

## **LICENSING AND SAFETY COMMITTEE**

**11 NOVEMBER 2022**

### **DRAFT STATEMENT OF LICENSING POLICY 2023 – 2028**

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#### Summary

To present members with a draft of the revised Statement of Licensing Policy under the Licensing Act 2003 and the proposed consultation methodology.

#### 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.

- 2.2. Section 5 of the Licensing Act 2003 (The Act) states that every 5 years a Licensing Authority must:

- Determine its policy with respect to the exercise of its licensing functions; and
- 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; and
- The protection of the 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. The current policy was approved by Council in April 2018 and came into effect on 1 May 2018. It will consequently expire on 31 April 2023.
- 2.6. A review of the existing policy has been carried out by the Senior Licensing Officer to highlight areas that are in need of revision and/or amendment.
- 2.7. The draft revised policy was first considered by the Committee at its meeting on 18 October when Members expressed concern on a number of matters including the proposed removal of Appendices 4, 5 and 6 which had not been reflected in the covering report, the lack of a schedule of proposed changes to the draft policy, the lack of working weblinks within the draft policy and the inclusion of named officer email addresses as opposed to generic email addresses within the draft policy.
- 2.8. The Committee agreed that the draft policy should be redrafted as necessary to take account of the concerns expressed during the meeting, that a schedule of changes be produced and that they be resubmitted to a special meeting of this Committee, prior to it being approved for consultation.
- 2.9. The redrafted revised Statement of Licensing Policy can be found at Appendix A. In addition to the amendments requested by Members, there have been a number of grammatical amendments and some re-formatting.
- 2.10. A table of significant amendments can be found at Appendix B.
- 2.11. The Cumulative Impact Assessment (CIA), which provides the evidence to support a Cumulative Impact Policy must be reviewed every three years and the Statement of Licensing Policy must be reviewed every five years. If there were any changes to the CIA it would necessitate a review of the Statement of Licensing Policy. Therefore, Members should note from this table that officers have removed the Cumulative Impact and Stress Area policies from the draft policy, which still makes reference to Medway Council having a Cumulative Impact Policy. Its removal simplifies the review process of each policy in the future and make each document more digestible.
- 2.12. Members will also note that officers are still proposing the removal of three additional Appendices:
- Appendix 4: Mandatory Conditions
  - Appendix 5: Suggested Conditions
  - Appendix 6: Good Practice Guidance.
- 2.13. There is no requirement for these documents to be part of the main policy and they can regularly be subject to amendment. By removing them from the main body it will allow them to be amended at any time without the review of the full policy.
- 2.14. All three documents will be added to the Gravesham Borough Council website and links put into the Statement of Licensing Policy.

### 3. Options

- 3.1. Approve the draft copy of the Statement to be used for consultation, approve the list of consultees and instruct officers to begin the consultation period.
- 3.2. Request that officers make amendments to any of the above factors prior to consultation.

### 4. Advice and analysis

- 4.1. 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 promote 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.
- 4.2. 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 Act.

### 5. Risk management

- 5.1 The publication of a Statement of Licensing Policy under the Licensing Act 2003 is a statutory requirement and failure to do so by the expiration of the current policy as required may lead to negative publicity and criticism from central government. Close adherence to the mandatory guidance in terms of policy development and consultation will minimise the risk of judicial review at a later date. This risk is further minimised by working in close co-operation with the other licensing authorities within Kent.

### 6. Consultation

- 6.1. The Act and the guidance require a consultation process prior to determining the Statement of Licensing Policy.
- 6.2. The persons who must be consulted are:
  - The chief office of police for the area;
  - The fire and rescue authority for the area;
  - Each local authorities Director of Public Health in England (DPH);
  - 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.
- 6.3. A full list of the consultees can be found at Appendix C

- 6.4. An eight week consultation period is proposed, commencing on 14 November 2022 and ending on 6 January 2023. Methods of consultation will be via the Council's website and notice board, and by email and mail shots.
- 6.5. All incoming responses will be collated and entered on a table for consideration. The Senior Licensing Officer and Licensing Manager will conduct an evaluation of each response and give a recommendation as to whether or not to amend the policy statement, and if so to what extent.
- 6.6. The result of the consultation and any recommendations will be brought back for post consultation consideration to the Licensing and Safety Committee on 7 February 2023. The revised policy will then be recommended to Full Council for approval.

## 7. Financial implications

- 7.1. 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. Legal implications

- 8.1. The Authority's Statement of 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.
- 8.2. 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.

## 9. Recommendations

- 9.1. That the Committee authorises officers to place the draft policy at Appendix A on the Council's website, advertise and consult with all relevant interested parties listed in Appendix C as described in this report.
- 9.2. That the results of the consultation be reported back to the Licensing and Safety Committee together with a revised draft Statement of Licensing Policy, prior to recommendation to Full Council for approval.

## Lead officer contact

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## Appendices

Appendix A – Draft Statement of Licensing Policy

Appendix B – Table of significant amendments

Appendix C – Consultee list

## Background papers

None