

Item No. 8.	Classification: Open	Date: 6 November 2017	Meeting Name: Licensing Committee
Report title:		Licensing Act 2003: Review of statement of licensing policy 2016 – 2020	
Ward(s) or groups affected:		All wards	
From:		Strategic Director of Environment and Social Regeneration	

RECOMMENDATIONS

1. That the licensing committee:
 - a) Considers the draft amendments of the Southwark statement of licensing Policy 2016-2020 provided at Appendix A to this report for approval to undertake public consultation.
 - b) Agrees the arrangements for public consultation on the draft revision of the policy document, as set out within this report, including the basis for the public consultation questionnaire.
 - c) Considers whether to incorporate any additional areas within the public consultation, including that of recommended closing times for licensed premises based on premises type and area classification.

BACKGROUND INFORMATION

2. 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, to be administered by the local licensing authority (within Southwark, this council).
3. Section 5 of the 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. The current version of the policy for 2016 – 2020, which was approved by the licensing committee on 2 November 2015 and was adopted by council assembly on 25 November 2015. The statement of licensing policy came into effect on 1 January 2016. The policy is not due for revision, however

this is a mid-term review to make amendments to the policy.

5. Since the commencement of the current statement of licensing policy on 1 January 2016 , there have been a number of issues that have arisen at licensing sub-committee meetings where members have requested clarification, the amendments in this revision seeks to clarify Southwark's position that are believe to be appropriate and necessary.
6. Every revision of the policy is required by law to be subject of full public consultation. Details of the proposals for public consultation on this revision are set out in this report.
7. The licensing committee is asked to consider and comment on the content of the draft policy revision and to agree the arrangements for public consultation on the draft policy accordingly. The committee is also asked whether it wishes for any additional matters to be incorporated into the public consultation.
8. The licensing committee is also asked to note that there are two separate agenda items relating to the proposed amendments to the statement of licensing policy each to be considered individually for consultation. These items are the proposal to change the policy closing times for new and variation licence applications in the Shad Thames area and to consider the introduction of a late night levy within the policy.

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 to 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 its 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.

Summary of the main amendments

11. A summary of some of the main changes is as follows.

Section 2 – All About Southwark

12. Paragraphs 23 to 25: Update to alcohol related crime analysis.

Section 4 – Administration, exercise and delegation of function

13. Paragraph 58: The provision of scale plans is updated to clarify that Southwark requires outside areas intended for the consumption of alcohol to be included in the premises plans.
14. Paragraphs 69 to 73: The policy on temporary event notices (TENs) is updated to clarify Southwark's position on multiple TENs, that there is a presumption not to grant more than one TEN for a single event.
15. Paragraph 79: Clarification for pre-application advice for complex applications.
16. Paragraph 82: Introduces recent changes to the Act to include the Secretary of State as a responsible authority and the change to allegeable persons who can apply, vary or transfer a premises or apply for a personal licence by restricting these applications for individuals to persons who have the right to work in the UK.
17. Paragraph 94: To update table 1, the table of delegations of licensing functions to include the secretary of state and to delegate the decision for determining the action to take on an existing personal licence where convicted of any relevant offence or foreign offence, or required to pay an immigration penalty.
18. Paragraph 98: Clarification of transfer applications of a premises licence following application for a review
19. Paragraph 104: To clarify the position that the council's regeneration section and policies have the same standing as planning policies.
20. Paragraphs 109 to 111: To clarify that premises licences and TENs do not give consent to use the premises/land where the premises/land is under separate ownership and the need for owners consent to use the premises/land, including obtaining a table and chairs licence.

Section 6 – Local cumulative impact policies (CIPs)

21. Paragraphs 134 to 135: Updated to clarify the positions of CIPS and planning and regeneration policies.

Section 7 – Hours of operation

22. Paragraph 168 to 170: To clarify premises that do not fall into the listed premises category and where the sale of alcohol is not the primary activity.

23. Paragraph 173: There is a separate report for consideration to introduce separate closing times for the Shad Thames area.
24. Paragraphs 175: To state that there is currently no late night levy in Southwark

Section 10 – The third licensing objective - The prevention of public nuisance

25. Paragraph 242: The introduction of a maximum occupancy figure for the premises and outside areas in relation to the assessment of the premises to prevent public nuisance.

Section 12 – Enforcement

26. Paragraph 296: To highlight that the current enforcement policy is under review.

Resource implications

27. 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.
28. 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 process

29. The revision of the Southwark statement of licensing policy is intended to be undertaken with public consultation in accordance with section 5(3) of the Licensing Act 2003. As such, it is proposed that consultation will take place as follows.
30. The policy will be introduced by circular letter sent to
 - 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
 - All responsible authorities specified under the Act.
31. The consultation will also be introduced on the council web site with the draft policy made available together with an online questionnaire for easy response.
32. A local meeting will be held in each community council area, intended to stimulate debate on the policy content.
33. The policy consultation and area meetings will be advertised in the local press.

Consultation questionnaire

34. It is suggested that the following questions be posed under the public consultation exercise. The committee is asked to consider whether it wishes for any amendment of the proposals or addition made:
- Whether the amendments to the policy are clear and easily understood?
 - Whether the amendments to the policy are balanced, fair and reasonable?
35. In each case, respondents will be offered the opportunity to expand on their answer and provision for general comments will be made.
36. A separate consultation will be undertaken if the committee decides to proceed with the late night levy and the Shad Thames closing times.

Consultation timetable

37. The following timetable for the public consultation on the draft policy amendments and for final approval of the 2016 – 2020 policy document is proposed:
- Licensing committee 6 November 2017: Consideration of the 2013 partnership analysis, cumulative impact policies, draft policy revision and consultation timetable.
 - November 2017 – Final preparations for the public consultation.
 - Public consultation to run from 1 December 2017 to 28 February 2018.
 - March 2018: Consideration of consultation responses and further revision of the policy.
 - TBC (first available meeting after April 2018): 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.
 - TBC (first available meeting after licensing committee consideration): council assembly considers final policy revision for adoption

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Law and Democracy

38. 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.
39. 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.
40. 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.

41. 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.
42. 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.
43. 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.
44. 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.
45. 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'.
46. 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.

47. 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.
48. 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.
49. 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.
50. 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.

Strategic Director of Finance and Governance

51. The strategic director of finance and corporate services notes the resource implications contained within the report and that there are no financial implications as a result of accepting the proposals. Officer time to effect recommendations will also be contained within existing budgeted revenue resources.

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 2016 – 2020

AUDIT TRAIL

Lead Officer	Deborah Collins, Strategic Director of Environment and Social Regeneration	
Report Author	David Franklin, Team Leader Licensing	
Version	Final	
Dated	23 October 2017	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments sought	Comments included
Director of Law and Democracy	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
Cabinet Member	No	No
Date final report sent to Constitutional Team		24 October 2017