

## **COUNCIL**

**22 APRIL 2021**

### **LICENSING ACT 2003 – PROPOSED AMENDMENT TO THE CUMULATIVE IMPACT POLICY**

Report from: Perry Holmes, Chief Legal Officer

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#### Summary

This report requests that Full Council approves an amendment to the Council's Cumulative Impact Policy, following a recommendation from Kent Police that the policy should no longer apply to premises license applications for the sale of alcohol for consumption on the premises, as considered and recommended for approval by the Licensing and Safety Committee on 8 April 2021.

#### 1. Budget and policy framework

1.1. The Licensing and Safety Committee's terms of reference state that the committee will make recommendations to Council for approval of the Statement of Licensing Policy. The Cumulative Impact Policy forms part of the Council's Statement of Licensing Policy.

#### 2. Background

2.1. The current Statement of Licensing Policy was approved by Full Council on 26 April 2018 to be effective from 1 May 2018 to 30 April 2023. Incorporated into the Statement as Policy 17 is the Cumulative Impact Policy, which currently reads as follows:

'This policy applies to applications for new premises licences, substantial variations and provisional statements.

It is the Authority's policy to refuse applications for the sale of alcohol for premises licences which fall within the Cumulative Impact Policy areas, dependent on the specific policies in these areas.'

2.2. Where the Cumulative Impact Policy is applied, and there are relevant representations, there is a rebuttable presumption of refusal by the Authority in

all but exceptional circumstances, unless the applicant can demonstrate the premises will not adversely affect the licensing objectives.

2.3. The areas covered by the policy are as follows:

- Chatham High Street and Railway Street area
- Gillingham High Street, Canterbury Street and Gillingham Road area
- Luton Road area
- Rochester High Street area

2.4. Policy 18 relates to Stress Areas which have been identified as being of concern, although the evidence does not support a Cumulative Impact Policy. This currently reads as follows:

‘This policy applies to applications for new premises licences, substantial variations and provisional statements.

It is the Authority’s policy to expect applications for the sale of alcohol for premises licences in Stress Areas to demonstrate they will promote the licensing objectives so as not to add to the alcohol harms in these areas, dependent on the specific policies in these areas.

When its discretion is engaged it is the policy of the Authority that applications which fail to demonstrate this are likely to be refused, or have conditions placed on the licence consistent with the promotion of the licensing objectives’.

2.5. The areas that are identified as Stress Areas are as follows:

- South Gillingham
- The High Street and A2 between Chatham and Rochester.
- Strood town centre

2.6. The Cumulative Impact and Stress Area Policies therefore currently apply to both off-sales, such as off licences, and on-sales, such as pubs, bars and clubs.

2.7. The Cumulative Impact Assessment is the evidential basis for the justification of the Cumulative Impact Policy and is valid for 3 years with the original assessment due to expire on 30 April 2021. Licensing Officers therefore carried out a consultation exercise on the assessment, in accordance with the statutory requirements, to establish whether or not the evidence within it supported the continued application of the Cumulative Impact Policy. Responses from Kent Police, the Director of Public Health, a Local Councillor and a local resident all supported the continuation of the Cumulative Impact Policy based on the evidence in the assessment.

2.8. In their response, relevant extracts from which are attached as Appendix A, Kent Police stated that they had reviewed the new evidential data contained within the Cumulative Impact Assessment report and did not consider the

evidence was sufficient to justify the continued application of the Cumulative Impact Policy in relation to new on-sale premises licence applications.

- 2.9. On 8 April 2021, the Licensing and Safety Committee considered the evidence in the Cumulative Impact Assessment in some detail. The Committee agreed that the evidence continued to support the requirement for a Cumulative Impact Policy for the promotion of the licensing objectives.
- 2.10. The Committee also agreed with the conclusion of Kent Police that the Cumulative Impact Policy should no longer apply to premises licence applications for the sale of alcohol for consumption on the premises. As this would require an amendment to the Cumulative Impact Policy, contained within the Statement of Licensing Policy, this is a matter for Full Council to determine.
- 2.11. It should be noted that there will be a full review of the Statement of Licensing Policy prior to 30 April 2023 when the current policy statement expires.

### 3. Risk Management

- 3.1. The Statement of Licensing Policy is a key document in relation to the Council's position in continuing to implement the objectives of the Licensing Act 2003 and consideration of subsequent licensing applications. An inappropriately worded policy could result in a legal challenge by way of judicial review.

### 4. Financial implications

- 4.1. The cost of the consultation has been met from within existing budgets. There are no further cost implications.

### 5. Legal implications

- 5.1. The Licensing Act 2003 requires the Cumulative Impact Assessment review to be carried out every three years and for the result of the review to be confirmed by publishing a statement setting out the conclusions. The Authority must have a Statement of Licensing Policy which can, where appropriate, include a Cumulative Impact Policy. Decisions of the Licensing Authority must be made in line with these documents.

### 6. Recommendations

- 6.1. That Council approves an amendment to Policy 17 of the Statement of Licensing Policy, Cumulative Impact Policy, the amended policy statement to read:

‘This policy applies to applications for new premises licences, substantial variations and provisional statements, **for the sale of alcohol for consumption off the premises.**

It is the Authority's policy to refuse applications for the sale of alcohol **for consumption off the premises** for premises licenses which fall within the Cumulative Impact Policy areas, dependent on the specific policies in these areas.'

- 6.2. That Council approves an amendment to Policy 18 of the Statement of Licensing Policy, Stress Area Policy, the amended policy statement to read:

'This policy applies to applications for new premises licences, substantial variations and provisional statements **for the sale of alcohol for consumption off the premises**.

It is the Authority's policy to expect applications for the sale of alcohol **for consumption off the premises** for premises licences in Stress Areas to demonstrate they will promote the licensing objectives so as not to add to the alcohol harms in these areas, dependent on the specific policies in these areas.

When its discretion is engaged it is the policy of the Authority that applications **for the sale of alcohol for consumption off the premises** which fail to demonstrate this are likely to be refused, or have conditions placed on the licence consistent with the promotion of the licensing objectives.'

- 6.3. That Council agrees to delegate authority to the Chief Legal Officer to, in consultation with the Portfolio Holder for Planning, Economic Growth and Regulation, make any related amendments to the Statement of Licensing Policy to ensure consistency with these amended policy statements.

## Lead Officer Contact

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## Appendices

Appendix A - Extracts from the Kent Police Cumulative Impact Assessment

## Background papers

[Report to the Licensing and Safety Committee – 8 April 2021](#)