



Committee and Date

Council

13 December 2018

## **Licensing Act 2003 Proposed Statement of Licensing Policy 2019 to 2024**

**Responsible Officer** Rod Thomson – Director of Public Health

e-mail: rod.thomson@shropshire.gov.uk

Tel: 01743 258918

### **1. Summary**

- 1.1** The Licensing Act 2003 ('the Act') requires the Council to prepare and publish a statement of licensing policy ('the 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** The Strategic Licensing Committee has overseen the preparation of the proposed policy, including the process to consult in accordance with the Act, and recommends to the Council that the proposed policy is approved and published/advertised in accordance with the provisions of the Act and that the policy will take effect from 1 April 2019.
- 1.3** The Strategic Licensing Committee has also overseen the preparation of supporting guidance; the 'Premises Licence Applications – Completing the Operating Schedule and Plan of the Premises Guidance', which sits outside the policy as a separate document.

### **2. Recommendations**

- 2.1** That the Council agrees and adopts the proposed statement of licensing policy ('the policy'), as set out in **Appendix 1**, and confirms that the policy will take effect from 1 April 2019 and instructs the Trading Standards and Licensing Operations Manager to publish and advertise the policy in accordance with the requirements of the Licensing Act 2003.
- 2.2** That the Council agrees the 'Premises Licence Applications – Completing the Operating Schedule and Plan of the Premises Guidance', as set out in **Appendix 2**, and confirms that this guidance will take effect from 1 January 2019 and that it will be amended, as necessary by appropriate licensing officers, in order that it continues to reflect best practice and supports the aims and objectives of existing and future statements of licensing policy.

## REPORT

### 3. Risk Assessment and Opportunities Appraisal

- 3.1** The preparation and publishing of the statement of licensing policy as set out at **Appendix 1** is a legal requirement under the Licensing Act 2003. There is no requirement to prepare and publish supporting guidance and as such it is proposed that the guidance set out **Appendix 2** will sit outside the policy to allow it to be amended by licensing officers in order that it continues to reflect best practice and effectively supports the aims and objectives of existing and future statements of licensing policy.
- 3.2** If the Council fails to prepare, publish and adopt the 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 publishing the 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 its functions and the level at which applications will be dealt with.
- 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 to reduce the burden on the licensing service and other responsible authorities.
- 3.4** An Equality and Social Inclusion Impact Assessment (ESIIA) has been undertaken in relation to the proposed policy utilising evidence already held by the licensing service and the results of the public consultation. The full ESIIA document can be found at **Appendix 3**.
- 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 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.
- 3.6** There is no anticipated environmental impact associated with the recommendations in this report.
- 3.7** The recommendations are not at variance with the Human Rights Act 1998 and is 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.
- 3.8** The Act requires the Council to consult on the policy and to consider any comments received during the consultation period. The Council's Strategic Licensing Committee approved a ten-week period of consultation which was undertaken between 25 June 2018 and 2 September 2018. A list of all the parties that were consulted is contained within the proposed policy at Part 5 of **Appendix 1**. The

relevant Committee report is available at Agenda Item 10 of the Strategic Licensing Committee meeting held on 20 June 2018 and can be found at the following link:

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

- 3.9** In addition to consulting on the policy, consultation was also undertaken in respect of the 'Premises Licence Applications – Completing the Operating Schedule and Plan of the Premises Guidance'. The guidance aims to assist applicants and existing licence holders to meet the requirements of the policy. There is no specific legal requirement in the Act to consult on the guidance; however, as the guidance and the policy are inextricably linked, it was deemed appropriate to do so. This aimed to ensure that stakeholders are aware of both the policy and the practical approach to the licensing regime that the Council intends to adopt over the next five years.
- 3.10** Members of the Strategic Licensing Committee have considered the comments received as a result of the consultation. The relevant report is available at Agenda Item 6 of the Strategic Licensing Committee meeting held on 3 October 2018 and can be found at the following link:  
<https://shropshire.gov.uk/committee-services/ieListDocuments.aspx?CId=166&MId=3730&Ver=4>
- 3.11** There was a limited response to the consultation with only ten responses received. However, broadly, there was positive support for both the revised policy and the guidance; further details are available at paragraphs 5.3 to 5.8 below.
- 3.12** 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;
  - clarify 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
  - to 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 further promote understanding of the provisions of the Licensing Act 2003.
- 3.13** Changes were also made to take into account 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 remained explicit 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.

- 3.14** Where feedback was received that has not led to changes to either the policy or the guidance, this is either because the Act does not permit the changes suggested, the matter is already addressed in a different paragraph within the policy, or changes are not justified in the circumstances described. In all cases, the detailed reasons for the position taken are set out in Appendix A to the report that was presented to the Strategic Licensing Committee on the 3 October 2013.

#### **4. Financial Implications**

- 4.1** The financial implications associated with the recommendations are limited to the employee costs associated with undertaking the preparation of the policy, including the consultation exercise and the costs involved in publishing the policy. The policy will only be published electronically through the Council's website and as result no additional advertising expenditure will be incurred.
- 4.2** The costs are met from statutory fees paid by licensees in accordance with provisions of the Licensing Act 2003.

#### **5. Background**

- 5.1** The Council has responsibility for determining the Council's statement of licensing policy. It is specifically not the responsibility of the Cabinet.
- 5.2** There are no defined legal procedures that must be adhered to by the Council prior to the policy taking effect; other than to ensure it is the subject of consultation and is published. The Council may determine the most appropriate means by which to achieve this.
- 5.3** The consultation feedback indicated the opportunity to comment on what was held to be a constructive piece of work was welcomed; of note, is the support from the Council's planning service, which is a key responsible authority that the licensing team is keen to foster more effective working relationships in order to promote the licensing objectives.
- 5.4** 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 improvement on the existing policy with added clarity on roles and responsibilities.
- 5.5** It was welcomed 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. The creation of a responsible authority role within the licensing function of Shropshire Council is also recognised as an improvement 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.

- 5.6** 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** 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 was always the intention to include an executive summary to the policy once the consultation exercise was completed and this has now been included to aid understanding.
- 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.

## **6. Additional Information**

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

## **7. Conclusion**

- 7.1** The required consultation has been undertaken in accordance with the Licensing Act 2003 and the proposed Licensing Act 2003 Statement of Licensing Policy 2019 to 2024 is ready for approval and publication by the Council.

**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 for 2014 to 2019

**Cabinet Member (Portfolio Holder)**

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

**Local Member**

The report has county wide application.

**Appendices – Electronic copies ONLY**

**Appendix 1** - Proposed Shropshire Council Licensing Act Statement of Licensing Policy 2019 to 2024

**Appendix 2** - Premises Licence Applications – Completing the Operating Schedule and Plan of the Premises Guidance

**Appendix 3** - Equality and Social Inclusion Impact Assessment