

LICENSING AND REGISTRATION COMMITTEE

3 NOVEMBER 2022

REPORT OF THE DEPUTY CHIEF EXECUTIVE

A.2 REVIEW OF THE COUNCIL'S LICENSING ACT 2003 STATEMENT OF LICENSING POLICY

(report prepared by Michael Cook & Keith Simmons)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

This report submits for the Committee's consideration a proposed revised Statement of Licensing Policy (at Appendix A to this report – with tracked changes). The proposed revised Statement is submitted following a recent 28-day period of consultation on a draft revised Statement. Essex Police (on behalf of the Chief Constable) made comments during the consultation period. These are set out below in the 'Current Position' section of the report. The submitted revised Statement of Licensing Policy reflects changes based on feedback from the Committee at its meeting on 21 July and the submission from Essex Police.

At present, the Council does not have a valid Statement of Licensing Policy at the term of its last Statement was expired on 9 January 2022.

EXECUTIVE SUMMARY

The Council is required to determine its Statement of Licensing Policy every five years in accordance with the Section 5 of the Licensing Act 2003 (as amended by the Police Reform and Social Responsibility Act 2011 and by the Policing and Crime Act 2017) ('the 2003 Act'). The Council last adopted a Statement of Licensing Policy in 2016 and was for the period 2016-21. As such, to comply with its legal duty under Section 5 of the 2003 Act, the Council is seeking to develop and adopt a new Statement as soon as practicable.

The 2003 Act states that a Council's Statement of Licensing Policy will set out the Council's policy with respect to the exercise of its licensing functions within the 2003 Act. Before determining its Statement of Licensing Policy, the Licensing Authority must consult with those set out in the 2003 Act. The Committee, at its meeting of the 21 July 2022 (Minute 124 refers), authorised the necessary consultation and a draft revised Statement for that purpose. The Committee provided feedback on the draft revised Statement and, during the consultation period, comments were received from Essex Police (on behalf of the Chief Constable). The submitted proposed revised Statement of Licensing Policy seeks to reflect the feedback and comments referred to. The Committee is requested to consider the comments received from Essex Police and the proposed revised Statement of Licensing Policy submitted (at Appendix A to this report). The Appendix has tracked changes from the 2016 version of the Statement. The Essex Police comments are repeated in full in the 'Current position' section of this report. If satisfied, the Committee is invited to recommend the proposed revised Statement of Licensing Policy for adoption by Full Council at its meeting on 22 November 2022.

RECOMMENDATION(S)

It is recommended that the Committee:

- a) considers the outcome of the consultation undertaken on a revised Statement of Licensing Policy as set out in this report;**
- b) considers the report and, if satisfied, recommends to the Council that the revised Statement of Licensing Policy set out at Appendix A to this report be adopted for the period 2022-2027; and**
- c) recommends this final draft of the Policy to Council for adoption at its meeting on 22 November 2022.**

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

A licensing authority, such as this Council, must carry out its licensing functions under this 2003 Act with a view to promoting the licensing objectives. The licensing objectives in the 2003 Act are –

- (a) the prevention of crime and disorder;
- (b) public safety;
- (c) the prevention of public nuisance; and
- (d) the protection of children from harm.

In promoting the four licensing objectives, the Council (in its role as licensing authority) will also 'Deliver High Quality Services', assist in 'Building Sustainable Communities for the Future', have 'Strong Finances and Governance', support a 'Growing and Inclusive Economy' and provide 'Community Leadership through Partnerships'. These are the themes of the Council in its 2020-24 Corporate Plan.

FINANCE, OTHER RESOURCES AND RISK

Finance and other resources

The cost of administration in terms of production, consultation and publication of the Council's Statement of Licensing Policy will be met within the current service budget.

Risk

The Council's must review its Statement of Licensing Policy and have it adopted and published. The fact that the five year period of the 2016 Statement of Licensing Policy has expired is a significant risk to the Council as, by implication, it has not met its duty to determine a new Policy prior to (6 January) 2021. It therefore undermines the general duty of the Council in Section 4 of the 2003 Act which requires the Authority (in carrying out its licensing functions) to have regard to its Statement of Licensing Policy. Accordingly, to comply with its legal duty under Section 5 of the 2003 Act, the Council is seeking to develop and adopt a new Statement as soon as practicable. In addition, measures have been put in place to prevent a repetition of the position in five years' time.

LEGAL

Before determining its Statement of Licensing Policy, the Authority must consult with the following-

- (a) the chief officer of police for the authority's area,
- (b) the fire and rescue authority for that area,
- (ba) each Local Health Board for an area any part of which is in the authority's area,
- (bb) each local authority in England whose public health functions within the meaning of the National Health Service Act 2006 are exercisable in respect of an area any part of which is in the authority's area,
- (c) such persons as the licensing authority considers to be representative of holders of premises licences issued by that authority,
- (d) such persons as the licensing authority considers to be representative of holders of club premises certificates issued by that authority,
- (e) such persons as the licensing authority considers to be representative of holders of personal licences issued by that authority, and
- (f) such other persons as the licensing authority considers to be representative of businesses and residents in its area.

By implication, the Council must consider fully any representations received from those consulted before determining its next Statement of Licensing Policy. Following determination, the Council must publish its Statement.

By virtue of Section 7(2) of the 2003 Act, the function of approving a Statement of Licensing Policy cannot be delegated from the Council itself to a Committee, Sub-Committee or Officer of the Council. As such, this Committee, through the recommendations set out above is invited to recommend adoption of a revised Statement. In this way, the Council itself will be in a position to exercise the function reserved to it through Section 7(2).

In general, in relation to carrying out its licensing functions, a licensing authority such as this Council, must have regard to any guidance issued by the Secretary of State under section 182 of the 2003 Act. This general requirement also applies to the development and content of its Statement of Licensing Policy. The current guidance from the Secretary of State was issued with effect from 6 April 2018. This guidance is available here - [Secretary of State's Guidance under Section 182 of the 2003 Act](#).

The Guidance of the Secretary of State includes the following as Fundamental Principles for Councils, as licensing authorities, in relation to the content of the Statement of Licensing Policy for their respective areas:

“14.9 All statements of policy should begin by stating the four licensing objectives, which the licensing policy should promote. In determining its policy, a licensing authority must have regard to this Guidance and give appropriate weight to the views of consultees.

14.10 While statements of policy may set out a general approach to making licensing decisions, they must not ignore or be inconsistent with provisions in the 2003 Act. For example, a statement of policy must not undermine the right of any person to apply under the terms of the 2003 Act for a variety of permissions and to have any such application considered on its individual merits.

14.11 Similarly, no statement of policy should override the right of any person to make representations on an application or to seek a review of a licence or certificate where provision has been made for them to do so in the 2003 Act.

14.12 Statements of policies should make clear that:

- *licensing is about regulating licensable activities on licensed premises, by*

- qualifying clubs and at temporary events within the terms of the 2003 Act; and*
- *conditions attached to various authorisations will be focused on matters which are within the control of individual licence holders and others with relevant authorisations, i.e. the premises and its vicinity.*

14.13 A statement of policy should also make clear that licensing law is not the primary mechanism for the general control of nuisance and anti-social behaviour by individuals once they are away from the licensed premises and, therefore, beyond the direct control of the individual, club or business holding the licence, certificate or authorisation concerned. Nonetheless, it is a key aspect of such control and licensing law will always be part of a holistic approach to the management of the evening and night-time economy in town and city centres.”

OTHER IMPLICATIONS

Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.

Crime and Disorder / Equality and Diversity / Consultation/Public Engagement.

CRIME AND DISORDER

As set out earlier, two of the four licensing objectives under the 2003 Act are the Prevention of Crime and Disorder and the Prevention of Public Nuisance. The Council also has a duty under Section 17 of the Crime and Disorder Act 1998 to do all that it reasonably can to prevent crime and disorder in its area. The Council's Statement of Licensing Policy has been prepared with the intention to promote positively the four licensing objectives as a whole including the prevention of crime and disorder and the prevention of public nuisance in the District.

EQUALITY AND DIVERSITY

The Licensing Authority will have due regard to the public sector equality duty under the Equality Act 2010. Under this duty, the Authority (in the exercise of its functions) must have due regard to the need to:

- eliminate any form of unlawful discrimination (including direct or indirect discrimination, harassment, victimisation, and any other conduct prohibited under the Act)
- advance equality of opportunity between people who share a relevant characteristic and people who do not
- foster good relations between people who share a protected characteristic and people who do not

The Secretary of State's guidance under Section 182 of the 2003 Act provides as follows in respect of the Equality Act 2010:

“14.66 A statement of licensing policy should recognise that the Equality Act 2010 places a legal obligation on public authorities to have due regard to the need to eliminate unlawful discrimination, harassment and victimisation; to advance equality of opportunity; and to foster good relations, between persons with different protected characteristics. The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.”

AREA/WARDS AFFECTED

All

CONSULTATION

In addition to those the Authority must consult (referenced earlier in this report), the consultation also invited all Members of the Council, Town and Parish Council's, partnership and community groups, late night economy and business associations to comment on the draft policy. The consultation and draft policy have been available on the Council's web site for public comment from Friday 22 July 2022 to end of 18 August 2022. This was also advertised by public notice in the local press and at the Council offices with the public encouraged to actively participate in the review.

Further details of the consultation undertaken in relation to the Statement of Licensing Policy are provided in the 'Current Position' section below.

PART 3 – SUPPORTING INFORMATION

BACKGROUND

The Statement of Licensing Policy, under Section 5 of the 2003 Act, is intended to inform and guide applicants, licence holders and other interested parties such as Responsible Authorities, businesses, residents and Councillors as to how this Council (as the Licensing Authority under the 2003 Act) expects to administer applications submitted during the five years that the Policy is in force and how the Authority intends to promote the Licensing Objectives through its Policy.

At its meeting on 21 July 2022, this Committee approved undertaking the necessary steps to be undertaken to enable a proposed revised Statement of Licensing Policy to be submitted to this Committee for consideration for the period 2022-2027. This would then enable any recommendation for a revised Statement to be submitted to the Council meeting on 22 November 2022.

CURRENT POSITION

The Committee is invited to consider the content of this report and the proposed revised Statement of Licensing Policy set out at Appendix A. This section of the report sets out the steps taken since the meeting of the Committee on 21 July 2022; including the consultation undertaken in respect of a revised Statement.

Public Consultation on a revised Statement of Licensing Policy for the District commenced on 22 July 2022. A page was created for the consultation on the Council's website, a public notice was placed in the local Gazette (and this in turn was used on its website) on 28 July. In addition, the public notice was displayed outside of the front of the Town Hall and the Council's Offices at Pier Avenue, Clacton-on-Sea. Consultation responses were asked for by 18 August 2022.

The Chief Constable for Essex Police Area, Essex Fire and Rescue Authority, the Local Health Board for the area and Essex County Council (in respect of its public health functions) was consulted as prescribed in the 2003 Act. In addition, the Council's Planning Service and Environmental Health Service were consulted as were Essex County Council's Social Services (being the responsible authority for protection of children from harm) and Essex Trading Standards.

The Consultation also included:

- representatives of holders of premises licences locally - 100 premises licensees were written to and this number spanned pubs, off licences, late night refreshment premises and night time economy;
- representatives of holders of club premises certificates locally - 40 Club Premises Certificate Holders premises
- representatives of holders of personal licences locally - 100 Designated premises supervisors of premises;
- representatives of businesses and residents locally – Agents/Solicitors who act for licensees, all 48 District Councillors, all 27 Parish/Town Councils in the District, 245 licensed taxi drivers within the District and a range of partner organisations such as in health, universities and community groups (including Citizens Advice Tendring, Community Voluntary Services Tendring and AgeUK) and business organisations such as the Federation of Small Businesses and Local Business Associations for Clacton, Frinton and Manningtree.

One response was received to the consultation, which was from Essex Police (on behalf of the Chief Constable). This was received on 12 August 2022 and was as follows:

“The draft policy is endorsed with the following observations.

- 1. At the end of paragraph 1.2 – would it be possible to add something similar to “The Essex Police Licensing Team (details at Appendix C) particularly encourages pre-application dialogue with it and is prepared to suggest suitable conditions as part of an operating strategy”.*
- 2. At paragraph 1.18 mention is made of the Licensing Enforcement Group – a reference I am unfamiliar with. I understand this may be an internal council forum and so a different form of wording may be more appropriate (or an explanation provided).*
- 3. At paragraph 1.18 the text “their staff recognise the 9 September 2020 signs of child exploitations” appears – I am assuming that ‘9 September 2020’ should not be included in this wording?*
- 4. At paragraph 3.7 references are made to a TEN being granted and notification being made to the applicant after 3 days. Temporary Event Notices are however not granted; they are a notification which the legislation and guidance is required to acknowledge as soon as possible. Where representations are subsequently made counter notices should be issued and (in the case of standard TENs) a hearing arranged. This sentence may therefore require some rewording (or removal) to avoid confusion.*
- 5. At Appendix C – item 2. Can I ask that the contact details of Essex Police are slightly amended. If the e-mail address can be amended to licensing.applications@essex.police.uk instead of licensing.applications@essex.pnn.police.uk; all UK police forces have now moved away from the .pnn network.*
- 6. A general point – I wonder if it would assist if page numbers were added. Frequently at hearings, participants find it easier to locate specific items of text if a page number also exists.”*

At the Committee's meeting on 21 July, Councillors raised a number of matters in authorising the commencement of the process towards the adoption of a new Statement of Licensing Policy. These issues included the application of the EU Service Directive, misuse of illegal drugs and other substances, drink spiking awareness, temporary event notice acknowledgement, safety advisory group contact details, reference to of local pubwatch and modern day slavery, together with minor word changes within the policy.

In respect of point 6 of the Police comments above, page numbers will be used in the final published version of the Statement of Licensing Policy.

The proposed revised Statement of Licensing Policy set out at Appendix A seeks to reflect the above consultation response that have been received. The Committee is invited to consider it and, if appropriate, agree a final version to be recommended to Council for adoption at its meeting on 22 November 2022.

The timetable shown below is submitted to the Committee by way of information on the remaining stages of the review of the Statement of Licensing Policy.

Key Event	Intended Outcome
Licensing & Registration Committee 08 September 2022 (revised to 3 November 2022)	Committee review outcome of consultation and agree final proposed content of statement and recommend it to Council.
Full Council - 20 September 2022 (revised to 22 November 2022)	Full Council considers the recommendation to adopt the revised statement.
Policy to be published on Council's web site following adoption by Full Council.	Policy published on website.
Public Notice of adoption to be published in local newspaper following Full Council adoption.	Public Notice published in newspaper.
Commencement of new policy	Policy runs from 2022 to 2027 (with any future administrative amendments as required by legislation).

In addition to the above comments, and in response to enquiries of Essex Police in respect of the concerns around drink spiking, the Police Licensing Manager advised on 15 August 2022:

"The Essex Police Crime Registrar has provided no specific guidance on drink spiking that I am aware of (other than what national crime codes should be used) – reported offences are recorded against a number of offence types by our crime recording bureau who are well trained in the national standards. Offences are recorded as either administering poison/noxious thing to injure/annoy or administering a substance with intent.

Essex Police analysts research this data to create a crime pattern analysis.

[...]"

The matter of drink spiking has recently been considered by Parliament's Home Affairs Committee, and a more recent still response from Government to that Committee's recommendations on the matter, For completeness, the links below are to the Home Affairs Committee's report and to the Government's response to it:

[House of Commons Home Affairs Committee report on Spiking with recommendations to government](#)

[Government Response to the Home Affairs Committee's Report and Recommendations on Spiking](#)

BACKGROUND PAPERS FOR THE DECISION

None

APPENDICES

APPENDIX A – Proposed Revised Statement of Licensing Policy 2022-2027 (with tracked changes to show the amendments from the 2016 version of the Statement).