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| Item: 7.1 | Classification: Open | Date: January 24 2007 | Meeting Name: Council Assembly |
| Report title: | | Licensing Act 2003 – Mid-Term Review of the Licensing Statement of Policy | |
| Ward(s) or groups affected: | | All wards | |
| From: | | Strategic Director of Environment & Leisure | |

RECOMMENDATION

1. That Council Assembly considers and approves the draft revised statement of licensing policy attached at Appendix A to this report.
2. That Council Assembly specifically agrees to
 - 1) The revised policy on the licensing of adult entertainments as set out in paragraph 20 of this report which includes a proximity clause (clause 2) which states that *“applications will not normally be granted where the premises are located:*
 - a) *Near residential accommodation;*
 - b) *Near places of worship, community facilities, or public buildings;*
 - c) *Near schools, youth clubs, shops, parks, leisure and recreational establishments and any other similar premises directed at, or primarily used by children or families;*
 - d) *Or within sight of pedestrian routes or transport nodes (such as stations or bus stops) serving categories a), b) or c).”*
 - 2) The additional imposition of the suggested clause 5 of the revised policy on the licensing of adult entertainments as set out in paragraph 24 of this report and amended upon counsel’s advice to read

“5) That in deciding whether the imposition of particular conditions enables an application to be granted rather than refused, the licensing authority will bear in mind that the proper regulation of sex-related entertainment requires a range of conditions not only to be imposed, but to be supervised by the authority and specialist units of the police. The council will have regard to the practicalities of enforcement before imposing conditions.”
 - 3) The improvements to the current public consultation process undertaken in respect of premises licence and club premises certificate applications and review applications, as set out in paragraphs 47 and 49 of this report and, specifically in the case of applications involving striptease and nudity, in paragraph 22 of this report.

- 4) Upon consideration of counsel's advice, no local steps be taken at this stage to give immediate remedy to the restrictions placed upon ward councillors wishing to speak on licensing applications but that this matter be pursued through the forthcoming review of the Department of Culture Media and Sport's guidance to the Licensing Act 2003.

And notes

- 5) That no proposals are made for consideration of saturation zones at this time but that relevant authorities will continue to monitor the situation in regard of each of the suggested areas raised for consideration under the policy consultation, set out in paragraph 54 of this report. This with the intention that in the event that the position may be reached where the relevant authorities consider there to be an evidential basis for the consideration of a policy in any one area, further local consultation will be undertaken by the Licensing Service with a view to reporting the situation back to Council Assembly for determination as to whether a policy may be necessary;
- 6) The arrangements for reviewing the implications of premises Licenses and the Disabilities Discrimination Act set out in paragraphs 63 to 65 of this report; and
- 7) The further consideration that is required to develop Council policy on Licensing, planning and the late-night economy (paragraph 71 of this report)

BACKGROUND INFORMATION

3. The Licensing Act 2003 came into effect on 24 November 2005. It established a new regime for the licensing of
 - a) The retail sale of alcohol;
 - b) The supply of alcohol on behalf of a club to members of that club and their bona fide guests;
 - c) The provision of regulated entertainments (which include music, music and dance, films, plays and indoor sports); and
 - d) The provision of late night refreshment (comprising of hot food and drink between 23.00 and 05.00 hours.
4. This new regime was to be wholly administered by the local authority with responsibility for alcohol licensing passing for the first time to the authority from the magistrates' courts.
5. The Act established four new licensing objectives
 - a) The prevention of crime and disorder;
 - b) Public safety;
 - c) The prevention of nuisance; and
 - d) The protection of children from harm.

6. As part of the preparations for the introduction of the Act each local authority was required to establish a statement of licensing policy, which was to be reviewed every three years.
7. This Council consulted upon its statement of licensing policy in the summer of 2004. A policy was approved by Council Assembly in December 2004. The policy was drafted in compliance with
 - a) The provisions of the Licensing Act 2003; and
 - b) The guidance to the Act produced by the Department of Culture Media and Sport published in July 2004;
 - c) Secondary regulations produced by the Secretary of State under the Act released in draft form in 2004 and published in January 2005.
8. The policy was thereafter published in January 2005 in time for the transition into the Act, which commenced in February 2005. The Act came into effect on 25 November 2005.
9. On 22 June 2006 the Licensing Committee approved proposals for a mid-term review of the Council's statement of licensing policy under the Licensing Act 2003. The review was initiated in the light of the first seven months of operation of the new licensing regime. During these first months of operation a number of issues were identified which required further examination.
10. Only days later, on 28 June 2006 Council Assembly passed the following motion

"That council assembly notes the concern of local businesses, faith groups, tenants and residents' associations, trade unions, health services and residents that the opening of adult entertainment establishments will have a negative effect on regeneration and a harmful impact on those who live, work and visit the area, especially women.

That council assembly welcomes the proposal for review of and consultation on Southwark's licensing policy but remains concerned, given recent statements by the leader reported in the local media, that the policy, even if reviewed, may not protect the interests of local people partly due to the fact that councils cannot ban or restrict adult entertainment premises and the fact that Southwark cannot claim a "saturation policy" similar to that in Westminster where there are 100s of adult entertainment businesses.

That council assembly further notes:

- a) *The failings of the government's new licensing laws, as reported by the Office of the Deputy Prime Minister: Housing, Planning and Local Government and the Regions Committee, which believed that the new*

laws placed an unnecessary restriction on elected representatives wishing to speak on licensing applications; and

- b) That despite concerns expressed to the Department for Culture, Media and Sport (DCMS) prior to the implementation of the Licensing Act 2003, the department significantly underestimated the cost of implementing the Act and set fees associated with licence applications too low thereby reducing the ability of the council to carry out high levels of consultation, despite the council incurring over £350,000 extra expenditure.*

The council assembly therefore calls on the government to review its licensing laws with a view to:

- (i) Allowing councillors to represent their local communities;*
- (ii) Allowing licensing committees to consider restricting certain classes of entertainment in a location, even where no current such use exists, where that class of entertainment is in conflict with a area's regeneration and community safety objectives; and*
- (iii) Introducing a fee structure that accurately reflects the cost of implementing the Act.*

That council assembly also calls on the licensing committee to

- Ensure wide consultation on the review of the licensing policy;*
- Ensure that the consultation includes a policy option which ensures that adult entertainment clubs are not opened in close proximity to schools, visitor attraction, residential areas, places of worship and other community facilities;*
- Review the procedural aspects of Southwark's licensing policy, and if necessary make representations to the government, to ensure that ward councillors are not prevented from playing an effective role as advocates for their communities in licensing matters; and*
- Assure the local community that it will honour its responsibilities to local people and to local businesses and ensure that the Southwark council takes this issues as seriously as other London boroughs such as Westminster council."*

11. The mid-term review was again conducted with broad public consultation, which ran from 3 July through to 30 September 2006. As part of this consultation

- a) Notices inviting contributions from any interested party were given in the local press and on the Council's licensing web site;
- b) Direct invitations to submit comments were sent to all current licence holders, known business and community representative groups, ward councillors and other relevant council departments;

- c) The matter appeared on the agendas of the Council Action Teams and Community Councils;
 - d) A range of public and other meetings were staged; and
 - e) Discussions took place with responsible bodies.
12. Beyond this a range of additional advice was taken and research carried out.
13. Information generated by this process, including submissions received from the consultation exercise, has now been considered. A draft revised policy is put to the Council Assembly for consideration and final approval.
14. The draft revised policy is attached as Appendix A to this report. Submissions received as a result of the consultation are summarised at Appendix B, together with comments on each submission.
15. This draft revised policy has been considered by and is supported by
- a) The Safer Southwark Partnership at its meeting of 15 December 2006;
 - b) The Healthy Southwark Partnership at its meeting of 18 December 2006;
 - c) The Young Southwark Executive at its meeting of 9 January 2007; and
 - d) The Council's Licensing Committee at its meeting of 9 January 2007.
16. This revised draft policy is also subject of an equalities and diversity assessment.

KEY ISSUES FOR CONSIDERATION

Main Policy Considerations

17. The consultation invited submissions on any aspect of the policy. However, the mid-term review paid particular attention to the following issues that had come to light during the early days of the new licensing regime.

The licensing of adult entertainments

18. The first issue under consideration concerns the licensing of adult entertainments. This issue provoked perhaps the greatest response from the public consultation exercise.
19. The original statement of licensing policy, provided in accordance with the Act, guidance and regulations, that applications for all of the range of consents available under the Act would be granted subject to terms, conditions and restrictions consistent with those proposed in the applicant's operating schedule except where the council's discretion is engaged by representations lodged and not satisfied and that where this discretion is engaged each application would continue to be considered

upon its own merits. This applied equally to applications that included a stated intention to provide adult entertainments.

20. As part of the review Counsel's advice has been taken on the degree to which the policy might be developed to provide a framework which allows proper consideration of, and prevents the unregulated growth of adult entertainment facilities. Counsel was asked to consider the Southwark position alongside that of the policy set by Westminster City Council. In summary, Counsel's advice confirms that this council is not in a position to introduce either a "no grant" policy (as this is absolute) nor currently a saturation policy dealing with the cumulative effect of existing premises of this category. However, the advice does support the ability of this council to introduce a locations or proximity clause. In recognition of the level of concern within the local Southwark community around this single issue, this has been taken on within the policy redraft. The licensing of adult entertainments is dealt with in full at pages 37 to 40 of the draft Policy . The terms of the draft "adult entertainments policy" are provided below with the proposed proximity clause at clause 2).

"It is this authority's view thereby that in cases where a valid representation is received, an application involving adult entertainment will only be granted if the licensing authority is satisfied, having regard to all the circumstances including the nature and extent of the activities, the location of the premises, and the conditions proposed by the applicant or which might properly be imposed by the authority, that the proposals are compatible with the promotion of the four licensing objectives.

In particular, while each application will be considered on its own merits:

- 1) Consideration will be had to the cumulative effect of premises offering adult entertainment in a particular area; and, in future, to any special policy which the licensing authority may adopt should a particular location become saturated with such premises;*
- 2) Applications will not normally be granted where the premises are located:
 - a) Near residential accommodation;*
 - b) Near places of worship, community facilities, or public buildings;*
 - c) Near schools, youth clubs, shops, parks, leisure and recreational establishments and any other similar premises directed at, or primarily used by children or families; and*
 - d) Or within sight of pedestrian routes or transport nodes (such as stations or bus stops) serving categories a), b) or c)."**
- 3) Where nudity or partial nudity form part of the entertainment, or is part of the operation of the premises, the licensing authority will normally expect the operating schedule and, if the application is granted, the licence conditions to address all relevant matters in pursuit of the licensing objectives. These are likely to include conditions relating to*

- a) *The exclusion of persons under 18 at all times from the premises and the prevention of views into the premises;*
- b) *The prohibition of exterior advertising of the sex-related entertainment at the premises;*
- c) *The prohibition of leafleting or touting for business;*
- d) *That the provision of services will be to seated customers only;*
- e) *The prohibition of the participation of customers in the performance;*
- f) *The maintenance of a minimum distance of 1 metre between performer and customers during the performance;*
- g) *The provision of CCTV and the maintenance of a library of recordings;*
- h) *A code of conduct for dancers including appropriate disciplinary procedures for failure to comply with the code;*
- i) *Rules of conduct for customers, including appropriate procedures for breach of these rules;*
- j) *Procedures to ensure that all staff employed in the premises have pre-employment checks including suitable proof of identity, age and (where required) permission to work; and*
- k) *The provision of supervisors and security staff.*

4) *Applicants will be expected to indicate in their operating schedules what measures they propose to have in place to ensure that the conduct of the licensed activities, including the recruitment or supply of performers, is free of the influence of organized criminal activity."*

21. It remains, however, that the legislation still requires representations to be lodged under the licensing process for the council's discretion to be engaged. With this in mind it is considered important that "responsible authorities" and "interested parties" are very clear as to the applications that are under consideration and are thereby able to engage the process.

22. The policy revision therefore requires all applicants for premises licences who intend to provide adult entertainments under that licence, to provide clear detail of that intention in all public notices given in respect of the application. It is also proposed and set out in the revised policy that in the case of applications involving an intention to provide adult entertainments the Licensing Service will carry out a direct letter drop to all (residential and business) premises within 100 metres of the application premises.

The licensing of adult entertainments - Views of the Council's Licensing Committee

23. At its meeting of 9 January 2007 the Council's Licensing Committee agreed an amendment to the fifth paragraph of the section of the draft policy dealing with "entertainment involving striptease and nudity" so as to read "The authority recognises the capacity for the use of the premises for adult entertainment to produce impacts of the sort described above. These impacts are quite apart from ...". This addition is made for the purpose of linking cause to effect of the policy.

24. Given that it was agreed to seek Counsel advice on matters set out below on the role of ward councillors, it was also agreed that the opportunity should be used to obtain a view on the inclusion of the following clause as clause 5 of the policy on “entertainment involving striptease and nudity”.

5) That in deciding whether the imposition of particular conditions enables an application to be granted rather than refused, the licensing authority will bear in mind that the proper regulation of sex-related entertainment requires a range of conditions not only to be imposed, but to be supervised by the authority and specialist units of the police. The specialist resources to do this are limited.”

The Licensing of Adult Entertainments – Counsel’s Opinion

25. Counsel’s advice has since been taken on the matter raised in paragraph 24 and this advice states “... I suggest the last sentence of the proposed condition may leave the Council open to challenge. Wording along the lines “the council will have regard to the practicalities of enforcement before imposing conditions” should suffice and is far less prescriptive. A lawful business should not be prevented from opening merely because it is assumed it will break the law unless inspected. It is for the Council to determine its enforcement priorities.”

26. Council Assembly are asked to consider the imposition of clause 5 as revised following the advice provided by counsel.

The role of ward councillors

27. The second matter concerns the role of ward councillors.

28. Under the Act, applications for new and varied premises licences and club premises certificates are subject of a local consultation process. This consultation period allows defined “responsible authorities” and “interested parties” to lodge representations where applications give rise to concerns arising from the four licensing objectives. The Act defines “interested parties” as

- a) A person living in the vicinity of the premises;
- b) A body representing persons living in that vicinity;
- c) A person involved in a business in that vicinity; or
- d) A body representing persons involved in such businesses”

29. Advice given by LACORS (the Local Authority Co-Ordinating body for Regulatory Services) set out that a ward councillor should only be regarded as an interested party where the councillor concerned either lives within, or is involved in a business, within the vicinity of a particular premises, and thereby is affected by the application in their own right; or where that councillor has been authorised in writing to represent other persons who qualify as interested parties. This view was taken with reference to precedent case law arising from Richardson & Orme Vs North

Yorkshire County Council & the first Secretary of State & Brown & Potter Ltd which was considered by the Court of Appeal on 19 December 2003. To date this advice has been accepted by most licensing authorities.

30. However, it is understood that this view is disputed by the Association of Labour Councillors. Also the concern of Council Assembly that "*ward councillors are not prevented from playing an effective role as advocates for their communities in licensing matters*" is noted, as is the views of several respondents to the consultation that ward councillors must be free to form their own view of an application and speak on that matter at licensing sub-committee hearings.
31. The contents of the Local Government White Paper on "Strong and Prosperous Communities" issued by the Department for Communities and Local Government in October 2006, is also noted with interest. The document states "*Strong local councillors, representing their communities, are at the heart of our democracy. An independent review will look at incentives and barriers to serving on councils. New training opportunities will be provided for councillors; and the code of conduct will be amended to allow councillors to speak out on licensing and planning issues that matter to their local neighbourhoods*".
32. Furthermore it is understood from the Department of Culture Media and Sport that the review of current guidance referred to in paragraph 76 of this report, due to commence shortly, is intended to address the role of ward councillors. Also, it is noted that under the Gambling Act 2005, which comes into effect later this year, ward councillors are included within the definition of "interested parties".
33. With this in mind consideration has been given to whether the Council may disregard the advice given by LACORS and make a local determination that ward councillors will be considered to fall within the definition of an interested party for the purposes of the Act without the qualifications discussed in paragraph 29 above. It is considered that such decision would carry a high risk of legal challenge either by way of judicial review of the policy or by appeal taken against any individual decision reached which includes representations made by a non-authorized ward councillor.
34. An alternative option has been considered through which ward councillors might be afforded less restricted ability to play an effective role as advocates for their communities in licensing matters through change to the constitutional / procedural arrangements. The Act enables the licensing authority to establish its own procedural arrangements for hearings of licence application and review cases as long as these meet the requirements of the relevant hearings regulations under the Act. The Licensing Act 2003 (Hearings) Regulations set out arrangements for notification of the hearing arrangements to various parties but do not apparently prevent other persons from attending. Regulation 17 specifically states that "Members of the authority may ask any question of any party or other person appearing at the hearing". On this basis it is

arguable that it is open to the council to make provision for ward councillors to address the licensing sub-committee on matters of local knowledge within the confines of the hearings procedure and the members code of conduct.

35. Under this provision it may also be arguable that (while it should continue to be recommended that the authorisation process should be utilised whenever a ward councillor wishes to make representations on behalf of their constituents, in order that it is clearly understood on whose behalf those representations are given), views might be offered by local ward councillors where authorisation can not be provided with those views given appropriate weight.
36. A third considered option is to allow the status quo to remain in the belief that the government itself may shortly address the situation either through the review of guidance or developments arising from the white paper.
37. Irrespective of the final decision on this matter it is the intention of the Licensing Service to make the authorisation process as easy to use as possible. For this purpose a pro-forma authorisation form will be made available on the licensing web site or from the Service upon request. The form will require minimum personal details to be provided for completion.
38. The role of ward councillors is dealt with on page 19 of the revised draft policy.

The Role of Ward Councillors – Views of the Licensing Committee

39. At its meeting of 9 January 2007, the Council's Licensing Committee considered the options for progression of this matter and decided that it wished to recommend that the second option involving amendment of the Licensing Committee's procedural arrangements for the hearing of licence application and review cases would be the preferred course of action but that Counsel's advice should be taken as a supportive measure before Council Assembly considers a final determination. In the event that this option were pursued the inclusion of the following text in the revised policy document was supported

"It is open to any "responsible authority" or "interested party", as defined under the act, to lodge representations during the set consultation period. A representation would only be "relevant" if it relates to the likely effect of the grant of the licence on the promotion of at least one of the licensing objectives. A representation that fails to do this is not "relevant" for the purposes of the 2003 Act.

It is for the licensing authority to determine on its merits whether any representation by an interested party is frivolous or vexatious.

Representations must be received in writing at the licensing service office by the last date for representations. Representations must be signed,

dated, provide the grounds of representation in full and include the name and address of the person / body making the representation.

In recognition that many interested parties may feel disadvantaged in the representations process, this council wishes to make the process of authorizing local ward councillors and other representatives to speak on behalf of other interested parties as easy as possible. For this purpose pro-forma authorization forms may be downloaded from www.southwark.gov.uk/businesscentre/licensing or obtained from the licensing service. If using the authorization process you should firstly obtain the consent of the person you intend to represent your views and then provide a completed and signed authorization form to the licensing service before the last date for submission of representations. You should understand that applicants will still have a right to know the name and address of any person who lodges a representation, even if an authorization form has been completed.

This authority recognises that ward councillors have an important role to play as advocates for their community in licensing matters. For this reason it should be made clear through this policy that the authorisation process does not affect the ability of a ward councillor to address the licensing sub-committee on matters of local knowledge within the confines of the hearings procedure and the members code of conduct. While it is recommended that the authorisation process should be utilised whenever a ward councillor wishes to make representations on behalf of their constituents, in order that it is clearly understood on whose behalf those representations are given, views may be offered by local ward councillors at a hearing where authorisation can not be provided and those views shall be given appropriate weight.

Further information, including an outline of the process that is followed at public hearings, can be found in the separate document "" Guidance to the Hearing of Representations and Licence Reviews".

The Role of Ward Councillors – Counsel’s Opinion

40. Counsel’s advice has since been taken and the advice sets out the following points

- a) That “the definition of “interested party” is a statutory one and cannot be expanded by any statement of licensing policy.”
- b) That “I consider express authorisation is needed for a representative to act. A ward councillor is in no different position to any other representative and needs to be told at least the bare bones of what to say and be authorised to speak on that persons’ behalf”
- c) That “A committee needs to be able to find that a person is acting as a representative. There are no procedural requirements on this behalf and how a person satisfies a committee he is acting as somebody’s representative is up to each individual and whether the committee is

satisfied is up to each committee. Oral instruction may do, but written instruction would be better.

- d) That “There is nothing in the Hearing Regulations which would permit a Council to allow ward councillors to have a freestanding role at a hearing. Whilst, for example, regulation 21 (*allowing the authority to determine the procedure to be followed at the hearing*) the scheme of the regulations militates against such an approach.
- e) That “I do not consider the penultimate paragraph of the proposed wording on regulations can stand. A representative an represent, he / she cannot do more just because he / she is a ward councillor”

41. Further follow up clarification was raised by way of the following question

“Do the hearing regulations allow any capacity for a ward councillor to appear and speak at a licensing hearing other than formally going through the representations process? For instance could a ward councillor speak at a hearing on matters of local and personal knowledge if the procedural rules of the committee provided for this? Would the position be affected if the ward councillor was required to give notice of the issues upon which he / she wished to address?”

42. Counsel’s response was ““I do not consider a ward councillor could so act. There is no provision for such a free standing role within the rules”.

43. Council assembly is recommended that at this time this matter is pursued only through the forthcoming DCMS review of the guidance to the Act.

Consultation Arrangements

44. Issue three is concerned with the level of public consultation undertaken on premises licence applications. The Act and regulations to the Act require only a minimal level of consultation – a public notice placed in a local newspaper and a similar notice prominently placed in the window of the application premises for a 28-day period.

45. This level of consultation is below that the Licensing Service previously undertook in respect of public entertainment licences, in which case the Service would write directly to all known tenants and residents and associations and to all residents within a 100 metre radius of the application premises. The Service has, since the new law came into being, looked to supplement the new consultation arrangements by notifying local ward councillors of applications in their ward and also placing details of applications on the licensing web site.

46. Experiences have indicated that even with the additional steps taken by the Service, applications may not come to residents’ attention in time for them to lodge representations. The consultation has indicated a desire in the community that additional consultation arrangements are made.

47. In considering options for improving the consultation arrangements, the Service has been mindful that it is prevented in law from canvassing for representations and that it must be seen to be acting consistently in each application that it deals with.

48. Consideration has been given to the re-introduction of the direct letter drop. However, calculations made of the cost of conducting a letter drop to local residents across the last 20 application cases received by the Service, have shown that the cost of carrying out such letter drop alone would have left a net deficit to the service in excess of £1,500 after taking into account all the licence fees received in respect of those applications.

49. A more cost-effective approach is proposed, which is supported by several consultation respondents. The proposal is to establish an email licensing alert scheme whereby, at regular intervals anyone who lives or works in Southwark may ask to receive a short standard email alert that notifies them whenever a new premises licence application or variation appears on the Southwark licensing web site. That email will contain a direct link to the web site which may be viewed at leisure. While it is recognised that this is only of direct use to people who have access to the internet, it is also recognised that many local community and business representative groups will have some access to the internet among its membership and will be able to assist with the local dissemination of information.

50. Consultation is dealt with on page 18 of the revised draft policy.

Consultation Arrangements – Views of the Council’s Licensing Committee

51. At its meeting of 9 January 2007 the Council’s Licensing Committee agreed that

- a) The draft policy should clearly set out the Council’s expectation of the minimum standard of public notice to be displayed at an application premises, which should be above the minimum provided for by the current secondary regulations. The draft policy is accordingly revised setting out that public application notices displayed at premises “should be of A3 size in pale blue colour printed legibly in black ink in a font of a size equal to or larger than 20” and be “displayed in a position where they may be easily seen and read by passers by”;
- b) In establishing the email alert scheme appropriate advice should be taken by the Licensing Service (both from the Council’s Communications Team and also Equalities and Diversity) in how information relayed in the email alerts may best be provided; and
- c) That prior to invitations to sign up for the email alert scheme are distributed current lists of known tenants and residents associations are to be circulated to all community councils and local ward councillors for assistance with updating.

Introduction of Saturation Policies

52. The fourth issue deals with the position regarding the need for saturation policies within Southwark.
53. The guidance to the Act introduced the concept of saturation policies which deal with the cumulative impact of existing licensed premises upon the four licensing objectives. The guidance sets out the steps to be followed in considering whether to adopt a special policy within the policy which are
- a) Identification of concern about crime and disorder or public nuisance;
 - b) Consideration of whether it can be demonstrated that crime and disorder and nuisance are arising and are caused by the customers of licensed premises, and if so identifying the area from which problems are arising and the boundaries of that area; or that the risk factors are such that the area is reaching a point where cumulative impact is imminent;
 - c) Consultation with those specified by section 5(3) of the Act as part of the general consultation required in respect of the whole policy;
 - d) Subject to that consultation, inclusion of a special policy about future premises licence or club premises certificate applications from within that area within the terms of the DCMS guidance to the act in the policy; and
 - e) Publication of the special policy as part of the policy required by the Act.
54. The guidance to the Act states that “there should be an evidential basis for the decision to include a special policy within the statement of licensing policy”. Accordingly, the policy consultation asked whether evidence existed which supported the consideration of a saturation policy in any area of the borough.
55. Although several responses were received on this matter, crucially, mapping exercises carried out by the police in respect of crime and disorder figures and by the Council’s Environmental Health Noise Team in respect of noise nuisance figures have not supported any local policies at this point in time.
56. Cases made elsewhere, however, are as follows
- a) By Southwark Community Safety Service in respect of areas in Peckham, Camberwell and the Elephant and Castle (supported by the Draper Tenants Association);
 - b) By Shad Thames Residents Association in respect of areas in Shad Thames and Tower Bridge Road;
 - c) By the Dulwich Society and Stradella and Springfield Residents Association in respect of Herne Hill.

57. Of the submissions made, only submissions made by Community Safety provide an evidence base. It should be noted that the position regarding both the Elephant and Castle and Peckham is changing rapidly following recent decisions taken by the Council's Licensing Committee (combined in the case of the Elephant and Castle with progression of the regeneration proposals).
58. In each of these suggested cases the information provided at present is not considered to be detailed enough to move forward to stage two local consultation with directly affected businesses and residents.
59. It is proposed, however, that the police, noise team and community safety service should continue to closely monitor the situation in each of the areas named in a) to c) above and report back to the Licensing Committee in the event that any an evidence base is established in any area.
60. Saturation policies are dealt with on pages 34 and 35 of the revised draft policy.

Introduction of Saturation Policies – Views of the Council's Licensing Committee

61. At its meeting of 9 January 2007 the Council's Licensing Committee noted the stated intention to continue monitoring the situation in and around the areas raised as potential saturation zones through the consultation process and report back at any time that an evidential basis around the potential establishment of a saturation zone for further local consultation may be available. The Committee decided that in order that it may properly understand the current local position with regards to saturation, representatives from Southwark Police should be invited to attend and discuss the situation at the next meeting of the Committee. Other bodies that proposed saturation zones under the past consultation are to be invited to attend this meeting.

Licensing and the Disability Discrimination Act

62. The fifth issue deals with the extent to which the licensing authority may consider issues around access for people with disabilities to licensed premises.
63. Discussions on this matter have taken place between the Southwark Licensing Service and the Southwark Disablement Association (SDA). Contact has been made with the government direct and London Councils (formerly the Association of London Government). Both responses have indicated that the government is unlikely to consider setting access for people with disabilities as a fifth licensing objective or otherwise including this as a consideration under the licensing regime as matters are covered by other legislation and the licensing act is not intended to duplicate any other provisions.

64. The Licensing Service is mindful, however, that the Disabilities Discrimination Act 2005 places a duty on public bodies to actively promote disability equality and that there is general desire that the licensing process should not be seen to endorse premises where reasonable adaptations have not been made to make facilities available to all.
65. It is proposed under the draft policy, therefore, that the two services will instigate close working arrangements which will see the SDA notified of all new and varied premises licence applications. The SDA will visit each premises to gauge the access facilities and offer assistance in introducing improvements where necessary. In cases where any resistance may be met the licensing service will lend its support to discussions to effect improvements at the premises concerned. The revised draft policy also provides a link to a web based access self-assessment tool, which some licensees may find helpful.
66. Licensing and the Disability Discrimination Act is dealt with on pages 24 and 25 of the revised draft policy. A further item on the Disabilities Discrimination Act will be prepared for the information of the Licensing Committee in accordance with the Committee decision of 16 November 2006.

Licensing and the Disability Discrimination Act – Views of the Licensing Committee

67. At its meeting of 9 January 2007 the Council's Licensing Committee agreed that the intended forthcoming report to the Committee on the Disabilities Discrimination Act should also consider how a broader range of views on access facilities may be sourced.

Licensing, Planning & the Night-Time Economy

68. The sixth specific issue raised deals with the desire that licensing and planning are seen to be working hand in hand.
69. Licensing and planning are separate regimes in law. Refusal of one consent is not reason in itself for refusal of the other. Licensing should not be a rerun of the planning process. Licensing should concern itself with the impact of a premises on the licensing objectives while the planning process should consider issues of amenity.
70. However, the Act does enable interaction between the two. Planning is one of the named responsible authorities under the Act and is therefore able to make representations on licence applications or call for licence reviews around issues relating to the objectives.
71. Page 27 of the revised draft policy looks to establish clearly the inter-relationship between the two and set down the licensing authorities expectations around this issue.

72. Furthermore agreements have been made that licensing and planning reports will carry information regarding the position of the other consent where these are applicable.

73. Relevant to this matter, the development of the Mayor's draft Best Practice Guidance on Managing the Night Time Economy is watched with interest. The development of a coherent policy, which reaches across all aspects of the licensing, planning, transport, policing and other relevant strategies would provide the most comprehensive framework upon which licensing decisions may be taken. Work to develop such a policy will require specific resource allocations.

Other Matters

74. The draft revised licensing policy is revised and updated throughout, particularly the sections 7 to 10 which relate in turn to the four licensing objectives. Within each section additional advice and guidance on best management practice has been provided, prepared in conjunction with the relevant responsible authority, for the benefit of applicants and licensees.

75. Section on 11 on enforcement sets out how enforcement resources are to be primarily directed to high risk premises informed by information provided through local partnership meetings.

Other Matters – Views of the Licensing Committee

76. At its meeting of 9 January 2007 the Council's Licensing Committee agreed the following revisions to Section 7 of the draft policy dealing with the prevention of crime and disorder

- a) That the reference contained within the broad guide to crime and disorder controls relating to "adequate numbers of SIA registered door supervisors to be employed at the entrance to premises" should be extended to include other key internal positions for the purposes of security, protection, screening and dealing with conflict;
- b) That the policy should re-inforce that all persons employed for the purposes of "security, protection, screening the suitability of persons entering premises or dealing with conflict in pubs, clubs and other licensed premises open to the public" must be registered with the SIA and that it is in the licensees own interest to ensure that all security staff whether employed directly or engaged from security companies are so licensed;
- c) That the policy should more strongly encourage that either the designated premises supervisor or a personal licence holder is on the premises at all times that alcohol sales are taking place;
- d) That the policy should set out that in cases where there is any element of doubt, the premises user should provide the council and the police authority with evidence of consent to use the premises from the premises owner.

Timetable for Progression

77. Following approval by the Assembly the revised policy must be published and advertised in a local newspaper. The revised policy comes into effect four weeks after its publication is advertised.

Continued Work - Review of the Department of Culture Media and Sport (DCMS) Guidance on the Licensing Act 2003

78. The guidance issued by the Department of Culture Media and Sport on the Licensing Act 2003 is currently subject of a two-stage review process. The initial stage of the review, which focussed on issues where a degree of consensus existed among stakeholders, commenced early in 2006 and resulted in supplementary guidance being issued in June 2006. More comprehensive consideration of the content of the DCMS guidance, with full public consultation undertaken, is to be carried out within the second stage of the review. The second stage of the review was due to have been carried out in the summer of 2006 but has been considerably delayed. The consultation on the review is now to be launched in January 2007. In June 2006, the Association of London Government (now London Councils) was approached to represent this Council's views on matters contained within the Act and the Guidance but was unable to have these raised in the first stage of the review exercise. The ALG advised that this Council's representations should be made formally as a response to the second stage consultation. All matters that this mid-term policy review has not been able to satisfy will be raised under the awaited consultation.

Continued Work – Review of the Licensing Fees Schedules by the Department of Culture Media and Sport

79. The level of statutory fees under the Act is currently under review by the Department of Culture Media and Sport. This authority has provided full information on the costs incurred by this Council in preparing for and administering the Act to the fees review. The publication of the outcome of the review is awaited.

Community Impact Statement

80. This revision of the policy is intended to provide for greater dissemination of information concerning licensing applications among the Southwark community and thereby facilitate better consultation; and to ensure full and proper consideration of applications relating to adult entertainments being a matter of proven considerable local concern. The revised policy draft will be subject of an equalities impact assessment.

Resource Implications

81. There are no further resource implications other than those raised in the main body of the text.

Consultations

82. Consultation arrangements undertaken in respect of this policy revision are detailed in paragraph 11 of this report.

SUPPLEMENTAL ADVICE FROM OTHER OFFICERS

Borough Solicitor

83. The Licensing Act 2003 requires the Council, as the licensing authority, to prepare and publish a statement of its licensing policy every three years. The policy must be published before the Council carries out any function in respect of individual applications made under the 2003 Act. The Council's first statement of licensing policy received Council assembly approval on December 8th 2004. Since that date the policy has been kept under review.

84. Members of the Licensing Committee are asked to comment on the draft statement of licensing policy, which incorporates revisions to the first statement of licensing policy. These revisions reflect legislative and policy developments together with feedback from the community relevant to whether the statutory objectives are being met. Paragraph 2 of the report identifies specific proposals upon which comment is sought.

85. 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 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.

86. 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.

87. Once the statement of licensing policy is in place, the Council is required to have regard to it 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.

88. 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

89. 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.

90. Members should however note that 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.

91. Members should note that 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'.

92. Members should note that 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 an 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.

93. 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.

94. The 2003 Act provides that the functions of the licensing authority, except those relating to the making of the statement of licensing policy, are to be taken or carried out by its licensing committee and that the licensing committee may delegate these functions to sub-committees or to licensing authority officials in appropriate cases. The Council has delegated its licensing functions in accordance with the 2003 Act as set out in its Constitution (2006/07) at Part 3G.

95. Members should note the opinion/advice obtained from the external counsel on matters under consideration and are asked to consider it when given approval to the amended policy.

BACKGROUND INFORMATION

| Background papers | Held at | Contact |
|--|--|--|
| Licensing Act 2003 DCMS Guidance Secondary regulations Licensing policy review papers Consultation responses and analysis Legal opinion referenced herein | The Chaplin Centre, Thurlow Street, London, SE17 2DG | Mrs Kirty Read, C/O The Licensing Service. Telephone 020 7525 5748 |

AUDIT TRAIL

| | | |
|--|--|-------------------|
| Lead Officer | Gill Davies, Strategic Director of Environment & Leisure | |
| Report Author | Richard Parkins, Licensing Manager | |
| Version | Final | |
| Dated | 12 January 2007 | |
| Key Decision | Yes | |
| Consultation with other officers / Directorates / Executive Member | | |
| Officer | Comments sought | Comments received |
| Borough Solicitor and Secretary | Yes | Included herein |
| Executive Member | 7 November 2006 | 7 November 2006 |
| Safer Southwark Partnership Board | 15 December 2006 | 15 December 2006 |
| Healthy Southwark Partnership Board | 18 December 2006 | 18 December 2006 |
| Young Southwark Executive | 9 January 2007 | 9 January 2007 |
| Licensing Committee | 9 January 2007 | 9 January 2007 |