

## **REVIEW OF THE LICENSING POLICY AND CUMULATIVE IMPACT POLICY FOR COMMERCIAL ROAD AREA OF HEREFORD CITY - LICENSING ACT 2003 AND GUIDANCE ISSUED UNDER SECTION 182 OF THE LICENSING ACT 2003**

**Report By: HEAD OF ENVIRONMENTAL HEALTH AND TRADING STANDARDS**

### **Wards Affected:**

County-wide

### **Purpose**

1. (a) To review the Herefordshire Council licensing policy in respect to carrying out its functions under the Licensing Act 2003 (Appendix 1).  
  
(b) To review the special licensing policy for the cumulative impact of premises in the Commercial Road area of Hereford City.

### **Law**

2. 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.
3. Section 5 of the Licensing Act 2003 requires the local authority to determine every three years its policy with respect to the exercise of its licensing functions and publish a statement of that policy before the beginning of the period. The last licensing policy was reviewed on 14 December 2004.
4. 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,

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Further information on the subject of this report is available from Suzanne Laughland, Licensing Manager on (01432) 261675

- 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.
5. 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.
  6. In addition of section 4 the licensing authority must have regard to the guidance issued buy the Secretary of State under section 182 of the Act. The requirement is therefore binding on all licensing authorities to that extend. However, it is recognised that the guidance can not anticipate every scenario or set of circumstances that may arise and so 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. When doing so, licensing Authorities will need to give full reasons for their actions. Departure from the Guidance could give rise to an appeal or judicial review, and the reasons given will then be a key consideration for the courts when considering the lawfulness and merits of any decision taken. (*Guidance issued under section 182 of the licensing Act 2003 Para 2.3*)

### **Cumulative impact policy.**

7. "Cumulative impact" is not specifically mentioned in the Act but means in the guidance 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. The steps to be followed in consideration whether to adopt a special policy within the statement of licensing policy are:
  - Identification of concern about crime and disorder or public nuisance;
  - Consideration of whether it can be demonstrated that crime and disorder and nuisance are arising and are caused by the customers of licensed premises, and if so identifying the area from which problems are arising and the boundaries of that area; or that the risk factors are such that the area is reaching a point when a cumulative impact is imminent;
  - Consultation with those specified in section 5 of the act (as stated above);
  - Subject to that consultation, inclusion of a special policy about future premises licence or club premises certificate applications from that area within the terms of the guidance in the statement of licensing policy;
  - Publication of the special licensing policy as part of the licensing policy.
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 Mercier Police authority made representations that they wished the Commercial Road area of Hereford City to remain the subject of a cumulative impact special licensing policy. (Appendix 2).

### **Consultation.**

11. The chief officer of police for West Mercier police Authority was consulted along with the licensing officer and policy officer.
12. The chief fire officer for Hereford and Worcester fire authority was consulted along with the policy officer.
13. All licence holders were written to notifying them of the review process.
14. All the elected members were sent a copy of the policy for their comments.
15. All parish councillors were sent a letter informing them of the licensing policy consultation process and inviting them to make comments.
16. A public notice was published in all the local newspapers inviting comments.
17. The policy, West Mercia Police Authority cumulative impact statement and a guidance document was published on Herefordshire Councils website.
18. The policy was sent to national trade organisations and presentations were made to local trade organisations and representative groups including licensing solicitors.
19. All comments received were collated and where appropriate changes were made to the licensing policy.

### **Options**

- **To adopt the licensing policy with the special policy for the Commercial Road area.**
- **To adopt the licensing policy without the special licensing policy.**
- **To come to some other conclusion.**