

North Tyneside Council Report to Council Date: 23 January 2014

ITEM 8

Title: Statement of
Licensing Policy 2014-
2019

Portfolio(s): Housing and Environment

Cabinet Member(s): Councillor John
Harrison

Report from: Environment and Leisure

Report Author: Phil Scott, (Tel: 0191 6437295)
Head of Environment and Leisure

Wards affected: All

PART 1

1.1 Purpose:

This Report has been prepared following a recent review of the Authority's Statement of Licensing Policy. The Authority (as a Licensing Authority) is obliged by virtue of section 5 of the Licensing Act 2003 (the Act) to have a Statement of Licensing Policy and to keep the Policy under review. Recent important legislative changes and the requirement to ensure that the Policy broadly reflects the Statutory Guidance issued by Government has led the Policy to be reviewed and updated. The Policy will provide guidance as to how the Authority as Licensing Authority will exercise its functions under the Act. The Report outlines the final proposals to Council in relation to the Policy. The Authority's first Statement of Licensing Policy took effect on 7 January 2005 and subsequent Policies then took effect on 7 January 2008 and 7 January 2011. This third Statement of Licensing Policy if adopted by Council will come into effect on 23 January 2014.

1.2 Recommendation(s):

It is recommended that Council:-

- (a) Approve the draft Statement of Licensing Policy appearing at **Appendix 1** including the proposed delegations at Appendix 1 of the Policy document; and
- (b) Approve the Cumulative Impact Policy for the Whitley Bay area as delineated in the map appended to the Policy; and
- (c) Instruct officers to undertake further work in relation to the Tynemouth area and consult as appropriate on whether or not there should be a Cumulative Impact Policy introduced in that area in due course.

1.3 Forward plan:

This item appears on the current Forward Plan for the period 4 December 2013 to 31 March 2014.

1.4 Council plan and policy framework:

This report has no direct link to the planned priorities.

1.5 Information:

The Licensing Act 2003 received Royal Assent on 10 July 2003 and places the responsibility for licensing the sale and supply of alcohol, the provision of regulated entertainment (previously referred to as public entertainment), and the provision of late night refreshment with the Authority as a Licensing Authority.

Any licensing function undertaken by the Authority is the responsibility of Council, including the approval of the Statement of Licensing Policy.

In carrying out its licensing functions under the Act, the Council, through its Licensing Committee, Sub-Committees or officers must do so with a view to promoting the four licensing objectives: -

- a) The prevention of crime and disorder;
- b) The promotion of public safety;
- c) The prevention of public nuisance; and
- d) The protection of children from harm

Section 5 of the Act requires the Authority to prepare and publish a Statement of Licensing Policy every five years after undertaking the necessary consultation. There is however a requirement for the Authority to keep the Policy under review and make revisions to it when considered appropriate. With this in mind, it was considered appropriate to review the Policy due to numerous important legislative changes to the Act that need to be reflected in the Policy. A log of amendments made to the draft Policy is attached at Appendix 3 to this report.

Whenever the Licensing Committee, a Licensing Sub-Committee or officers are exercising a function under the Act, they **must** have regard not only to the Statutory Guidance issued by the Secretary of State but also to the Authority's Statement of Licensing Policy.

The Policy was prepared having regard to the Secretary of States guidance and was the subject of a 12 week period of consultation in line with the revised Cabinet Office guidance on public consultations. As is required by the Act, the consultees have included the Chief Officer of Police, the Fire and Rescue Authority, Local Health Board, representatives, and holders of Premises Licences and Club Premises Certificates issued by the Authority, representatives of personal licence holders, representatives of residents and businesses in the Borough as well as all MPs, MEPs and Councillors. There have been articles in the local press and the Authority's "Our North Tyneside" publication stating that the Policy was being consulted on and inviting comments on the Policy. The draft Policy was also available for inspection at libraries and on the Authority's website during the consultation period. A list of the consultees is appended to the Policy at Appendix 2.

A cross party Member Steering Group was formed to assist officers in the preparation of the draft Policy and to consider the 16 responses received to the consultation. Each comment has been recorded and considered. **Appendix 2** to this Report is a schedule of the comments received, the Steering Group's observations on each comment and the reason why the comment or suggested amendment has, or has not, been included in the Policy.

1.6 Decision options:

The following decision options are available for consideration by Council:

Option 1

To adopt the draft Statement of Licensing Policy including the delegations contained therein and to instruct Officers to undertake further work in the Tynemouth area and to consult as appropriate on whether or not there should be a Cumulative Impact Policy introduced in that area in due course.

Option 2

To adopt the draft Statement of Licensing Policy but with amendments to it as Council sees fit.

Option 3

To refuse to adopt the Policy.

1.7 Reasons for recommended option:

Option 1 is recommended because the draft Statement of Licensing Policy has been fully consulted upon. By adopting the policy the Authority will be in a position to publish the same and ensure that the Authority as Licensing Authority has a policy in force which reflects the updated legislation.

During the period of consultation responses received from the residents of Tynemouth showed support for a Cumulative Impact Policy to be introduced in the Tynemouth area. It is important to note that Northumbria Police consider that such a Policy is unnecessary therefore it may be considered appropriate to instruct officers to consult on the adoption of a Cumulative Impact Policy for the Tynemouth area. By consulting on the possibility of a Cumulative Impact Policy this will allow evidence to be collected regarding the need for such a policy. As the consultation is on a specific issue, it may not be necessary for the consultation to last for 12 weeks and could be for a shorter period of time such as a 6 week consultation process. The effect of a Cumulative Impact Policy will mean that there will be a presumption against granting any new licences or substantially varying existing licences in the area in question. Such a Policy does not however prevent Applications for a licence/certificate or variation of a licence/certificate from being made and it may be that an Applicant could rebut the presumption against granting a Licence. Such a Policy is therefore not a prohibition on further licences/certificates in Tynemouth from being granted. An Applicant will however be aware that there will be a presumption against granting their Application.

Option 2 - If Council decides that the Statement of Licensing Policy should be amended, then if the proposed amendments are fundamental changes then it may be necessary to consult on those changes before they can be introduced into the Policy.

Option 3 - If the Policy is not approved by Council then the existing Policy will continue to apply but will not reflect some of the changes that have been introduced to alcohol and entertainment Licensing by virtue of amendments to the Licensing Act 2003 and certain parts will have to be disregarded because of the legislative changes.

1.8 Appendices:

Appendix 1: Draft Statement of Licensing Policy

Appendix 2: Schedule of Responses to Consultation and Steering Group comments on the Consultation Responses.

Appendix 3: Summary of Amendments

1.9 Contact officers:

Colin MacDonald – Senior Client Manager, Technical Services. Tel no: 0191 6436620

Joanne Lee – Public Protection Manager. Tel no: 0191 6436901

Alan Burnett – Principal Officer, Trading Standards and Licensing. Tel no: 0191 6436621

John Barton, Lawyer. Tel no: 0191 6435354

Alison Campbell, Finance Business Manager. Tel no: 0191 6437038

1.10 Background information:

1. Licensing Act 2003 <http://www.legislation.gov.uk/ukpga/2003/17/contents>
2. Chapter 13 – ‘Statements of Licensing Policy’ of the Secretary of States Guidance issued under Section 182 Licensing Act 2003
<https://www.gov.uk/government/publications/licensing-act-2003-amended-guidance-issued-under-section-182>
3. Consultation responses received.

PART 2 – COMPLIANCE WITH PRINCIPLES OF DECISION MAKING

2.1 Finance and other resources

The costs of preparing the Statement of Licensing Policy and the associated consultation arrangements can be met from the Licensing revenue budget.

2.2 Legal

The Authority by virtue of section 5 of the Licensing Act 2003 has a duty to publish a Statement of Licensing Policy at least every 5 years. The Authority as it is required to do has undertaken statutory consultation on its revised draft Policy. This consultation has been extensive and has taken place over a 12 week period. The Statement of Licensing Policy is a statutory requirement and without such a Policy the Authority as Licensing Authority could not undertake its statutory duties under the 2003 Act. There is a need for the Policy to reflect the current legislation and any significant changes in legislation should be reflected in the Policy so that it remains up to date. It is for this reason that the Authority is required to keep the Policy under review.

The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 are clear that any licensing function exercised under the 2003 Act, including the determination and publication of a Licensing Policy, is a Council function.

2.3 Consultation/community engagement

There has been extensive consultation over a 12-week period as already outlined. There were 16 responses all of which have been properly considered.

2.4 Human rights

The decisions made by the Licensing Committee/Sub-Committees and officers can have implications under the Human Rights Act 1998. Decisions of the Authority as Licensing Authority could be said to interfere with the property of the licence holder (a licence, or its goodwill, is classed as property) and also impact on the rights of parties to a family and private life. However, these rights are qualified rights and those rights can be interfered with if such interference is permitted in law. Any party who wishes to make representations in relation to a licensing matter has the right to express their views without interference and any person appearing before a Committee/Sub-Committee will be afforded an opportunity to a fair hearing.

2.5 Equalities and diversity

All parties involved in the licensing procedure will be treated with respect and all parties will be treated as equals by the Authority. All parties who have responded to the consultation process will also be treated equally. No decision taken under the Licensing Act 2003 should in any way discriminate against any person or group in society.

2.6 Risk management

Risks associated with the service are managed via the Operational Risk Management Group.

2.7 Crime and disorder

The prevention of crime and disorder is one of the licensing objectives that may be engaged when dealing with a licensing application. It is a requirement under the Licensing Act 2003 and subordinate Regulations that the Police are forwarded a copy of an application for a licence or certificate so that the Police are able to scrutinise the application and make representations in relation to the application insofar as the prevention of crime and disorder licensing objective is concerned.

2.8 Environment and sustainability

There are no environment and sustainability implications arising directly from this report.

PART 3 - SIGN OFF

- Chief Executive X
- Deputy Chief Executive X
- Mayor/Cabinet Member(s) X
- Chief Finance Officer X
- Monitoring Officer X
- Strategic Manager Policy, Partnerships, Performance and Communication X