

## LICENSING AND SAFETY COMMITTEE

18 OCTOBER 2022

### LICENSING ACT 2003

#### DRAFT STATEMENT OF LICENSING POLICY 2023 - 2028

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#### Summary

The Licensing Act 2003 requires that the Council publish a 'Statement of Licensing Policy' that sets out the policies the Council will generally apply to promote the licensing objectives when making decisions on applications made under the Act.

The Council's current Policy Statement will lapse on 30 April 2023. This report provides Members with information and guidance on an updated Statement of Licensing Policy under the Licensing Act 2003 which requires approval for public consultation.

#### 1. Budget and policy framework

- 1.1 The Committee's terms of reference state that the Licensing and Safety Committee will make recommendations to Council for approval of a number of licensing policies.

#### 2. Background

- 2.1. In its role as the Licensing Authority under the Licensing Act 2003 the Council has a duty to prepare, and keep under review, its Statement of Licensing Policy. This sets out how the authority approaches its responsibilities under the Act. A range of legislative and other changes have been taken into account as part of the review of this policy, which must be publicly consulted upon before it can be adopted. The draft copy of the Statement of Licensing Policy is attached as **Appendix A**.
- 2.2 Section 5 of the Licensing Act 2003 (the Act) states that every 5 years, each licensing authority must –
  - (a) determine its policy with respect to the exercise of its licensing functions and;
  - (b) publish a statement of that policy before the beginning of that period.

2.3 Underpinning that obligation are the four Licensing Objectives which are:

The Prevention of Crime and Disorder  
Public Safety  
The Prevention of Public Nuisance  
The Protection of Children from Harm

2.4 Equal weight is given to all four licensing objectives and the policy must seek to secure the promotion of these objectives throughout the licensing process.

2.5 Whilst the current policy has proven useful, it is in need of some amendments to align it with changes in legislation and updates in Ward boundary changes, for example.

2.6 In addition, the revised draft Policy seeks to separate the Cumulative Impact Policy (CIP) from the Statement of Licensing Policy making them two independent policies in their own right, in keeping with the legislation/statutory guidance. This will not reduce the effectiveness nor weight of the CIP but will simplify the review of each policy (every 3 and 5 years respectively), make each more user-friendly/easily digestible, and provide additional clarity to applicants.

2.7 The Licensing Authority must have regard to the statutory guidance issued under section 182 of the Licensing Act 2003 when drafting its policy. The latest version has been referred to during the drafting of this policy.

2.8 The main changes proposed in the draft policy for consultation are summarised below:

- Link to Local Government Boundary Commission for England website has been inserted outlining proposed Ward Boundary changes within the borough - Page 4.
- The Cumulative Impact Policy has been removed from the Statement of Licensing Policy draft as it is to exist as a standalone policy.
- Amendments to Policy 24 – Relating to Personal Licences to reflect changes in Right to Work legislation.
- Amendments to Appendix 3 regarding TENs to reflect changes to permitted allocations.
- Introduction of Policy 17 – Guidance on dealing with applications for sales of alcohol from distribution centres.
- Information Commissioner’s guidance section on use of Surveillance Conditions.
- Inclusion of public health information throughout policy for information and guidance.
- Amendments to some conditions.

### 3. Advice and analysis

- 3.1 The benefits of approving the draft new policy for consultation are that the Licensing Authority will continue to secure a foundation on which to determine applications in a way that clearly promotes the licensing objectives, protects residents and allows the vision for the Council to be achieved through a clear, fair and robust licensing process underpinned by the policy.
- 3.2 The Statement of Licensing Policy must be published before the Authority carries out any function in respect of individual applications and notices made under the terms of the 2003 Act.

### 4. Risk management

- 4.1 This review of the Statement of Licensing Policy 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. It should be noted that an inappropriately worded policy could result in a legal challenge by way of judicial review.

### 5. Consultation

- 5.1 The Act and the Guidance require a consultation process prior to determining the Statement of Licensing Policy.

The persons who must be consulted are:

- the chief officer of police for the area;
- the fire and rescue authority for the area;
- each local authority's Director of Public Health in England (DPH) or Local Health Board in Wales for an area any part of which is in the licensing authority's area,
- persons/bodies representative of local premises licence holders;
- persons/bodies representative of local club premises certificate holders;
- persons/bodies representative of local personal licence holders; and
- persons/bodies representative of businesses and residents in its area.

A full list is attached as **Appendix B**.

- 5.2 A 6-week consultation is proposed, commencing 24 October 2022. Methods of consultation will be via the council's website and notice board, and by direct email and mail shots.
- 5.3 All incoming responses will be collated and entered on a table for consideration. The Senior Licensing Officer will conduct an evaluation of each response and give a recommendation in consultation with other officers as to whether or not to amend the policy statement, and if so to what extent.
- 5.4 The results of the consultation and any recommendations will be brought back to the Licensing and Safety Committee on 7 February 2023 for post

consultation consideration before approval is sought by Full Council on 23 February.

## 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 The Authority's licensing policy provided the framework on which the Licensing Service under the Licensing Act 2003 is administered. This policy is not only important in setting out the licensing authority's approach to the Licensing Act; it will also be considered and referred to by the Magistrates' Court on appeal. The Magistrates' Court may decide to depart from the policy if they have good reason for doing so.
- 7.2 The Magistrates' Court may also decide that an appealed decision of the Authority was not reflective of the policy and that no good reason was given by the authority to depart from the policy when making that decision. In that case the appealed decision may be referred back to the Local Authority to reconsider in line with its policy.

## 8. Recommendations

- 8.1 That the Committee authorises officers to place the draft Statement of Licensing Policy at **Appendix A** on the Council website, advertise it and consult with all relevant interested parties as listed in **Appendix B** for a period of 6 weeks commencing 24 October 2022. Methods of consultation will be via the Council's website and notice board, and by direct email and mail shots.
- 8.2 That the results of the consultation be reported back to the Licensing and Safety Committee on 7 February 2023 together with a revised draft Statement of Licencing Policy, prior to recommendation to Full Council for approval on 23 February 2023.

### Lead officer contact

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### Appendices

Appendix A – Draft Statement of Licensing Policy.  
Appendix B – Consultee List

### Background papers

None