

<b>Item No.</b> 6.	<b>Classification:</b> Open	<b>Date:</b> 9 September 2020	<b>Meeting Name:</b> Licensing Committee
<b>Report title:</b>		The Licensing Act 2003: Review of Statement of Licensing Policy 2021 - 2026	
<b>Ward(s) or groups affected:</b>		All Wards	
<b>From:</b>		Strategic Director of Environment and Leisure	

## RECOMMENDATIONS

1. That the licensing committee:
  - a) Considers the Southwark statement of licensing policy 2021-2026 provided at Appendix A to this report for approval following the public consultation.
  - b) Agrees the amendments for the revision of the policy document, as set out within this report. This includes the basis for the public consultation and the resulting feedback.
  - c) Considers whether to accept the changes or propose any further amendments following the public consultation.
  - d) Recommends the statement of licensing policy for approval by council assembly.

## BACKGROUND INFORMATION

2. The Licensing Act 2003 came into effect on 25 November 2005. The Act introduced a regime for the licensing of alcohol, regulated entertainment and late night refreshment, to be administered by the local licensing authority
3. Section 5 of the 2003 Act requires each licensing authority to prepare and publish a statement of licensing policy every five years. The policy statement is expected to set out, for the benefit of applicants, responsible authorities and members of the local community, how the authority intends to approach its licensing responsibilities under the Act. Each authority is also required to keep the statement of policy under review throughout its term and make appropriate revisions as necessary.
4. The initial Southwark statement of licensing policy was considered and approved by the full council assembly on 6 December 2004. It was compiled with regard to the provisions of the Act itself, secondary regulations and guidance then issued by the Department of Culture Media and Sport (DCMS). It has been kept under constant review since that date. The current (fifth) version of the policy for 2019 – 2021, was a mid-term revision and was adopted at council assembly on 27 March 2019. The statement of licensing policy came into effect on 3 May 2019. The policy is now under a full review to make amendments to the policy.

5. Since the commencement of the current statement of licensing Policy, there have been a number of issues that have arisen at Licensing Sub-Committee meetings where members, responsible authorities and applicants have requested clarification. Amendments in this revision sought to clarify Southwark's position and are believed to be appropriate and necessary.
6. On 4 November 2019 the licensing committee agreed that amendments to the policy should be put to a full public consultation. This took place for an eight week period, ending on 1 March 2020. Responses were received from a mix of local residents, local businesses, responsible authorities and ward councillors. Generally, all the proposed amendments have been agreed, however, some parties have asked for additional changes. Some of these have been considered to be appropriate so have been applied to the policy. In addition, the consultation and resulting policy has not been impacted by the COVID-19 pandemic, which became a national emergency at the end of March 2020.
7. Details of the responses for public consultation on this revision are set out in this report in Appendix B.
8. The committee is asked to consider the latest revision of the policy with a view of referring the matter to council assembly for ratification.

## **KEY ISSUES FOR CONSIDERATION**

### **The purpose of the policy**

9. The purpose of the statement of policy is set out in section three of the document, as follows:
  - To reinforce with the elected members on the licensing committee, the powers and constraints placed upon the local authority as licensing authority by the 2003 Act.
  - To set out, for the benefit of prospective applicants; responsible authorities; local residents; and licensed operators; the parameters under which this authority will make its licensing decisions.
  - To inform prospective licensees how a licensed premises is likely to be able to operate within the local authority area.
  - To inform local residents and licensed operators how their needs will be addressed.
  - To minimise the number of licensing decisions that may be challenged in a court of law.

### **The licensing objectives**

10. 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

- The protection of children from harm.

### **Amendments to the policy**

11. At the meeting of the licensing committee on 4 November 2019, it was agreed that officers undertake public consultation. The policy is to be considered as a whole document.
12. Proposed changes to the policy were agreed by the licensing committee at the meeting of 4 November 2019 and are in Appendix D. These changes were based on officer evidence and legal advice in order to provide clarity on existing ambiguities within the policy.
13. Using detailed analysis presented at the November committee meeting, it was decided that cumulative impact areas (CIAs) monitor zones within Southwark are to remain unchanged. There was insufficient evidence to show that additional CIAs be introduced or the current areas be removed or amended, however, this may be subject to change during the lifespan of the new policy if supported by partnership analysis
14. It was agreed that the consultation on closing times for Sunday to Thursday and Friday to Saturday be phrased within the consultation questionnaire as open questions and to include the opportunity for the consultees to state why they felt that their response was appropriate.
15. A link to the licensing committee report for November 2019 is available: <https://moderngov.southwark.gov.uk/ielistDocuments.aspx?CId=171&MId=6485&Ver=4>

### **Consultation for 2021-2026 statement of licensing policy**

16. The consultee responses for the 2021-26 policy were considered and as a result amendments have been made to the Policy. The amended policy is now available in Appendix A.
17. The consultee responses and officer comments are available in Appendix B. The comments highlight the points of the policy that have been updated as a result of the consultation. The feedback was generally positive. Some respondents used the consultation to raise complaints about their area, or about specific premises. Those respondents have been contacted individually to be provided with advice and support.
18. A summary of the additional changes resulting from the consultation (i.e.. beyond those agreed by members at the licensing committee meeting of 4 November 2019) are available in Appendix E. These provide further guidance based on officer experience and suggestions by members of the public:

### **COVID-19**

19. Officers have considered at length inserting sections into the policy to take into account the COVID-19 pandemic. It should be noted that primary legislation around alcohol sales has been amended, to support the industry and the government's response to the emergency, but this is for a limited period only. This Policy will surpass that period.

20. Government guidance is evolving at such a pace and the situation so dynamic that at this time it is unlikely that anything of long term significance will result and therefore would not be suitable for the policy. Therefore it has been deemed inappropriate to include any measures referring to the pandemic, instead it is noted in the introduction of the policy that it should be read in conjunction with any legislation and timely government guidance. Should evidence emerge and international and national approaches evolve and change, the authority can always update our policy in due course to reflect the more permanent changes.

### **Resource implications**

21. 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.
22. 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.

### **Policy Implementation timetable**

23. The following timetable for the public consultation on the draft policy amendments and for final approval of the 2021 – 2026 policy document has been and will continue to be followed.:
- The consultation took place over a period of eight weeks, ending on 1 March 2020.
  - On 9 September 2020 officers will report back to licensing committee asking the committee to consider the further draft policy revision and make recommendation for adoption of a final policy by council assembly.
  - On 25 November (TBC) the policy as recommended by the licensing committee shall be put before council assembly for adoption.

## **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

### **Director of Law and Democracy**

24. 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.
25. 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.
26. 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.

27. 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.
28. 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.
29. 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.
30. 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.
31. 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'.
32. Licensing is about regulating the carrying out 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.

33. 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.
34. 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.
35. 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.

#### **Public sector equality duty**

36. Equality impact assessments are an essential tool to assist councils to comply with the equalities duties and to make decisions fairly. Equalities and human rights impact assessments that are carried out should be mindful of the protected characteristics under the Equality Act 2010. An assessment was carried out before amendments were made to the draft policy. Members will need to consider whether there are any potential negative impacts on the protected characteristics as outlined in the assessment at the committee hearing. A further assessment has carried out following the public and statutory consultation in preparation for returning to the licensing committee. The current assessment is available in Appendix C. Any decision made by members of the licensing committee will also have to hold this in mind.

#### **Strategic Director of Finance and Governance (EL20/023)**

37. This report is requesting the licensing committee to consider recommendations (a), (b) and (c) in paragraph 1 above in relation to the Southwark statement of licensing policy 2021-2026.
38. The strategic director of finance and governance notes the recommendations and that, currently, there are no identified additional resource implications as a result of these proposals. However the service should be aware due to uncertainties because of COVID-19 this could be subject to change and be prepared to incorporate any amendments in legislation and government guidance which may lead to additional resources being utilised.
39. The strategic director of finance and governance also notes that staffing and any

other running costs connected with these recommendations are to be contained within existing departmental revenue budgets.

## BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
The Licensing Act 2003 plus secondary regulations	The Licensing Service, C/O 160 Tooley Street, London, SE1	Name: Mrs Kirtikula Read Phone number: 020 7525 5748
The Home Office Guidance to the Act published June 2014		
Local Government (Miscellaneous Provisions) Act 1982		

## APPENDICES

No.	Title
Appendix A	Draft Southwark statement of licensing policy 2021 – 2026
Appendix B	Consultee responses and officer comments
Appendix C	Equalities analysis
Appendix D	Policy amendments agreed by licensing committee 4 November 2019
Appendix E	Summary of changes to Policy following public consultation

## AUDIT TRAIL

<b>Lead Officer</b>	David Littleton, Head of Regulatory Services.	
<b>Report Author</b>	Andrew Heron, Principal Licensing Officer	
<b>Version</b>	Final	
<b>Dated</b>	24 August 2020	
<b>Key Decision?</b>	Yes	
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b>		
<b>Officer Title</b>	<b>Comments Sought</b>	<b>Comments included</b>
Director of Law and Democracy	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
<b>Cabinet Member</b>	No	No
<b>Date final report sent to Constitutional/ Team</b>	27 August 2020	