

MEETING:	Regulatory Committee
MEETING DATE:	12 September 2014
TITLE OF REPORT:	Review the implementation of the licensing policy and cumulative impact policy - licensing act 2003
PORTFOLIO AREA:	Economy, Communities and Corporate Directorate
REPORT BY	Mike Pigrem – Head of Trading Standards and Licensing

CLASSIFICATION: Open

Wards Affected

Countywide

Key Decision

This is a key decision because it is likely to be significant in terms of its effect on living or working in an area comprising of one or more wards in the county.

Purpose

- (a) To consider the adoption of the licensing policy to be used by Herefordshire Council in respect to carrying out its functions under the Licensing Act 2003
- (b) To consider the adoption of a special licensing policy for the cumulative impact of premises in the vicinity of Hereford city.

Recommendation(s)

Members are asked to note the contents of the report and agree the attached draft policies and consultation strategy outlined.

Reasons for Recommendations

The revised policy 2013-2019 retains the vast majority of the current policy, but has been updated to reflect changes following the legislation having been amended. The introduction of a special policy (cumulative impact policy) is not mentioned in the act but is covered by the Guidance issued to Local Authorities under Section 182 of the Act.

Options

- 1 a) To recommend the statements as published to full council and agree the consultation programme

- b) To recommend only the main policy but to refuse to recommend the 'special policy'
- c) To make amendments to the proposed policy/policies and then recommend the amended policy/policies to the full council
- d) To refuse to recommend any of the policies
- e) To reach some other decision

Key Considerations

- 2 To approve the amended Policies and Consultation programme.

Introduction and Background

3. Section 4 of the Licensing Act 2003 requires the licensing authority to carry out its functions under the Act with a view to promoting the following licensing objectives:-
 - a) the prevention of crime and disorder;
 - b) public safety;
 - c) the prevention of public nuisance
 - d) the protection of children from harm.
4. Section 182 of the Act requires the secretary of state to issue guidance for licensing authorities on the discharge of their functions under the Act.
5. However, determining and publishing a statement of its policy is a licensing function and as such the authority must have regard to this Guidance when taking this step. A licensing authority may depart from its own policy if the individual circumstances of any case merit such a decision in the interests of the promotion of the licensing objectives. (*Guidance issued under section 182 of the Licensing Act 2003 Para 1.12*)
6. Section 5 of the 2003 Act requires a licensing authority to determine and publish a statement of its licensing policy at least once every five years. The policy must be published before it carries out any licensing functions under the 2003 Act.
7. "Cumulative impact" is not specifically mentioned in the Act but means the potential impact on the promotion of the licensing objectives of a significant number of licensed premises concentrated in one area. For example, the potential impact on crime and disorder or public nuisance on a town or city centre is a large concentration of licensed premises in that part of the local licensing authority area. The cumulative impact of licensed premises on the promotion of the licensing objectives is a proper matter for a licensing authority to consider in developing its policy statement.
8. Information which licensing authorities may be able to draw on to evidence the cumulative impact of licensed premises on the promotion of the licensing objectives includes:
 - local crime and disorder statistics, including statistics on specific types of crime and crime hotspots
 - statistics on local anti-social behaviour offences;
 - health-related statistics such as alcohol-related emergency attendances and hospital admissions;
 - environmental health complaints, particularly in relation to litter and noise
 - complaints recorded by the local authority, which may include complaints raised by local residents or residents' associations;

- residents' questionnaires;
 - evidence from local councillors; and
 - evidence obtained through local consultation
9. The effect of adopting a special policy of this kind is to create a rebuttable presumption that applications for new premises licences or club premises certificates or material variations will normally be refused, if relevant representations to that effect are received, unless it can be demonstrated that the operation of the premises involved will not add to the cumulative impact already being experienced.
10. West Mercia Police have made representations that they wished the areas shown within the 'special policy' to be included and have provided evidence to support this request

Community impact

11. The statement is likely to have some impact on the community.

Equality and Human Rights

12. There are no equality or human rights issues in relation to the content of this report

Legal implications

The Licensing policy has been drafted to reflect current legislative requirements. All applications for licences, changes to licences, temporary event notices and personal licences have to be made and determined in accordance with the legislation. However where discretion is allowed then the authority must consider the guidance issued under Section 182 of the Act and their licensing policy in reaching their decision. Under the relevant legislation, the authority must have in place a relevant policy. Failure to do so would leave the authority in breach and open to challenge.

Risk management

13. Failure to reach a decision would mean that the licensing authority could not carry out its function under the Licensing Act.

Financial implication

14. The licensing section is required to operate the function on a full cost recovery basis. The fees for Licensing Act applications are set by central government. A robust policy which is fit for purpose is essential if full cost recovery is to be monitored and maintained.

Consultation

15. Before determining the policy the licensing authority must consult –
- a) The chief officer of police for the licensing authority's area.
 - b) The fire authority for that area,

- c) Such persons as the licensing authority considers to be representative of holders of premises licences issued by that authority.
- d) Such persons as the licensing authority considers to be representative of holders of club premises certificates issued by that authority,
- e) Such persons as the licensing authority considers to be representative of holders of personal licences issued by that authority, and
- f) Such other persons as the licensing authority considers to be representative of businesses and residents in its area.

16. The consultation document will be published on the council website.

17. Consultation will also take place by:-

- Publishing notices in the local press.
- Writing to all premises licensed under the Licensing Act 2003
- Notifying local members.
- Writing to local organisations acting on behalf of young people and children.
- Writing to parish councils

18. The responses will be collated and presented to council following the consultation process. If no responses are received members can agree the policy be implemented.

Appendices

19 Draft statement of policy

Background Papers

20 Guidance issued to licensing authorities under Section 182 – June 2013