

Item No. 6.2	Classification: Open	Date: 12 October 2011	Meeting Name: Council Assembly
Report title:		The Licensing Act 2003 – Three Year Review of Statement of Licensing Policy	
Ward(s) or groups affected:		All wards	
From:		Strategic Director of Environment and Leisure	

RECOMMENDATIONS

1. That council assembly adopts the document at Appendix A to this report as the Southwark Statement of Licensing Policy for 2011-2014.
2. That council assembly notes that a further report will be provided to the council's licensing committee, on the impact of the licensing provisions contained within the current Police and Social Responsibility Bill upon the council's policy statement, following the Bill's progression through parliament.

BACKGROUND INFORMATION

3. The Licensing Act came into effect on 25 November 2005. The Act introduced a new regime for the licensing of alcohol, regulated entertainment and late night refreshment, administered by the local licensing authority (within Southwark, this council).
4. Section 5 of the Act requires each licensing authority to prepare and publish a statement of licensing policy, every three years. The policy statement sets out how the authority intends to approach its licensing responsibilities. Each authority is also required to keep its statement of policy under review throughout each three year period and make any revisions it considers appropriate.
5. The initial Southwark statement of licensing policy (for 2005-2008) was compiled having regard to the provisions of the Act itself, secondary regulations and Guidance issued by the Department of Culture Media and Sport (DCMS). That initial statement of policy was approved by full council assembly on 6 December 2004.
6. It has since been kept under constant review. By the beginning of 2010, the policy statement was on its fourth revision (approved on 4 November 2009).
7. Current guidance to the Act makes clear that the requirement to formally review the statement of policy every three years stands, irrespective of any mid-term reviews or revisions that may have taken place.
8. In accordance with the provisions of the Act, the Southwark statement of policy was taken out to public consultation in the summer of 2010. Responses to the consultation have been reviewed and have contributed toward a fifth revision of the policy statement.

9. However, other developments have affected the position. In the summer of 2010, overall government responsibility for alcohol licensing was passed from the DCMS to the Home Office. This realignment of responsibility firstly led to a government consultation proposing reform of the 2003 Act, entitled "Rebalancing the Licensing Act". This consultation in turn, has led to a number of far reaching amendments to the Act being incorporated into the Police and Social Responsibility Bill which, at the time of writing, is at the report stage in the House of Lords. The realignment of responsibility has also led to a Home Office revision of the Guidance to the Act being issued in October 2010.
10. The fifth revision of the Southwark statement of policy has been checked for compliance with the October 2010 revision of the Guidance and this was presented to the council's licensing committee at its meeting of 26 July 2011. The committee decided to recommend the revision to the assembly for formal adoption as the council's licensing policy statement for 2011-14. A copy of the document is provided at Appendix A.
11. The policy is anticipated to require further amendment in the light of the outcome of the licensing provisions within the Bill. The progress of the Bill is being closely monitored and the impact of any new provisions upon the statement of policy will be reported back to the licensing committee in due course.

KEY ISSUES FOR CONSIDERATION

The purpose of the policy

12. The purpose of the statement of policy is set out in section three of the document, as follows:
 - To reinforce to elected members on the licensing committee, the powers of and constraints placed upon the local authority and to provide the parameters under which these licence decisions are made;
 - To inform licence applicants of the parameters under which this authority will make licence decisions and how a licensed premises is likely to be able to operate within an area;
 - To inform residents and businesses of the parameters under which licence decisions will be made and how their needs will be addressed; and
 - To minimise the number of licensing decisions that may be challenged in a court of law.

The licensing objectives

13. Central to the statement of policy is the promotion of the four licensing objectives established under the Act. These are:
 - The prevention of crime and disorder;
 - Public safety;
 - The prevention of public nuisance; and
 - The protection of children from harm.

Summary of the main amendments

14. Given the frequency of the revision of the policy since it's initial formulation, there

are no major policy changes. The statement of policy is revised throughout so as to ensure consistency with the latest changes in legislation, guidance and case law and to reflect current best practice. A summary of some of the main changes follows.

Section 4 – Administration, exercise and delegation of function

15. Section 4 deals with the administrative arrangements for processing and determining licence applications. This revision
- Notes recent amendments to the process including
 - the availability of the minor variations process for matters that do not impact upon the licensing objectives; and
 - the change to the period allowed for counter notices to be provided by the police in respect of temporary event notices from within 48 hours of receipt of the notice to two working days;
 - Includes a new section dealing with applications for licences in respect of events during the Olympic summer of 2012, which sets out that the need for, and availability of, emergency service resources will be a consideration when determining applications.

Section 6 – Other related legislation and strategies

16. Section 6 references other associated and complementary legislation and strategy. New references include:
- Policing & Crime Act 2009 – which introduced the mandatory code of practice for alcohol retailers; established elected members as ‘interested parties’; and reclassified lap dancing clubs and similar as ‘sex entertainment venues’ under the sex establishments licensing regime within the Local Government (Miscellaneous Provisions) Act 1982. Note: Any member wishing to receive advice on acting as an interested party under the Act should contact the licensing service;
 - Equality Act 2010 – which replaced many of the provisions of the Disability Discrimination Act and provides new rights for people not to be discriminated against or harassed because they have an association with a disabled person; and
 - EU Services Directive – which introduced new provisions to help facilitate cross-border trade within the European community.

Section 7 – The first licensing objective – The prevention of crime and disorder

17. Section 7 sets out to provide best practice guidance to prospective licence applicants in pursuit of the prevention of crime and disorder objective. Within this section the broad guide to potential crime and disorder controls has been overhauled, in conjunction with the police and trading standards, and new references include:
- The five new mandatory licence conditions established by statute in 2010 (relating to irresponsible drinks promotions and games; the provision of free tap water; requirements for age verification policies; and for availability of small measures;
 - The western extension of the Borough and Bankside saturation zone;

- Amendment of the section on adult entertainment to reflect the changed position in law that requires regular striptease and similar to require a sex establishments licence, while exempting occasional performances;
- New sections on 'The sale and possession of smuggled, bootlegged or counterfeit products and the handling of stolen goods' and 'Theft of personal property'.

Section 8 – The second licensing objective – Ensuring public safety

18. Section 8 sets out to provide best practice guidance to prospective licence applicants in pursuit of the public safety objective. Within this section the broad guide to public safety considerations has been overhauled, in conjunction with the occupational health and safety team and the fire brigade. New references include expanded sections on the Regulatory Reform (Fire Safety) Order 2005 and the Health and Safety at Work Regulations 1999.

Section 9 – The third licensing objective - The prevention of public nuisance

19. Section 9 sets out to provide best practice guidance to prospective licence applicants in pursuit of the prevention of public nuisance objective. Within this section the broad guide to sound containment and reduction measures has been overhauled in conjunction with the environmental protection team. New references include Extended sections on 'nuisance outside of premises' and 'smoking and licensed premises'

Section 10 – The fourth licensing objective – The protection of children from harm

20. Section 10 sets out to provide best practice guidance to prospective licence applicants in pursuit of the protection of children from harm objective. It has been amended in conjunction with trading standards and the Southwark Safeguarding Children Board. New references include:
- Amendment of the 'broad guide controlling under age-sales measures' to incorporate references to 'Challenge 25'/'Think 25'; and
 - A new section on the Southwark Proof of Age (SPA) card

Community impact statement

21. The Southwark statement of licensing policy recognises that responsible business operators who run, safe, well managed venues and facilities and are prepared to work together with their local community will provide benefit to that community. The policy equally recognises that irresponsible business operators who fail to provide good management practices are likely to have negative impacts on the community.
22. As such, the statement of policy sets out to achieve a necessary balance between providing a platform upon which responsible business operators may contribute toward a thriving business and late night economy while ensuring that the quality of life of those who live and work in the borough is protected and enhanced through the licensing system.
23. Central to this, is a licensing process which aims to be inclusive and ensures that local community concerns are understood, debated and resolved. This is

supported by offering broad support to licensees, through the range of involved authorities, to establish best practice management, and by a strong directed enforcement resource.

24. Furthermore, the council, as licensing authority, monitors the impacts of its licensing decisions through regular partnership analysis of statistical information on alcohol related crime and disorder; calls to the police regarding disorder and rowdiness; ambulance 'pick-up' statistics; and noise nuisance calls to the council.
25. The equalities impact assessment has been revisited as part of the revision of this policy. As the primary changes to the policy form technical updates, no new issues are identified at this stage. However, it is anticipated that a new assessment will be necessary in the light of changes to the law proposed in the aforementioned Police and Social Responsibility Bill.

Resource implications

26. The revision and update of the Southwark statement of licensing policy does not have any resource issues in itself. Where new initiatives referenced within the policy statement have resource implications these will have been dealt with at time of conception.
27. This is an update to the existing statement of licensing policy. This policy is mainly advisory/informative, providing guidance to the licensing committee, licence applicants, residents and businesses. Costs associated with implementing the existing policy are currently met from the licensing revenue budget.

Consultation

28. The fifth revision of the Southwark statement of licensing policy has been prepared with public consultation undertaken in accordance with section 5(3) of the Licensing Act 2003. As such this authority has consulted with
 - The chief officer of the police;
 - The fire authority;
 - Representatives of holders of premises licences; club premises certificate holders; and personal licence holders;
 - Representatives of businesses and residents; and
 - All responsible authorities specified under the Act
29. A summary of the responses received to the consultation is attached as Appendix B.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Strategic Director of Communities, Law & Governance

30. The Licensing Act 2003 ("the 2003 Act") requires the council, as the licensing authority, to prepare and publish a statement of its licensing policy every three years.
31. In determining its policy, the council is exercising a licensing function and as such must have regard to the Guidance issued by the Secretary of State under section 182 of the 2003 Act. It must also give appropriate weight to the views of

those persons/bodies listed in section 5(3) of the Act which it is required to consult before determining its policy.

32. Although the Guidance represents best practice, it is not binding on the council. As long as the Guidance has been properly and carefully understood and considered, licensing authorities may depart from it if they have reason to do so. In this event they will need to give full reasons for their decisions, which must be consistent with the objectives of the 2003 Act.
33. The council is required to have regard to the statement of licensing policy and make decisions in accordance with it. Licensing authorities may depart from their policy if the individual circumstances of any case merit such a decision in the interests of promoting the licensing objectives. In this event it is important that full reasons are given for departing from the published statement of licensing policy.
34. Members should note that the 2003 Act imposes a duty on the council, as the licensing authority, to carry out its functions under the Act with a view to promoting the four licensing objectives, namely:
 - the prevention of crime and disorder;
 - the promotion of public safety;
 - the prevention of public nuisance;
 - the protection of children from harm
35. Each of these objectives is of paramount and equal importance. There are no other licensing objectives and therefore the council cannot reject an application for a licence or impose conditions on a licence for any purpose unrelated to the promotion of these objectives. For example, whether or not there is a 'need' for another licensed premises in a given area is a matter for planning committees but is not a matter for a licensing authority in its statement of licensing policy or in discharging its licensing functions.
36. However, the cumulative impact of licensed premises on the promotion of the licensing objectives is a proper matter for the council to consider when adopting its statement of licensing policy. The Guidance explains 'cumulative impact' as the potential impact on the promotion of the licensing objectives – for example crime and disorder and/or public nuisance - of a significant number of licensed premises concentrated in one area.
37. The statement of licensing policy cannot seek to impose 'blanket' conditions. Each application must be considered on its own merits. Conditions can only be imposed on a licence if they are necessary to promote the licensing objectives in relation to the specific premises and are a proportionate response to the specific situation to be addressed. The Guidance provides that if the situation the condition is intended to address is already addressed by a provision in the 2003 Act or any other legislation then the condition cannot be said to be 'necessary'.
38. Licensing is about regulating the carrying on of licensable activities within the terms of the 2003 Act. The statement of licensing policy should make it clear that licensing law is not the primary mechanism for the general control of nuisance and anti-social behaviour by individuals once they are beyond the direct control of the individual, club or business carrying on licensable activities. However, the Guidance also states that licensing law is a key aspect of such control and

should always be part of a holistic approach to the management of the evening and night-time economy. It is therefore desirable that the statement of licensing policy is in line with the council's wider objectives and consistent with other policies.

39. Members should note that the statement of licensing policy must not be inconsistent with the provisions of the 2003 Act and must not override the right/s of any individual as provided for in that Act. Nor must the statement of licensing policy be inconsistent with obligations placed on the council under any other legislation, including human rights legislation. Members should also note that the council has a duty under Section 17 of the Crime and Disorder Act 1998, when carrying out its functions as a licensing authority under the 2003 Act, to do all it reasonably can to prevent crime and disorder within the Borough.
40. Positive equalities obligations are placed on local authorities, sometimes described as equalities duties, with regard to race, disability and gender. Race equality duties were introduced by the Race Relations Amendment Act 2000 which amended the Race Relations Act 1976. Gender equalities duties were introduced by the Equality Act 2006, which amended the Sex Discrimination Act 1975. Disability equality duties were introduced by the Disability Discrimination Act 2005 which amended the Disability Act 1995.
41. Equality impact assessments are an essential tool to assist councils to comply with our equalities duties and to make decisions fairly and equalities and human rights impact assessments that are carried out should be mindful of the protected characteristics under the Equality Act 2010.
42. Under the Local Authorities (Functions and Responsibilities) (England) Regulations 2000, as amended, decisions relating to licensing matters cannot be the responsibility of an authority's executive. The 2003 Act provides that whilst the majority of the functions of the licensing authority, are to be taken or carried out by its licensing committee, decisions relating to the statement of licensing policy cannot be delegated in such a way. The decision on whether to adopt the statement of licensing policy must therefore be taken by council assembly.

Finance Director (ENV/SR/170311)

43. The head of service has confirmed that the cost implications of this updated policy will be contained within the licensing revenue budget for the division.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
The Licensing Act 2003 plus secondary regulations	The Licensing Service, C/O The Chaplin Centre, Thurlow Street, London, SE17 2DG	Name: Mrs Kirty Read Phone number: 020 7525 5748
The Home Office Guidance to the Act published October 2010		
Local Government (Miscellaneous Provisions) Act 1982		

APPENDICES

No.	Title
Appendix A	Draft Southwark Statement of Licensing Policy 2011-14
Appendix B	Summary of consultation responses

AUDIT TRAIL

Lead Officer	Gill Davies, Strategic Director of Environment and Leisure	
Report Author	Richard Parkins, Health Safety Licensing & Environmental Protection Unit Manager	
Version	Final	
Dated	21 September 2011	
Key Decision?	Yes	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments included
Strategic Director of Communities, Law & Governance	Yes	Yes
Finance Director	Yes	Yes
Cabinet Member	Yes	Yes
Date final report sent to Constitutional Team	21 September 2011	