

BUSINESS SUPPORT OVERVIEW AND SCRUTINY COMMITTEE

2 DECEMBER 2010

LICENSING ACT 2003 – REVIEW OF COUNCIL STATEMENT OF LICENSING POLICY

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Summary

The purpose of this report is to ask the Business Support Overview and Scrutiny Committee to review the current Council Statement of Licensing Policy and to take into account the comments of the Licensing and Safety Committee and to recommend any changes to Cabinet on 21 December and Council on 13 January 2011.

1. Budget and Policy Framework

1.1 This is a policy framework document and as such is a matter for Full Council. The existing statement was approved for use by Council in November 2007 (amended in October 2009 in line with changes in legislation) and remains in force for a period of 3 years until January 2011.

2. Background

2.1 The current policy has provided a stable but flexible background to our consideration of licensing applications. This is illustrated by the fact that the policy has not been legally challenged.

2.2 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.

- 2.3 The Licensing and Safety Committee on 18 November 2010 considered this report and its comments are outlined later in this report.

3. Consultation

- 3.1 As part of the review of the Licensing Policy Statement, the proposed revisions have been correctly advertised as part of a 6-week consultation in the local paper, on the Council website and at the local offices. Details of the consultation have also been sent to responsible authorities, members and members of the trade.
- 3.2 Two representations were received, only one of which raised objections, which was from a local residents association based in Rochester. The association's comments are set out below (the items relate to the paragraphs in the draft revision of the policy);

Item 1.13 – They contest the assumption that longer licensing hours are desirable, but appreciate that this content comes from the section 182 guidance to the Licensing Act 2003. Residents are disturbed by anti social behaviour and sometimes violence in the early hours due to the late hours of closing.

They would like to see this clause deleted (as well as the later reference in para 11.3) or that it is allowed that an opposite outcome to that intended may equally occur under certain circumstances (i.e. it may exacerbate crime, nuisance and disorder).

Item 1.15 – This paragraph relating to licensing conditions to make explicit reference to licensee's responsibility for the behaviour of its patrons both inside and *in the vicinity* of their premises.

The existing measures detailed in para 1.15 are aimed at dealing with the *consequences* of alcohol misuse. In order to tackle the current problems the residents would like to see conditions put in place that allow for at least equal emphasis upon the responsibility of licensees to *prevent* excessive consumption of alcohol in the first place.

Item 10.4 – In light of the new mandatory conditions that have been introduced residents believe the statement would benefit from detail being included on the specifics of the conditions to allow all parties to be aware of the responsibilities of the licensees without the need to refer to other documentation.

Item 17.6 – Residents would like to see in recognition that the congregation of patrons outside premises to smoke/drink can be an equal source of disturbance that the item of the list of "factors, which impact upon the likelihood of public nuisance" be amended accordingly.

In view of the heightened profile of alcohol misuse as a social issue, residents would also like to see reference to the Alcohol Strategy (and its associated Action Plan) in the Statement of Licensing Policy

4. Advice and Analysis

- 4.1 Officers have considered the points raised as a result of the consultation and propose the following changes be made.
- 4.2 Reference to the Council website where details of the mandatory conditions will be listed has been added as 10.5. It is not practicable to list the mandatory conditions in the policy as the policy would need to be changed if the mandatory conditions changed.
- 4.3 The wording in respect of factors that may impact on public nuisance to be amended at 17.6 to include reference to outside space likely to be used by patrons.

5. Proposed Amendments

- 5.1 The committee is asked to consider the comments received as a result of the consultation listed at paragraph 3 and officers' comments thereon. The following changes to the policy as set out in Appendix A (some of which are housekeeping and minor amendments as a result of legislative changes and some responses to consultation) are recommended by officers: -
 - 5.1.1 The removal of reference to particular paragraphs of the guidance issued by the Government - this is constantly being updated and affects the quality of our document.
 - 5.1.2 The removal of information covered in detail within other existing and/or proposed Policy Statements relating to Gambling and Sexual Entertainment Venues.
 - 5.1.3 The inclusion in line with changes in legislation to paragraphs in respect of: -
 - Minor Variations
 - Removal of the requirements for a Designated Premises Supervisor in a Community Premises
 - Adult Entertainment
 - Mandatory Conditions
 - Early Morning Alcohol Orders
 - 5.1.4 House keeping changes and provision of additional information in respect of: -
 - Reviews
 - Enforcement
 - 5.1.5 Changes referred to in paragraphs 4.2 and 4.3 of this report.

6 Recommendations from the Licensing and Safety Committee

- 6.1 The Licensing and Safety Committee considered the comments received as a result of the consultation process and recommend the proposed changes to the Licensing Policy as set out in paragraphs 5.1.1 - 5.1.5 of the report.

7. Risk Management

- 7.1 This triennial review of the policy statement is a key document in relation to the council's position in continuing to implement the Licensing Act's objectives and consideration of subsequent licensing applications.

8. Financial and legal implications

- 8.1 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.
- 8.2 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. It should be noted that an inappropriately worded policy could result in a legal challenge by way of judicial review.

9. Recommendations

- 9.1 The Committee is asked to recommend the proposed changes to the Licensing Policy as set out in paragraphs 5.1.1 – 5.1.5 to Cabinet on 21 December and Council on 13 January 2011 for approval as part of the Councils policy framework.

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Background papers

1. The Licensing Act 2003
2. Amended Guidance issued under section 182 of the Licensing Act 2003 – dated 13 October 2010
3. Consultation papers