

Statement of Licensing Policy – Licensing Act 2003

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1. Summary

- 1.1** The Licensing Act 2003 ('the Act') requires the Council to prepare and publish a statement of licensing policy with respect to its licensing functions at least every five years. During the five-year period, the policy must be kept under review and the Council may make any revisions to it as it considers appropriate.
- 1.2** As agreed by the Strategic Licensing Committee, a period of formal consultation has been undertaken in respect of the draft statement of licensing policy that was considered by the Committee on 20 June 2018. This report sets out the representations received from consultees for further consideration which has resulted in minor amendments to the draft policy statement, with a view to agreeing a revised statement that may be reported to the Council for final approval.

2. Recommendations

- 2.1** That the Committee considers the representations received following the formal consultation on the draft Statement of Licensing Policy 2019 to 2024 and the 'Premises Licence Applications – Completing the Operating Schedule and Plan of the Premises Guidance'. The Committee agrees with the officers' comments in **Appendix A** in response to the comments made and recommends to the Council that the policy statement is published and advertised by the Operations Manager – Trading Standards & Licensing in accordance with the provisions of the Act and that the policy statement will take effect from 1 April 2019.

- 2.2** That the Committee delegates to the Operations Manager – Trading Standards & Licensing, in consultation with the Chair of the Strategic Licensing Committee, the authority to amend any typographical errors and/or administrative inconsistencies in the proposed Statement of Licensing Policy as set out in **Appendix B** prior to the policy statement being presented to the Council for final approval.

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3. Risk Assessment and Opportunities Appraisal

- 3.1** The preparation and publishing of the statement of licensing policy is a legal requirement under the Act. There is no requirement to prepare and publish supporting guidance and as such it is proposed that the guidance set out at **Appendix C** will sit outside the policy to allow this to be regularly updated by officers to reflect current best practice.
- 3.2** If the Council fails to prepare and publish the statement of licensing policy the Council may be challenged when exercising its functions under the Act through a number of routes, e.g. service complaints to the Local Government Ombudsman and judicial review. Conversely, by preparing and publishing the statement of licensing policy, the Council is complying with its legal obligation. In addition, the Council provides a defined framework within which to exercise its functions and makes it clear to all stakeholders the manner by which the Council intends to exercise those functions.
- 3.3** There are no direct legal consequences for failing to provide supporting guidance; however, the proposed guidance aims to assist applicants and existing licence holders to meet the requirements of the policy and reduce the burden on the Licensing Service and other Responsible Authorities.
- 3.4** An Equality and Social Inclusion Impact Assessment (ESIIA) has been undertaken, utilising evidence already held by the service area and the results of the public consultation.

- 3.5** For people in Protected Characteristic groupings in the community, and for those at risk of social exclusion, as indicated in the ESIIA the impact of the proposed policy is rated as 'low positive'. However, in practice the impact in reality is likely to be neutral – neither positive nor negative – with no anticipated need to take actions to mitigate or enhance the impact beyond common sense considerations that will benefit all groupings. The full ESIIA document can be found at **Appendix D**.
- 3.5** There is no anticipated environmental impact associated with the recommendation in this report.
- 3.6** The recommendations are not at variance with the Human Rights Act 1998 and are unlikely to result in any adverse Human Rights Act implications. The recommendations are in line with relevant legal procedures prescribed by the Act and with guidance issued by the Home Office.

4. Financial Implications

- 4.1** The financial implications associated with the recommendation are limited to the employee costs associated with undertaking the consultation exercise and any costs of publishing the statement of licensing policy. These costs are recovered through the statutory licensing fees.

5. Background

- 5.1** The Council has ultimate responsibility for determining the Council's statement of licensing policy and this cannot be undertaken by the Strategic Licensing Committee or Cabinet.
- 5.2** The consultation was undertaken for a ten week period from 25 June 2018 to 2 September 2018.
- 5.3** There are no defined legal procedures that must be adhered to by the Council prior to the statement of licensing policy taking effect; other than to ensure the statement of licensing policy is the subject of consultation and is published. The Council may determine the most appropriate means by which to achieve this.

- 5.4** In addition to consulting on the actual policy, consultation was also undertaken in respect of the 'Premises Licence Applications – Completing the Operating Schedule and Plan of the Premises Guidance'. The proposed guidance aims to assist applicants and existing licence holders to meet the requirements of the policy. Whilst there is no specific legal requirement in the Act to consult on the supporting guidance, because the guidance and the policy are inextricably linked, it was deemed appropriate to consult on the guidance at the same time as undertaking the policy consultation. This ensured that all stakeholders were fully aware of both the policy and the practical approach that the Council intended to adopt over the next five years.
- 5.5** There was a limited response to the consultation with 10 responses received. Broadly, there was support for both the revised policy and the guidance and the opportunity to comment on what was seen as a constructive piece of work was welcomed; of particular note is the support from the Council's planning service, which is one of the key responsible authorities, that the licensing team is very keen to foster more effective working relationships with in order to promote the licensing objectives; hence this feedback was very encouraging.
- 5.6** Positive comments were received to the effect that the policy is comprehensive and concise and yet comprehensible, omitting jargon and easy to read. It is considered a 'significant betterment' on the existing policy with added clarity on roles and responsibilities. The fact that the policy makes it clear that whilst the Council will aim to advise a business, it is ultimately the business' responsibility to ensure that it meets the four licensing objectives and this position was supported by the responsible authority that has responsibility for preventing public nuisance. The same responsible authority also considered the creation of a responsible authority role within the licensing function of Shropshire Council as a betterment to the existing position as it will encourage links between different Council functions as well as providing additional advice and guidance to all. In addition, the fact that the Council will look to liaise with the licence holder to propose amended or new conditions in relation to licence variations is fully endorsed and recognised as a suitable way of keeping licenses relevant and up to date. Further comments indicated the policy is to be welcomed and commended, with the

procedures seen as good implementation of the legislation that actively requires applicants to provide adequate and detailed information to enable sound licencing decisions.

5.7 However, one village hall committee did respond indicating that it was unrealistic for such a committee to be expected to comment on such a lengthy and technically worded document. It was suggested that a digest could be produced to assist understanding that would lead to further consultation responses. An individual response was sent to the village hall committee concerned explaining the reasons for the extent of the technical detail and that legally the Council is required to consult on the whole policy. It is (and always was) the intention to include an executive summary for the policy. This will be drafted and included in the policy after the consultation process has ended and the main body of the policy is approved.

5.8 The supporting ‘Premises Licence Operating Schedules and Premises Plans Guidance’ is also welcomed, particularly in respect of highlighting the importance and extent of the details required in the operating schedule of the application forms.

5.9 No major changes were made to the policy or the guidance as a result of the feedback. A small number of minor clarifying amendments were made to:

- ensure any confusion over what is meant by ‘the Council’ was removed;
- that it is clear that the planning and licensing regimes consider different aspects and aim to protect the local environment to different levels and that, as a result, it is entirely possible that there may be conflict in respect of conditions placed through each regime;
- enhance the wording in the list of matters that the Council will consider, and expects applicants to fully address, in relation to demonstrating that each of the licensing objectives is met;
- enhance the list of matters that need to be included in the physical description of the premises to include reference to glazing specifications and whether windows are capable of being opened; and

- strongly encourage applicants and existing licence/notice holders to consider other appropriate guidance, particularly where it is produced by a responsible authority, in order to fully understand the provisions of the Licensing Act 2003.

5.10 Where feedback was received that has not led to changes to either the policy or the guidance, this is because the Act does not permit the changes suggested, the matter was already addressed in a different paragraph within the policy, or changes were not justified in the circumstances described

5.11 Changes have also been made by officers to correct drafting errors and to take into account further advice from both the Shropshire Safeguarding Children Board (SSCB) Business Manager and the Head of Children’s Social Care and Safeguarding with respect to determining the body competent to take on the responsible authority role in respect of the licensing objective relating to the protection of children from harm. The draft policy originally proposed the SSCB to be the body competent; however, following discussions with interested parties around the practical application and implementation of this responsible authority role, it was agreed that the body competent would be changed to Shropshire Council’s Children’s Services. However, there was a recognition that the SSCB will be the body where matters of concern, relating to the protection of children from harm, would be reported where they are not being adequately addressed by any or all of the responsible authorities or the licensing regime as a whole.

6. Additional Information

6.1 Unless there are specific reasons for an earlier review and publication of a revised statement of licensing policy, the Council will be required to undertake the next formal consultation process under the Act during 2023 with the aim of a revised statement of licensing policy being effective from 1 April 2024.

List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)

The Licensing Act 2003 - 2003 Chapter 17

Local Authorities (Functions and Responsibilities) (England) Regulations 2000 - SI 2000/2853

Home Office Amended Guidance Issued Under Section 182 of the Licensing Act 2003 – April 2018

Shropshire Council Statement of Licensing Policy 2014 – 2019

Strategic Licensing Committee Report – ‘Statement of Licensing Policy Licensing Act 2003’ dated 20 June 2018

<https://shropshire.gov.uk/committee-services/ieListDocuments.aspx?CId=166&MId=3729&Ver=4>

Cabinet Member (Portfolio Holder)

Councillor Joyce Barrow, Portfolio Holder for Communities, Waste & Regulatory Services

Local Member

The report has county wide application

Appendices

Appendix A :Summary of officers’ comments in response to the consultee responses received during the consultation

Appendix B : Licensing Act 2003 Proposed Statement of Licensing Policy 2019 to 2024

Appendix C : Premises Licence Applications – Completing the Operating Schedule and Plan of the Premises Guidance

Appendix D : Equality and Social Inclusion Impact Assessment (ESIIA)