

| Statement of Licensing Policy | |
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| Title of Report | Statement of Licensing Policy |
| For Consideration By | Council |
| Meeting Date | 24 July 2023 |
| Classification | Open |
| Ward(s) Affected | All wards |
| Group Director | Rickardo Hyatt, Group Director, Climate, Homes and Economy |

1. Summary

- 1.1 This report provides Council with relevant information on the Licensing Act 2003 (“the Act”) following the consultation on the draft Statement of Licensing Policy (“the Policy”).
- 2.1 The Licensing Committee is due to consider the draft Statement of Licensing Policy (“the Policy”) at its meeting on 17 July 2023. This date falls after the required publication date for Full Council. Should the Licensing Committee be minded not to commend the report to Full Council for agreement or wish to make any further amendments to the Policy, an update will be sent to Full Council.

2. Recommendation(s)

Following consideration and recommendation by the Licensing Committee, Full Council is recommended to:

- 2.1 Approve the Statement of Licensing Policy effective from 1 August 2023 for a maximum period of 5 years.
- 2.2 Delegate authority to the Group Director of Climate Homes and Economy to make any changes to the Policy as appropriate. Changes will be reported to the Licensing Committee for noting.

3. Background

Statement of Licensing Policy

- 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 in drafting and implementing the Policy, it must promote the four licensing objectives. These 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 Licensing Act 2003 (the “Guidance”) provides local authorities with direction on the discharge of their functions under the Act. Licensing Authorities must have regard to the Act and the Guidance when preparing its Policy.
- 3.4 The Council first published its Statement of Licensing Policy (‘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 and 2010. A further review took place in 2013 to include a Special Policy Area (SPA) in Dalston that was introduced in January 2014. Further reviews took place in 2015 and 2017. The current iteration of the Policy became effective in August 2018.
- 3.5 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.

4. Consultation on the Draft Statement of Licensing Policy

- 4.1 The consultation on the draft Policy commenced on 15 May 2023 and concluded on 26 June 2023. A total of 38 survey responses and a further 6 written responses were received.

4.2 The consultation survey was centred around four main questions.

- **Question 1** - To what extent do you agree or disagree that the proposed core hours policy can continue to promote the licensing objectives?
- **Question 2** - To what extent do you agree or disagree that the proposed policy can support outdoor events, activities and areas in Hackney whilst minimising any negative impact on local communities?
- **Question 3** - To what extent do you agree or disagree that the proposed Special Policy Areas can promote the licensing objectives?
- **Question 4** - To what extent do you agree or disagree that the proposed Special Consideration Area policy can help to promote the licensing objectives?

5. Consultation Survey Responses

Survey Question 1 - Core Hours (LP3)

- 5.1 Paragraph 14.52 of the guidance issued by the Home Office states “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.”
- 5.2 Just over half of survey respondents stated that they disagree that the proposed core hours policy can continue to promote the licensing objectives, with just under half stating that they agree with the Core Hours policy as an approach to promote the licensing objectives. This difference between agree and disagree was the response of 3 respondents.
- 5.3 However, it appears that many of those respondents who stated that they agree that the proposed core hours policy can continue to promote the licensing objectives, left a negative comment. For example a respondent stated they agreed with the policy, but left “Core hours pose a threat to the NTE and each venue should be considered on its merits.” as their comment. This may suggest that in some cases the question was misunderstood. Respondents who disagreed with the statement in question 1 cited reasons such as the core hours within the policy being too early/not late enough and not reflective of the borough.
- 5.4 It should be noted that the Core Hours policy is a continuation of the Policy published in 2018, and is designed to reflect the requirement in the Home Office Guidance by seeking to balance the needs of licensed operators whilst mitigating any negative residential impact and promoting the licensing objectives.

- 5.5 Core Hours are also designed to be aligned with hours that could be considered night time (e.g. between 23:00 to 07:00), the hours for late night refreshment and the hours that certain forms of regulated entertainment are deregulated.

Survey Question 2 - External Events and Outdoor Activity

- 5.5 The external events and outdoor activity policy seeks to recognise the desire for many events and activities to be carried on outdoors. This itself has become more evident since the pandemic and the introduction of the provisions under the Business and Planning Act 2020.
- 5.6 The survey response showed a 50/50 split in terms of agree and disagree as to whether the proposed policy can support outdoor events, activities and areas in Hackney whilst minimising any negative impact on local communities. Sample comments of those that agreed suggested that 10pm is a reasonable time and that there should be a case-by-case approach. Where there was disagreement, references were made to less restriction on external activity in continental Europe, but also that the core hours do not go far enough.
- 5.7 The policy therefore recognises that outdoor activity should be balanced with any potential negative impacts, most notably on the promotion of public nuisance licensing objectives. It is acknowledged that some operators will seek to hold activities outdoors but it is also acknowledged that these activities can lead to noise nuisance.

Survey Question 3 - Special Policy Areas

- 5.8 Special policy areas exist in areas where there are already a large number of licensed premises and there is deemed to be a cumulative impact on local residents. This cumulative impact could mean noise at particular times of the night, litter, or increased alcohol-related crime or hospital admissions. An independent 'Cumulative Impact Assessment' is being carried out that would determine where, if any, special policy areas should be located in the borough.
- 5.9 There will be a presumption to refuse applications in a special policy area unless the applicant can demonstrate that their proposal will not add to the cumulative impact already being experienced.
- 5.10 Almost two thirds of respondents stated that they disagree that the proposed Special Policy Areas can promote the licensing objectives, with just over a third stating that they agree that special policy areas would promote the licensing objectives.
- 5.11 However, similar to the responses to the first survey question, it appears that many of those respondents who stated that they agree left a negative comment, also suggesting that the question was misunderstood by some

respondents. For example a respondent states that the Shoreditch SPA has had a negative impact, yet has stated that they agree that the proposed Special Policy Areas can promote the licensing objectives.. This same respondent did not clarify how the Shoreditch SPA has had a negative impact or what the negative impact was.

- 5.12 A key theme that arises from those that disagree relates to concerns about the removal of the SPA boundaries from the policy. These boundaries (if any) would be defined in the Cumulative Impact Assessment (CIA). The Policy sets out the approach to be taken in any area identified in the CIA as suffering from cumulative impact.
- 5.13 It should be noted that paragraph 14.42 of the Guidance issued by the Home Office states “The absence of a CIA does not prevent any responsible authority or other person making representations on an application for the grant or variation of a licence on the grounds that the premises will give rise to a negative cumulative impact on one or more of the licensing objectives, However, in each case it would be incumbent on the person making the representation to provide relevant evidence of cumulative impact.”
- 5.14 The above is reflected in paragraph 3.13 and LP12 (Cumulative Impact) in the current and proposed Policy.

Survey Question 4 - Special Consideration Areas

- 5.15 Special Consideration Areas (SCA) may be introduced where the cumulative impact from licensed premises is similar to that identified in Special Policy Areas. However, any cumulative impact identified is deemed not to be at a level that would require a presumed refusal of new licensing applications. Instead applicants are expected to address any issue identified in their application and put in place measures to mitigate these impacts. The location of these areas, if any, would be decided following an independent assessment, which will undergo public consultation.
- 5.16 Just over half of survey respondents stated that they disagree that such a measure would promote the licensing objectives, with just under half stating that they agree. This difference between agree and disagree was the response of 3 respondents.
- 5.17 One respondent in agreement stated that it is good to raise awareness to non-local operators. However, another person in agreement felt that there should still be a presumption to refuse in Special Consideration Areas. Coincidentally, a similar statement was made by a person in disagreement with the approach.
- 5.18 It is important to reiterate that an SCA could only be introduced where this is supported by evidence which would then be consulted on.

Open-ended comments

- 5.19 A number of respondents sent open-ended comments rather than complete the survey. These include responses from the Metropolitan Police, Public Health, Dalston Pubwatch and Shoreditch Public. A local owner operator and local resident also commented in this way.
- 5.20 Comments from the Police were generally supportive of the policy. However, the Police feel that more detail could be provided in the document on matters such as responsible drinking, nitrous oxide, welfare and misogyny in the night time economy.
- 5.21 The Police as a responsible authority have the opportunity to make representations on these issues upon receipt of an individual application on a case-by-case basis where relevant to a particular proposal. Furthermore, the late night levy funds activity via 'Hackney Nights' which aims to tackle issues such as those highlighted above.
- 5.22 Public Health has made a request for reference to be made to the Council's Health and Well Being strategy, but are disappointed that the Core Hours policy hours are from 08:00 rather than 10:00. Public Health also made suggestions in relation to additional conditions to be included within the Pool of Conditions.
- 5.23 Similar to the Police, Public Health as a responsible authority has the opportunity to make representations on this matter upon receipt of an individual application. Any such representation should be supported by evidence.
- 5.24 The response on behalf of Shoreditch Pubwatch raises concerns mainly in relation to the proposed SCA policy. However as the response states that SPAs are being abolished and replaced with SCAs, it would suggest that the changes to the Policy have been misunderstood. The response also highlights LP5 (Planning Status) and paragraph 4.11 in relation to sex establishments, despite there being very little and no changes to these sections respectively.
- 5.25 A local owner/operator has submitted a response seeking the removal of the SPAs and SCAs from the Policy. The response also questions whether there is evidence to support the effectiveness of the existing SPAs but also highlights work done by the 'Hackney Nights' scheme funded by the Late Night Levy and calls for more partnership work to keep customers and residents safe.
- 5.26 The response on behalf of the Dalston Pubwatch also highlights whether the effectiveness of the existing SPAs is supported by evidence, and also raises concerns re the length of time that the consultation was held. The response also states that the Dalston SPA has had a negative effect on the development of Dalston's evening and night time economy.

5.27 The responses from the trade all express concerns about the Policy, notably Core Hours and SPAs/SCAs. The reasoning behind the Core Hours Policy is explained above and it should also be noted that the Policy seeks only to set out the approach to be taken in SPA and SCA areas. A Cumulative Impact Assessment would determine where (if any) these would apply.

5.28 Overall the Policy as proposed has had limited changes from the version adopted in August 2018. However, the responses received during consultation demonstrate the continued challenge for the Policy to promote the licensing objectives whilst balancing the competing interests of interested parties.

6. Comments of the Group Director of Finance and Corporate Resources

6.1 This report informs Members of the review of the Licensing Policy following statutory consultation. There are no immediate financial implications. The activities leading up to the adoption of the Policy may have a financial impact, which will need to be met from within existing budgets.

7. Comments of the Director of Legal, Democratic and Electoral Services

7.1 The Licensing Act 2003 ('the 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 produce and review a Statement of Licensing Policy ('the Policy'). Section 5 of the Act now allows the Policy to be reviewed every 5 years, following the changes brought in by the Police Reform and Social Responsibility Act 2011 (PRORA 2011).

7.3 The existing Policy came into force on 1 August 2018 and expires on 31 July 2023. The Council must have a revised Policy in place by 1 August 2023.

7.4 The 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 Act.

7.5 The drafting of any revised policy must be done in line with the Act and the Section 182 Government Guidance ('the Guidance').

7.6 Since the current policy took effect, there have been a number of legislative changes affecting the Act. This must be reflected in any revised Policy where appropriate. Examples of the legislative changes that require the Policy to be updated include:

- Policing and Crime Act 2009.
- Police Reform and Social Responsibility Act 2011.
- Live Music Act 2012.
- Licensing Act 2003 (Descriptions of Entertainment) (Amendment) Order

- Licensing Act 2003 (Mandatory Conditions) Order 2014.
- Immigration Act 2016.
- Business and Planning Act 2020.

7.7 The Council's consultation of the revised policy commenced on 15 May 2023 and concluded on 26 June 2023.

7.8 The Licensing 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.

7.9 Within the terms of reference for Full Council it states that approving or adopting the Policy Framework will be exercised by the Full Council. The Statement of Licensing Policy is a document that falls within the Policy Framework. Full Council is able to approve the recommendations set out in paragraph 2 of this report.

Appendices

Appendix 1 - Statement of Licensing Policy for Approval

Appendix 2 - Report on the Consultation

Appendix 3 - Statement of Licensing Policy - Equalities Impact Assessment

Appendix 4 - Additional Responses - TO FOLLOW

Exempt

Not applicable.

Background Papers

None

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