

STATEMENT OF LICENSING POLICY**COUNCIL****18 JULY 2018****CLASSIFICATION:****Open****If exempt, the reason will be listed in the main body of this report.****WARD(S) AFFECTED****All Wards****GROUP DIRECTOR****KIM WRIGHT, Neighbourhoods and Housing**

1. Summary:

- 1.1 This report has been prepared to provide the Council with relevant information on the Licensing Act 2003 (“the Act”) and the proposed Statement of Licensing Policy (“the Policy”).
- 1.2 The Licensing Committee recommended the Policy for adoption at the meeting on 8 February 2018.

2. Recommendations:

2.1 Council is requested to:

- (i) **approve the proposed Policy at Appendix 1 to be published, effective from 1 August 2018.**
- (ii) **note the report on the Statutory Consultation at Appendix 2**
- (iii) **note the Cumulative Impact Assessment at Appendix 3**
- (iv) **note the Behaviour Audit at Appendix 4**
- (v) **note the Cost Benefit Analysis at Appendix 5**
- (vi) **note the Equalities Impact Assessment at Appendix 6**
- (vii) **authorise the Group Director of Neighbourhoods and Housing to make any non-substantive changes to the Policy as appropriate before approval by Full Council.**

3. REASONS FOR DECISION

- 3.1 The Licensing Act 2003 requires each local authority to publish a Statement of Licensing Policy and review it at least once every five years. This Statement must establish the principles to be applied when determining applications under the Act, such as applications for the sale/supply of alcohol, regulated entertainment and the provision of late night refreshment.
- 3.2 The Act specifies that the Policy must promote the four licensing objectives, which are:
 - The prevention of crime and disorder
 - Public safety
 - The prevention of public nuisance
 - The protection of children from harm
- 3.3 Home Office Guidance issued under section 182 of the Act (the “Guidance”) provides Local Authorities with direction on the discharge of their functions under the Act.

4. BACKGROUND

- 4.1 The Council first published its Policy in January 2005. This sets out the decision-making principles when licensing premises for alcohol, regulated entertainment and late night refreshment. Full reviews of the Policy took place in 2007, 2010 and 2015. In 2013 the Council consulted on the introduction of the Special Policy Area (SPA) in Dalston.
- 4.2 Before determining its Policy, the Licensing Authority must consult the persons listed in section 5(3) of the Act. These are:
- the Chief Officer of Police for the area;
 - the Fire and Rescue Authority for the area;
 - the Local Authority's Director of Public Health
 - persons/bodies representative of local premises licence holders;
 - persons/bodies representative of local club premises certificate holders;
 - persons/bodies representative of local personal licence holders; and
 - persons/bodies representative of businesses and residents in its area.

Policy Context

- 4.3 In devising this Policy, regard has been given to the available datasets, findings, shared vision and plans informing Hackney's Sustainable Community Strategy (the "Strategy"), adopted by the Council and Hackney's local strategic partnership (Team Hackney) in November 2008. The Strategy sets out the vision for the Borough in 2018.
- 4.4 Regard has also been given to the responsibility under the Council's planning regime and in particular the new borough-wide local plan, known as LP33. This will be the key strategic planning document which will establish a vision and planning policies to direct and guide development in Hackney up to 2033. The plan is critical in ensuring that the right amount of development is built in the right place at the right time so that the future needs of the borough are met.

Equality Impact Assessment

- 4.5 There is a requirement to carry out an Equalities Impact Assessment as part of the Policy development process. This can be found at Appendix 6.

Sustainability

- 4.6 The Policy notes the vibrant mix of entertainment and leisure activities in the Borough which makes it attractive to visitors and an exciting place to live, not only at night but in the daytime and early evening too. Hackney is an example of how diverse attractions can co-exist and complement one another. This greater choice encourages people to travel into the Borough to enjoy their leisure time, generating jobs and business opportunities.

4.7 However, there can often be a negative impact on the borough as a result of licensable activity. The Policy seeks to manage this, striking a balance via the promotion of the Licensing Objectives.

Statutory Consultation

- 4.8 Following approval of the draft Policy by the Licensing Committee on 31 October 2017, a statutory consultation was held between 6 November 2017 and 12 January 2018. It was publicised via the Council website, in local press, social media and at an information event.
- 4.9 A summary document produced by the Council's Consultation Team focussed on the key areas of the draft Policy, namely:
- Changes to the Special Policy Areas (SPAs), including the extension of the Shoreditch SPA boundary and simplification of the Dalston SPA
 - New general principles for applicants
 - A new core hours policy
 - A new policy on 'off' sales, the supply of alcohol for consumption off the premises
 - A new policy on outdoor activities
- 4.10 A report on the consultation responses has been prepared and is attached as Appendix 2. This outlines the consultation undertaken, the methodology used and provides a comprehensive analysis of the feedback received.

Further Submissions

- 4.11 A number of responses from residents of South Shoreditch accepted after the consultation have been collated and appended to this report. These can be found at Appendix 7.

5. RESPONSE TO THE STATUTORY CONSULTATION

- 5.1 Analysis of the consultation responses identified a number of key themes. These are responded to below:

Potential harm to current nightlife

- 5.2 The Policy sets out the principles to be applied when considering applications under the Licensing Act 2003. It is therefore difficult to see how the Policy would harm existing operations. If anything, the desire to use the Policy to diversify the night-time offer is more likely to complement existing operations rather than negatively harm them. The Policy aim of diversification is to develop areas of the Borough to appeal to a broad range of the community and wider aspirations for entertainment and recreation than merely the consumption of alcohol.

A barrier to growth

- 5.3 The Policy is just one tool for the management of the leisure and hospitality industry in Hackney. It is correct that the SPAs create a presumption to refuse new applications in those areas. But the SPA can only be triggered upon receipt of a relevant representation, and the Council would always remain flexible in its approach.
- 5.4 Furthermore, there has been a Special Policy in Shoreditch which has been effective since February 2005. In this time, the area has seen a net increase in the number of licensed premises. This demonstrates that, despite there being a presumption to refuse, there have been many occasions where applicants' have been successful in rebutting the presumption.

Watered down/pro business

- 5.5 The Policy seeks to recognise the significant contribution that night time economy makes to Hackney as a place. We want to encourage a broad and diverse range of activities in the key NTE areas of Shoreditch and Dalston. The Policy must carefully balance the needs of the business community whilst promoting the licensing objectives.
- 5.6 Both SPAs would still have the same effect of a presumption of refusal. However, the removal of the 'exceptional' test reflects the changing nature of the area.

London as a 24 hour city/Night Tube

- 5.7 It is recognised that the 24 hour tube at weekends provides an excellent mode of transport to assist dispersal. This has recently been added to by the Night Overground service, running between Dalston Junction and New Cross. The opportunity for the 24 hour tube to have a significant impact in Hackney is very much limited however due to fact that there are no tube stations in Hackney. And it is still very early days for the Night Overground meaning that the impact of this is yet to be fully understood.
- 5.8 We are also aware of the Mayor of London's recently published 24 hour vision which some respondents refer to. We feel that there is nothing in this Policy that conflicts with the aims set out in this document. It should however be noted that the vision states that its principle focus includes "...promoting all forms of culture and leisure - not just pubs and clubs, but a wide range of activities for people of all ages and interests...". We very much support these aims and feel that these are reflected in the Policy.

Lack of evidence to support expansion of the Shoreditch SPA

- 5.9 We are satisfied that there is sufficient evidence to support the expansion of the Shoreditch SPA. For example, the Cumulative Impact Assessment shows that there is a clear correlation between the locations of licensed premises and

certain types of crime, ambulance calls and increased A&E admissions. Other respondents suggested that the Council should in fact go further, and expand the Dalston SPA and declare other areas as saturated. However, as stated, we are satisfied that at the present time the evidence supports this approach.

- 5.10 It should be noted that forthcoming amendments to the Act as a result of the Police and Crime Act 2017 will put special policies on a statutory footing in order to provide greater clarity, transparency and legal certainty about their use. The changes are expected to be commenced this year. Amongst the requirements will be a need to review the evidence collated to support a SPA at least every three years. Notwithstanding, the three year review reflects the approach the Council has always taken with regards to its SPAs.

The proposed 'Core Hours' (LP6) are too restrictive

- 5.11 Paragraph 14.45 of the Home Office guidance states that "...Statements of licensing policy should set out the licensing authority's approach regarding licensed opening hours and the strategy it considers appropriate for the promotion of the licensing objectives in its area..."
- 5.12 As stated in the draft, the Core Hours have been designed to be generally aligned with hours of activity that have been deregulated by recent legislative measures, such as the Live Music Act 2012 and the Deregulation Act 2015. The hours are also based on the Council's own experience since the commencement of the Act. Furthermore, 23:00 to 07:00 are generally considered to be the 'night-time' hours hence the desire to place activities during late hours under more scrutiny whilst acknowledging that there may be slightly more tolerance at weekends.
- 5.13 The proposed Core Hours' policy should not be seen as a blanket approach. It should instead be treated as a guide for all parties involved in any application process. It is also considered to be a more appropriate policy for the Borough when compared to the current policy LP12 (Licensing Hours).

Outdoor activities proposal too restrictive/or not restrictive enough

- 5.14 Some respondents have expressed concern in relation to the proposed policy LP6 External Areas and Outdoor Events. Similar to the Core Hours, LP6 is intended as a guide and should not be seen as a blanket stance. However, nuisance is often caused as a result of these activities hence the desire for applicants to address this whilst preparing their operating schedules.

Could lead to costs of leases/licences being inflated

- 5.15 It has also been suggested that the proposed policy could lead to inflated costs of leases/licences when premises are being exchanged. However, the valuation of property is not something the licensing regime can control.

Perceived inflexibility

- 5.16 It was suggested that the proposed Policy is inflexible. The Policy is very clear that each application will be considered on its own individual merits. Guidance from the Home Office is very clear that local authorities should not adopt blanket approaches to decision making.

Monitoring information

- 5.17 The monitoring information shows that the majority of respondents identified themselves as white or white British (81.58%) male (67.02%), between the ages of 25 and 44 (80.27%). In the 2011 Census, 36% of respondents in the Borough described themselves as white or white British, whilst 49.8% of respondents were male.

6. COMMENTS OF THE GROUP DIRECTOR, FINANCE AND CORPORATE RESOURCES

- 6.1 This report requests the Council to approve the proposed Statement of Licensing Policy to be published, effective from 1 August 2018.
- 6.2 Expenditure and income in the Council, arising from the Licensing Policy will be managed within the available revenue budgets.

7. COMMENTS OF THE DIRECTOR, LEGAL AND GOVERNANCE

- 7.1 The Licensing Act 2003 ('the 2003 Act') confers various powers to the Council when discharging the licensing functions for the sale and supply of alcohol, regulated entertainment and late night refreshment.
- 7.2 Part of the functions requires the Council to publish a Statement of Licensing Policy. Section 5 of the 2003 Act requires the Policy to be reviewed every 5 years.
- 7.3 The 2003 Act does not set out any review processes to be adopted. It will be a matter for the Council to decide the process of review, unless further regulations are produced pursuant to Section 5(7) of the 2003 Act.
- 7.4 Even though the Council can decide its own process for the review it must still consult those groups listed within the 2003 Act before a revised version can be determined.
- 7.5 The drafting of any revised policy must be done in line with the 2003 Act and the Section 182 Government Guidance ('Statutory Guidance').
- 7.6 The proposed Statement of Licensing Policy ('the Policy') at Appendix 1 contains a cumulative impact policy for two separate areas in the borough. These are referred to within the draft Policy as a Special Policy Area ('SPA'). The ability to have an SPA currently arises from the Statutory Guidance and should only be introduced if there is considered to be a good evidential basis.

Should this be the case the Council can introduce an SPA if it is satisfied that it is appropriate to do so having regard to the crime and disorder or nuisance that is occurring, or whether there are activities which pose a threat to public safety or the protection of children from harm.

- 7.7 The Policing and Crime Act 2017 ('the 2017 Act'), will by regulations place Cumulative Impact Policies on a statutory footing. The 2017 Act has introduced Section 5A within the 2003 Act that, when in force, will require the Council to review any 'cumulative impact assessment' every three years from its introduction or revision. Section 5A is silent on the level of any evidence that is required but states that the Council must consult with those persons outlined in paragraph 5.4 above with the reasons for it to be introduced, kept in place or be removed.
- 7.8 The consultation on the Policy has been carried out in accordance with the 2003 Act, the Statutory Guidance and the guidance produced by the Government's Cabinet Office Consultation Principles. These principles do not displace the general principles derived from case law as to how consultations should be conducted. Those principles, known as the "Gunning principles", are as follows;
- Consultation should occur when proposals are at a formative stage;
 - Consultations should give sufficient reasons for any proposal to permit intelligent consideration;
 - Consultations should allow adequate time for consideration and response;
- 7.9 Following the consultation coming to an end the Local Authority must conscientiously consider the consultation responses, or a summary of them, before taking its decision.
- 7.10 The Consultation responses have been given due consideration and responded to, these responses should be taken and considered alongside the evidence produced before the draft Policy was consulted upon namely, the Cumulative Impact Assessment, Behaviour Audit and Cost Benefit Analysis. It is noted that the consultation responses provide a mix of responses including those who believe the revised draft Policy and in particular the SPAs are either a) weakening and/or watering down the current Policy or b) too restrictive and damaging the Night Time Economy. Having considered the review of the draft Policy in totality, the draft Policy is striking a balance between both the interests of residents alongside the rights of businesses, subject to the promotion of the licensing objectives.
- 7.11 The draft Policy must be approved by Full Council pursuant to Schedule 1 of The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 in order to take effect.

APPENDICES

Appendix 1 – Proposed Statement of Licensing Policy to be adopted

Appendix 2 – Report on the Statutory Consultation

Appendix 3 – Cumulative Impact Assessment

Appendix 4 – Hackney Evening and Night-time Economy Behaviour Study

Appendix 5 – Cost Benefit Analysis

Appendix 6 – Equalities Impact Assessment

Appendix 7 – Additional submissions from residents of South Shoreditch

BACKGROUND PAPERS

None.

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