

**Classification:** Public

**Key Decision:** No

## **Gravesham Borough Council**

**Report to:** Licensing Committee

**Date:** 17 September 2013

**Reporting officer:** Sarah Kilkie, Assistant Director (Communities)

**Subject:** Review of Statement of Licensing Policy under the Licensing Act 2013

### **Purpose and summary of report:**

To apprise Members of the proposed methodology to be followed in reviewing Gravesham's Statement of Licensing Policy under the Licensing Act 2003 and to put forward a draft for consultation.

### **Recommendations:**

- (1) Members to note and endorse the contents of the report and request officers to proceed with the review process
- (2) Members to approve the draft statement of licensing policy under the Licensing Act 2003, as attached at Appendix 2, for public consultation.

## **1. Background**

- 1.1 Section 5 of the Licensing Act 2003 (2003 Act) requires licensing authorities to prepare and publish a statement of its licensing policy every five years (previously every three years) The policy must be published before the licensing authority carries out any licensing functions under the 2003 Act.
- 1.2 The last Statement of Licensing Policy was adopted on 7 January 2011, for a period of three years and will expire on 6 January 2014.
- 1.3 The policy was developed in close conjunction with all the other local authorities and responsible authorities (Police, Fire, Trading Standards etc.) in Kent via the mechanism of the Kent & Medway Regulatory Steering Group. In development of the policy, full account was taken of the guidance issued under Section 182 of the 2003 Act and to which licensing authorities must have regard.
- 1.4 The aim of the county wide approach is two-fold. Firstly, to promote consistency to the benefit of licensees, potential licensees, businesses, residents and to regulatory services having a Kent wide remit. Secondly to minimise risk of judicial review of the individual policies.

- 1.5 The current policy has provided a stable but flexible background to the council's consideration of licensing applications. This is illustrated by the fact that the policy has not been legally challenged.
- 1.6 The existing Statement of Licensing Policy is working well in achieving the promotion of the four licensing objectives:-
- Prevention of crime and disorder
  - Public safety
  - Prevention of public nuisance
  - Protection of children from harm
- 1.7 There have been considerable changes in legislation over the last twelve months through the Police Reform and Social Responsibility Act 2011 and the Live Music Act 2012 that have made it necessary to review the policy now rather than in late 2014. These changes have been included in the draft statement of policy which is attached as Appendix 2. The changes include:
- Statement of Licensing Policy - to be reviewed every five years instead of every three years
  - Removal of the vicinity test – allowing anyone in the country to make a relevant representation regardless of the person's proximity to the premises
  - Temporary Events Notices (TEN's)
    - Previously only the Police could object to TEN's on the grounds of preventing crime and disorder. This now extends to environmental health officers as well and all licensing objectives can be taken into account
    - There are now two types of TEN's – the 'standard TEN' where at least 10 working days are given and now a newly introduced 'late TEN' where different procedures apply
    - Certain control have been relaxed in relation to the maximum duration of any one TEN from 96 hours to 168 hours and maximum aggregate duration of the periods for TEN's per premises per calendar year, increased from 15 days to 21 days
  - Licensing authority as a Responsible Authority – allows the licensing authority to comment on applications for new premises or variations to existing licences or review applications
  - Health bodies as a Responsible Authority – Health bodies are able to make representations against applications even though there is no licensing objective that obviously fits health concerns
  - Reducing the burden of proof on licensing authorities – There is now a lowered evidential threshold which licensing authorities must meet when making licensing decisions by requiring that they make decisions which are

‘appropriate’ rather than ‘necessary’ for the promotion of the licensing objectives

- Annual Fees – Licensing authorities can now suspend a premises licence for non-payment of all annual fees due on or after 25 April 2012
- Early Morning Alcohol Restriction Orders (EMRO’s) – designed to address recurring problems such as high levels of alcohol related crime and disorder in specific areas at specific times, serious public nuisance and other instances of alcohol related anti-social behaviour which is not directly attributable to specific premises. This is a local power that licensing authorities can choose whether or not to exercise
- Late Night Levy – enables licensing authorities to raise a contribution from late-opening alcohol suppliers towards policing the night-time economy. This is a local power that licensing authorities can choose whether or not to exercise
- Live Music Act 2012 –
  - Removes the licensing requirements for amplified live music and live unamplified music but subject to limitations
  - Removes the licensing requirement for entertainment facilities
  - Widens the licensing exemption for live music integral to a performance of Morris dancing or similar so that the exemption applies to live or recorded music generally, instead of just unamplified music

1.8 Members will recall that at the Licensing Committee of 6 March 2013 it was reported that there would be the de-regulation of recorded music for audiences of less than 500. This has not yet been introduced so it will be necessary to amend the policy again when this and other anticipated changes in 2014 are introduced.

1.9 Members will note that the format of the draft policy has been changed and expanded from previous versions in that, in addition to detailing both the legislation and the actual policy advice, reasons for the council stance have been included for further clarity and transparency. The inclusion of more appendices will also make it easier to amend a section of the policy without the need for a widespread consultation where the changes are mandatory.

## **2. Consultation**

2.1 The Act and the Guidance require a consultation process prior to determining the Statement of Licensing Policy. The persons who must be consulted are:

- The Chief Officer of Police for the area;
- The Fire and Rescue Authority for the area;
- Persons/bodies representative of local holders of premises licences;
- Persons/bodies representative of local holders of club premises certificates;
- Persons/bodies representative of local holders of personal licence;

- Persons/bodies representative of businesses and residents in its area
- 2.2 A consultation period of 12 weeks is proposed from 23 September 2013 until 14 December 2013.
  - 2.3 All incoming responses will be entered on to a grid for consideration as recommended by Local Government Regulation.
  - 2.4 The grid and recommendations will be put before Licensing Committee on 5 March 2014.
  - 2.5 The amended version of the Gravesham Statement of Licensing Policy will then be presented for approval by the Council on 22 April 2014 and then published thereafter.

### **3. BACKGROUND PAPERS**

- 3.1 None

Anyone wishing to inspect background papers should, in the first place, be directed to Committee & Electoral Services who will make the necessary arrangements.

**IMPLICATIONS**

**APPENDIX 1**

<b>Legal</b>	Section 5 of the Licensing Act 2003 (as amended by the Police reform and Social responsibility Act 2011) requires a licensing authority to prepare and publish a statement of its policy every five years, During the five year period, the policy must be kept under review		
<b>Finance and Value for Money</b>	There are no direct financial implications for Gravesham Borough Council concerning this matter at present. However, if at any time in the future the policy was subject to legal challenge, there could be costs associated with this process		
<b>Risk Assessment</b>	<p>Failure to keep a Statement of Licensing Policy under the Licensing Act 2003 that accurately reflects current legislation could lead to negative publicity and criticism from central government.</p> <p>Close adherence to the mandatory guidance in terms of policy development and consultation will minimise the risk of judicial review at a later date. This risk is further minimised by working in close co-operation and consistency with the other licensing authorities within Kent.</p>		
<b>Equality Impact Assessment</b>	<b>Screening for Equality Impacts</b>		
	<b>Question</b>	<b>Answer</b>	<b>Explanation</b>
	a. Does the decision being made or recommended through this paper have potential to cause adverse impact or discriminate against different groups in the community?	<b>No</b>	The Licensing Act 2003 is fully inclusive and affects all people equally. The consultation pool for the draft statement is diverse and includes various faiths, racial equality groups and interested business groups as well as the general public
	b. Does the decision being made or recommended through this paper make a positive contribution to promoting equality?	<b>No</b>	N/A
	c. What steps are you taking to mitigate, reduce, avoid or minimise the impacts identified above?		N/A
<i>In submitting this report, the Chief Officer doing so is confirming that they have given due regard to the equality impacts of the decision being considered, as noted in the table above</i>			

<b>Corporate Business Plan</b>	There are direct links to areas of focus: Focus Area 1 – Keeping Gravesham Safe There are indirect links to area of focus: Focus Area 13 – Driving the economic development of the borough.
<b>Crime and Disorder</b>	Fulfilling powers and duties under the Licensing Act 2003 is of direct relevance to the Council's obligations under Section 17 of the Crime and Disorder Act 1998 in that the objectives of the Licensing Act 2003 are:  a) The prevention of crime and disorder; b) Public safety; c) The prevention of public nuisance; and d) The protection of children from harm