

LICENSING AND SAFETY COMMITTEE

18 SEPTEMBER 2007

LICENSING ACT 2003- REVIEW OF COUNCIL STATEMENT OF LICENSING POLICY

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1. Introduction

- 1.1 The purpose of this report is to ask the Licensing and Safety Committee to consider whether the current Council Statement of Licensing Policy needs reviewing. This is a policy framework document. The committee's decision will then be forwarded to Business Support Overview and Scrutiny Committee on 16 October and for approval by Cabinet and Council on 6 November and 22 November 2007 respectively.

2. Decision Issues

- 2.1 The approval of any revisions to the Statement of Licensing Policy must be made by Council as this decision cannot be delegated.

3. Background

- 3.1 Under the Licensing Act 2003, the Council's current statement of licensing policy was approved by full council on 9 December 2004, took effect on 7 February 2005 and remains in force for a period of 3 years. Therefore a triennial review is required prior to February 2008.
- 3.2 A copy of the existing statement of licensing policy is attached at Appendix A.

4. Issues for Consideration

- 4.1 Periodic progress reports on the implementation of the Licensing Act 2003 and the effectiveness of the Council's Statement of Licensing policy, have been previously submitted to the committee, to keep Members informed and updated.
- 4.2 As previously reported, the current policy has served the Council well, providing a stable but flexible background to our consideration of licensing applications. This is illustrated by the fact the content of the policy has not been legally challenged. The Council has to date held 71 Licensing Hearing Panels to determine some 131 applications where relevant

representations were received. Only 4 appeals have been lodged against the panel decisions, 2 of which were resolved without the need for a court hearing and the other 2 were successfully defended by the Council. No costs have been awarded against the council in this connection.

4.3 Officers are of the view that the existing statement of licensing policy is working well in achieving the promotion of the 4 licensing objectives:-

- Prevention of crime and disorder
- Public safety
- Prevention of public nuisance
- Protection of children from harm

It has formed the background to all Licensing Act 2003 application decisions by both Members and officers. A key factor is that each application is considered on its merits. This has proved successful as the numbers of appeals lodged has been extremely low (see paragraph 4.2) and to date the content of the policy has not been challenged in the courts. Some Councils have adopted statements including special policies on “cumulative effect” which refers to the potential impact on the promotion of the licensing objectives of a significant number of licensed premises in one area. These policies have been successfully challenged by applicants in the courts.

5. Licensing Manager’s Comments

5.1 In light of the above information, officers would not recommend any revisions to the Statement of Licensing Policy at this time. The policy can of course be reviewed at any time in the future.

5.2 However, the committee’s approval is sought to the following minor amendments to the policy at Appendix A, by way of “housekeeping”:-

- Front cover – delete “as approved by the full council on 9 December 2004”. Reason – The policy will remain a current document unless and until it is revised.
- Paragraph 1.24 – amend the reference to paragraphs 3.13 – 3.28 of the Guidance to read paragraphs 13.24 – 13.39 of the guidance. Reason – to reflect the renumbered paragraphs of the revised Government guidance.
- Paragraph 1.29 – amend sentences 1 to 3 to read. “This policy statement will remain in force until revised by the Council. It will be subject to regular review by the Council’s Licensing Committee. This may lead to interim provisions”. Reason: The policy will now remain a current document unless it is revised.
- Paragraph 1.30 Amusement with Prize machines – delete this paragraph as now replaced by the Gambling Act 2005 provisions and the Council’s Statement of Gambling Policy.

- Paragraph 1.32 Transition period and “grandfather rights” - delete this paragraph as the Licensing Act 2003 came fully into force on 24 November 2005.
- Paragraph 2.1 replace reference to “Appendix D-H of the guidance” with “Annex D, of the guidance”. Reason – to reflect renumbered annex of the revised Government guidance.
- Paragraph 4.2 - delete paragraph commencing “In accordance with the Secretary of State’s guidance” and replace with new paragraph as follows:-
 “The Secretary of State’s revised guidance refers to the Regulatory Reform (Fire Safety) Order 2005 whereby any fire certificate previously issued by the Fire Authority under the Fire Precautions Act 1971 will have ceased to have effect. “Safe capacities” should only be imposed where necessary for the promotion of public safety or the prevention of disorder on the premises. For example, if a capacity has been imposed through other legislation, it would be unnecessary to reproduce it in a premises licence. Responsibility for complying with the Order rests with the “responsible person” at the premises and includes undertaking fire risk assessments with the necessary fire precautions including where relevant, capacity limits”.

Reason: To reflect the Regulatory Reform (Fire Safety) Order 2005 which replaced previous legislation.

5.3 It is considered that the current policy adequately covers the protection of children from harm objective and has worked well here in providing a background to consideration of premises licence applications.

However, in light of anticipated further future child protection refinements, the Committee is asked to note that officers will at a future date, in consultation with the Medway Safeguarding Children Board, be investigating if any policy revisions in this connection are relevant. If appropriate, a further report will then be submitted to the committee for consideration.

5.4 In accordance with the statutory provisions, the Council is required to advertise any revisions to its licensing policy statement. If the committee agrees that no revisions should currently be made (subject to the “housekeeping” amendments in paragraph 5.2) to the policy, it is proposed to give suitable publicity to this decision.

6. **Financial Implications**

6.1 There are no direct financial implications for Medway Council concerning this matter at present. However, if at any time in the future the policy was subject to legal challenge, there could be costs associated with this process.

7. Legal Implications

- 7.1 Section 5 of the Licensing Act 2003 requires a licensing authority to prepare and publish a statement of its policy every 3 years. During the 3 year period, the policy must be kept under review. The remaining legal implications are dealt with within the body of the report. It should be noted that an inappropriately worded policy could result in a legal challenge by way of judicial review.

8. Recommendations

- 8.1 The committee is asked to agree, subject to the minor “housekeeping” amendments in paragraph 5.2, that the licensing policy is not revised at this time.
- 8.2 That appropriate publicity be given to the decision of the committee; and
- 8.3 That following consideration by Business Support Overview and Scrutiny Committee, the matter be referred to Cabinet and Council for approval on 6 and 22 November 2007 respectively.

9. Background Papers

- 9.1 Licensing Act 2003
- 9.2 Statement of licensing policy (Appendix A)
- 9.3 Revised Government Guidance on the Licensing Act 2003 – issued 28 June 2007.

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