

County Council

25 September 2024

**Review of the Council's Statement of
Licensing Policy**



**Report of Corporate Management Team
Alan Patrickson, Corporate Director of Neighbourhoods and
Climate Change**

**Councillor John Shuttleworth Cabinet Portfolio Member for
Neighbourhoods and Local Partnerships**

Electoral division(s) affected:

Countywide

Purpose of the Report

- 1 To present the revised Statement of Licensing Policy to council and to seek its adoption.

Executive Summary

- 2 The Licensing Act 2003 requires local authorities to publish a Statement of Licensing Policy every five years and as the current policy was published in October 2019, a new policy will be required no later than October 2024.
- 3 A public consultation exercise has been carried out to gain views on whether the current policy should be re-adopted for another five years. A number of responses were received and, where considered appropriate, these have been incorporated into the new draft policy which is attached as Appendix 2.
- 4 There are no significant changes proposed in the new policy other than minor amendments and the provision of additional guidance as outlined in paragraph 21 within this report.
- 5 The proposed draft policy was taken to the Statutory Licensing Committee for consideration on 15 July 2024 and was endorsed for recommendation to Council. Final approval and adoption of a Statement of Licensing Policy is a non-executive function.

- 6 As part of the policy consultation, some organisations in the City of Durham called for DCC to introduce a late-night levy (LNL) and consider the introduction of a cumulative impact policy (CIP).
- 7 The Statutory Licensing Committee determined that consideration of both the LNL and the CIP should take place at a later date and should not form part of the proposed draft.
- 8 This approach has also been supported by the Police & Crime Commissioner's Office which is a statutory consultee for issues relating to both the Levy and Cumulative Impact Policies.
- 9 Should sufficient evidence be obtained that supports the adoption of a CIP and/or a LNL, this could be considered and potentially incorporated into the main policy at a later date.

Recommendation(s)

- 10 County Council is recommended to:
 - (a) agree and adopt the revised Statement of Licensing Policy as contained in Appendix 2.

Background

- 11 The Licensing Act 2003 requires that licensing authorities prepare and publish a Statement of Licensing Policy at least every five years. Durham County Council adopted its current policy in October 2019. A replacement policy must be published no later than Thursday 24 October 2024.
- 12 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 Statutory 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.
- 13 Failure to achieve the correct balance could lead to a policy being either overly prescriptive and open to challenge or alternatively ineffective in the protection of residents through a failure to promote the licensing objectives effectively.
- 14 The policy seeks to promote the following four statutory 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 Consultation

- 15 A 12-week public consultation exercise, undertaken with the assistance of the Consultation Officers Group (COG), has been carried out to gain views on whether the current policy should be re-adopted for another five years. In addition to direct communications on the subject, the review was also advertised and publicised on the Council website.
- 16 A discussion seminar with Members on Licensing Policy development took place in April, to which all members of the Licensing Committee were invited, and officers also met with various representatives of the responsible authorities and Durham City Parish Councillors during the consultation period.
- 17 The consultation ran between Monday 12 February and ended on Friday 3 May 2024. 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 3.

- 18 In total the Council received 66 responses. Seven responses were received directly by DCC Licensing Services, and 59 respondents completed an on-line Snap Chat questionnaire.
- 19 To create the revised policy, all recorded responses were considered and the merits of each were judged against the legislation and statutory guidance. Issues that were included are detailed in paragraph 21 below.

Main proposed changes to current policy

- 20 Most respondents were supportive of the current framework hours contained within the policy and no alternative proposals on this subject were received. No respondents provided any alternative suggestions and therefore it is proposed that the current recommendations about terminal hours for licensed premises are maintained.
- 21 The following matters have been included in the revised draft policy:
 - (i) Changes to layout, format, syntax – to improve the look and structure of the policy for clarity and readability purposes
 - (ii) Addition of a version history table
 - (iii) Expanded content table and guide
 - (iv) 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. New information concerning street drinkers and preventing thefts from licensed premises is included in chapter 5 '*How the council promotes the licensing objectives*'.
 - (v) More useful 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. New information and guidance about the prevention and reporting incidents of sexual harassment, misconduct and gender-based violence at licensed premises and drink and needle spiking is presented in chapter 6. '*Standards of management and operating practice*'.
 - (vi) Guidance on the use of '*bodycams*' by door staff has been added.
 - (vii) 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.
- (viii) Clearer descriptions and explanations of what the council expects, recommends, requires, considers, and encourages and why.
 - (ix) Updated information concerning responsible authorities contact details.
 - (x) Updated background information and data on public health matters associated with alcohol consumption in the County.
 - (xi) Greater clarity in connection with planning and development control issues and the links between planning and licensing regimes.
 - (xii) New 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.

Late Night Levy and Cumulative Impact

- 22 In addition to the above, during the consultation exercise some organisations in the City of Durham called for DCC to introduce a late-night levy (LNL) and to carry out a cumulative impact assessment (CIA), with a view to the introduction of a cumulative impact policy (CIP).
- 23 LNL's are a discretionary tool that licensing authorities can adopt which requires licensees in specified areas to pay a surcharge to the council, in addition to their licence fee, which can be used to cover additional expenses associated with the night time economy. CIPs are a discretionary tool that licensing authorities can adopt to make it more difficult (but not impossible) for new licences to be granted in specified areas.

Main Implications

- 24 When considering whether a LNL or CIP should be adopted, the council must gather sufficient robust evidence to justify the measures as legal challenges from the licensing trade would be highly likely.
- 25 This will require significant assistance from a number of agencies (particularly the Police) and council departments and will take too long to fit within the October deadline for adoption of a new policy.
- 26 The Statutory Licensing Committee determined that consideration of these should take place at a later date and should not form part of the proposed draft. This approach was also supported by the Police &

Crime Commissioner's Office which is a statutory consultee for issues relating to both the Levy and Cumulative Impact Policies. This decision was taken on the basis that consideration of a Cumulative Impact Policy had taken place around five years ago, at significant expense, and which had found there was no evidential base that would defend a legal challenge if such a scheme was introduced.

- 27 Furthermore, as there is still development taking place in new night time economy areas within the city, such as Milburngate and 'Stack', it was thought that a review may be more informative, and relevant, if it took place once these new developments were in operation.
- 28 Should sufficient evidence be obtained that supports the adoption of a CIP and/or a LNL, this could be considered and potentially incorporated into the main policy at a later date.

Conclusion

- 29 The current licensing policy requires revision and re-adoption by the 24 October 2024. The current policy has been consulted on in accordance with statutory requirements and all the responses received have been considered.
- 30 Relevant information, suggestions and recommendations have been used together with information from other sources to draft a revised licensing policy as shown in Appendix 2.
- 31 Supporting the proposal that consideration of the LNL and CIP be undertaken at a later date will allow for the main policy to be considered and adopted before the statutory deadline of October 2024.

Background papers

- Durham County Council's Statement of Licensing Policy [Licensing Act 2003 Statement of Licensing Policy 2019 to 2024 \(durham.gov.uk\)](https://www.durham.gov.uk/legislation/2019-2024/2019-2024-statement-of-licensing-policy)
- Licensing Act 2003 [Licensing Act 2003 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2003/30/contents)
- Revised Guidance issued under Section 182 of the Licensing Act https://assets.publishing.service.gov.uk/media/65a8f578ed27ca000d27b1f9/Revised_guidance_issued_under_section_182_of_the_Licensing_Act_2003_-_December_2023.pdf

Other useful documents

- None

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Appendix 1: Implications

Legal Implications

Failure to adopt a revised statement of licensing policy by 24 October 2024 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

An Equality Impacts Assessment screening has demonstrated that the policy / revisions to the policy have no impact on people with protected characteristics.

Climate Change

There are no climate change implications.

Human Rights

There are no known human rights 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: Draft Statement of Licensing Policy

Attached as separate document

Appendix 3: List of consultees

Attached as separate document.