certainty.

Background papers

- Durham County Council's Statement of Licensing Policy
- Licensing Act 2003
- Revised Guidance issued under Section 182 of the Licensing Act 2003

Other useful documents

- None

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Appendix 1: Implications

Legal Implications

Failure to adopt a revised statement of licensing policy by 29th October 2019 would mean that DCC has not complied with the requirements of the Licensing Act 2003 in connection with the revision, adoption and publication of licensing policies. Under such circumstances, licensing activities subject to the provisions of Act performed by the Council in the absence of such a policy may be unlawful or subject to legal challenge. This report and associated appendices have been considered by Legal and Democratic Services

Finance

The costs of consultation and publication of the revised policy will be met from existing budgets.

Consultation

The consultation was undertaken following COG processes and procedures and was carried out in accordance with statutory guidance over a 12-week period.

Equality and Diversity / Public Sector Equality Duty

There are no known equality or diversity implications

Human Rights

There are no known human rights implications

Climate Change

There are no known climate change implications

Crime and Disorder

The Council's licensing policy forms a central part of the control and regulation of the evening and night time economies. As such, it can be viewed as having a pivotal role in the prevention of alcohol related crime and disorder. The effective control of licensed premises via appropriate conditions or restrictions on licences can significantly reduce the potential for alcohol related issues or mitigate their effects. This coupled with monitoring and enforcement and the appropriate use of the review process can significantly contribute towards crime reduction and an increase in public reassurance.

Staffing

There are no staffing implications

Accommodation

There are no accommodation implications.

Risk

Failure to follow the statutory process could result in challenge and reputational damage. Following adoption, the policy may be subject to judicial review and legal challenge

Procurement

There are no procurement implications

Appendix 2: List of consultees

- Responsible Authorities for County Durham (the relevant licensing authority, the chief officer of police; the local fire and rescue authority; the relevant enforcing authority under the Health and Safety at Work etc. Act 1974; the local authority with responsibility for environmental health; the local planning authority; a body that represents those who are responsible for, or interested in, matters relating to the protection of children from harm; each local authority's Director of Public Health (DPH); the local weights and measures authority (trading standards); Home Office Immigration Enforcement (on behalf of the Secretary of State)
- All persons / bodies throughout the County holding premises licences or Club Premises Certificates including pubs, clubs, off licences, supermarkets, takeaways, restaurants and mobile food vendors
- Persons / bodies representative of local holders of Personal Licences
- Persons / bodies representative of businesses and residents in the County
- Safeguarding Children Board
- All Elected Members of Durham County Council
- Clerks of Town and Parish Councils throughout Durham County
- Safe Durham Partnership
- Durham CIU
- The British Beer and Pub Association
- The Federation of Licensed Victuallers
- British Institute of Inn Keeping (BIIB)
- Alcoholics Anonymous
- The Association of Licensed Multiple Retailers
- Equity
- North East Musicians Union
- Global Online Assessment for Learning (GOAL)
- Security Industry Authority
- Local MP's and MEP's
- Area Action Partnerships
- Citizens Panels
- County Durham Area Taxi Working Groups
- Safety Advisory Groups
- Business Support Managers
- Town Centre Managers
- Residents Associations
- Disability Groups
- North East Chamber of Commerce
- Night Time Economy Managers
- Local Multi Agency Problem Solving Groups
- Streetscene
- Community Safety Team
- Anti-Social Behaviour Team
- BALANCE