

Meeting:	Regulatory Committee
Meeting date:	19th February 2015
Title of report:	Review the implementation of the Licensing Policy and Cumulative Impact Policy following Public Consultation - Licensing Act 2003
Report by:	Head of Trading Standards and Licensing

Classification

Open

Key Decision

This is not an executive decision.

Wards Affected

Countywide

Purpose

- (a) To agree the 'Draft Licensing Act Policy and Special Policy' for recommendation to Council.

Recommendation

That:

- (a) **The draft Licensing Act Policy attached at appendix 1 and Special Licensing Policy attached at appendix 2 be recommended to Council.**

Alternative Options

1. To refuse to accept the officer recommendations and leave the policy as is and recommend the polices to Council for adoption
2. To accept some of the recommendations and reject others and recommend the polices to Council for adoption

3. To refuse to recommend the policies be adopted by council. This is not recommended because it would in effect mean that the policy was not in line with current legislative requirements.
4. To reach some other decision.

Reasons for Recommendations

5. The revised policy will meet the requirements of the Licensing Act 2003.

Key Considerations

6. The draft Licensing Policy 2015 – 2020, which includes the Special Policy (Cumulative Impact Policy) appeared before the Regulatory Committee on 12th September, together with the proposed consultation strategy.
7. This was endorsed by the Regulatory Committee and the matter went before Council on 26th September 2014, where the draft policy and consultation strategy was approved.
8. 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.
9. 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.
10. 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)
11. 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.
12. “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.
13. 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
14. 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.

Community Impact

15. The statement is likely to have some impact on the community. However the authority has a responsibility to promote the four licensing objectives of the prevention of crime and disorder, public safety, public nuisance and the protection of children from harm. This policy helps to promote this requirement.

Equality duty

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

Financial implications

16. 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.

Legal Implications

17. 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

18. Failure to reach a decision could result in an application for Judicial Review being made.

Consultees

19. The consultation period ran from 10th October to 21st November 2014.
20. In accordance with Section 5(3) of the Licensing Act 2003 the Licensing Section has consulted with the following parties:
 - (a) the chief officer of police for the licensing authority's area, (West Mercia Police – Mr Mooney)
 - (b) the fire and rescue authority for that area, (Hereford and Worcester Fire and Rescue Service - Darren Hunt Technical Fire Safety Inspector)
 - (c) such persons as the licensing authority considers to be representative of holders of premises licences issued by that authority, (The HAND [Herefordshire Against Night Time Disorder] for Hereford, Ross on Wye, Ledbury, Kington, Leominster and Bromyard)
 - (d) such persons as the licensing authority considers to be representative of holders of club premises certificates issued by that authority, (The HAND [Herefordshire Against Night Time Disorder] for Hereford, Ross on Wye, Ledbury, Kington, Leominster and Bromyard)
 - (e) such persons as the licensing authority considers to be representative of holders of personal licences issued by that authority, (The HAND [Herefordshire Against Night Time Disorder] for Hereford, Ross on Wye, Ledbury, Kington, Leominster and Bromyard)
 - and
 - (f) such other persons as the licensing authority considers to be representative of businesses and residents in its area.(Parish Councils)
21. The consultation document was published on the council website.
22. An advertisement was also placed in the Hereford Times advising of the consultation.
23. 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. It is recommended that this should be adopted.
24. Details of the responses received can be found within appendix 3.

Appendices

Appendix 1 – Licensing Act Policy

Background Papers

None.