

Body: Licensing Act Committee

Date: 2nd October 2017

Subject: Council Licensing Policy Statement – Review of Cumulative Impact Policy, Licensing Act 2003.

Report o: Claire Groves, Senior Specialist Advisor

Ward(s): All

Purpose: To inform Members of the result of the second consultation carried out for the review of the Council's Cumulative Impact Policy (CIP).

Recommendation:

- a) That Members note the responses received during the consultation period and information set out in this Report and agree one of the following options:
 - (i) To reduce the size of the existing area by removing streets in the Little Chelsea area of the town
 - (ii) To make no changes to the existing CIP
 - (iii) To remove the existing CIP from the Licensing Policy
- b) That if Members approve options i or iii they recommend that option to Full Council for approval.

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1.0 Background

- 1.1 From November 2005 Eastbourne Borough Council became the Licensing Authority in respect of all licensable activities governed by the Licensing Act 2003, referred to hereafter as the Act.
- 1.2 As the Licensing Authority, in accordance with Section 5 of the Act, Eastbourne Borough Council must prepare, consult and publish its

Statement of Licensing Policy. As noted in the Council's constitution, the Licensing Act 2003 requires that the Policy is approved by Full Council.

- 1.3 The purpose of the Statement is to promote the Licensing Objectives. It sets out the general approach taken by the Authority when considering and determining applications under the Act. The Licensing Objectives are:
- The prevention of crime and disorder;
 - Public safety;
 - The prevention of public nuisance;
 - The protection of children from harm
- 1.4 The Licensing Authority must carry out its functions with a view to promoting the Licensing Objectives. Regard must be had to Section 182 Guidance, issued in the April 2017 to Local Authorities by the Home Office. Where the Licensing Authority decides to deviate from this Guidance, it must have justifiable reasons for doing so.

2.0 The Council Licensing Policy Statement

- 2.1 On 20th November 2013, Full Council agreed the Licensing Statement Policy for the period 2014-2019. An appendix to that Policy is the CIP. These Policies form the basis of the Licensing Authority's general approach to some licensing matters in the Eastbourne area.
- 2.2 The Licensing Committee is required, under Section 5 of the Act to prepare and publish a statement of its licensing policy at least every five years. During the five-year period, the policy must be kept under review to ensure that it accurately reflects the Councils approach, whilst responding to the evolving nature of Eastbourne.

3.0 The Council Cumulative Impact Policy

- 3.1 The cumulative impact of licensed premises in an area, and their impact on the promotion of the licensing objectives is a proper matter for Eastbourne Borough Council to consider. This is particularly relevant where its inclusion in the wider Council Licensing Policy Statement will help to promote the Licensing Objectives.
- 3.2 The effect of adopting a special policy of this kind within the Licensing Policy Statement is to create a "rebuttable presumption" that applications for new premises licences, club premises certificates or material variations will be refused if they fall within the specified area. This will be considered whenever the Licensing Authority receives relevant representations about the cumulative effect or concentration of premises in an area and the impact on the promotion of one or more of the Licensing Objectives.
- 3.3 Such representation can come from Responsible Authorities and/or interested parties or anyone, and, following a hearing, should normally lead to refusal where it can be upheld that the matter in question

undermines the CIP and the promotion of the Licensing Objectives.

- 3.4 It is important to note that adoption of the policy does not prohibit applications in the designated cumulative impact area. It would be for the applicant to demonstrate to the Licensing Authority that the operation of the premises involved will not add to the negative cumulative impact already being experienced in the area and would not undermine the promotion of the Licensing Objectives.

4.0 Review of the Cumulative Impact Policy

- 4.1 A copy of the current Licensing Policy Statement and the CIP and designated zone, outlined in blue, can be found at www.eastbourne.gov.uk/about-the-council/council-policies-plans-and-strategies/licensing-policy/licensing-policy-and-cumulative-impact-policy/
- 4.2 It is important that the Committee regularly review the Council's CIP in line with Section 182 guidance which states that: *"Once adopted, special policies should be reviewed regularly to assess whether they are needed any longer or if those which are contained in the statement of licensing policy should be amended"*.

5.0 Consultation

- 5.1 Public consultation of the current CIP took place between 1st November 2016 to 31st January 2017. Letters and emails were sent to the Responsible Authorities identified under the Act, Local Councillors and special interest groups. The consultation was also placed on the consultation section of the Eastbourne Borough Council website.
- 5.2 A range of organisations and individuals were directly consulted, and the Authority received 6 responses which was reported back to the Licensing Act Committee on 20th March 2017.
- 5.3 To summarise the responses were:
- a) To carry out a comprehensive data analysis exercise – (1 response)
 - b) No Change required to the policy (2 responses)
 - c) Reduce the size of the CIP zone (1 response)
 - d) Remove altogether (2 responses)
- 5.4 One of the responses fully in support of (b), was Sussex Police and they provided Members with an analysis of the crime and incident data for the area.
- 5.5 In support of c), it was suggested that the Little Chelsea area would benefit from being removed from the zone.
- 5.6 Full details can be found in the report at:

<http://democracy.eastbourne.gov.uk/documents/g1469/Public%20reports>

- 5.7 It was resolved on 20th March 2017 to:
- a. Defer the decision until officers can collate additional information and report back. A list of questions would be formulated by the Chairman in consultation with the Licensing Committee and forwarded onto officers.
 - b. A sub-committee would be formed with officers to discuss engagement with licensees.

6.0 Additional Information

- 6.1 The question posed to officers by the Chairman, as referred to at 5.3(a) was: The number of new premises licences, in the Cumulative Impact zone, that have been applied for since the Policy came into force?

- 6.2 The results:

Types of Licence	Number
Off Sales only (off licences)	17
Late Night Refreshment only (takeaways)	10
Café Bar conditions (Restaurant)	41
Vertical drinking establishments	7
Hotels	1
Community Centres	3

- 6.3 A sub-committee meeting, referred to at 5.3(b) was convened on 10th July 2017 between members and Bryn Mabey, Customer Communications and Engagement Lead. The result was that members wished to undertake a second consultation exercise in an attempt to gain more responses from licensees.

7.0 Second Consultation and feedback

- 7.1 A second consultation exercise took place between 24th July 2017 and 3rd September 2017. A letter was sent to all premises and club certificate licence holders which included a paper survey and the web address to complete it online. A page was put on the website together with an online survey. Paper copies, as well as making the information available in different languages and formats were also available on request.
- 7.2 To ensure the greatest response possible the consultation was promoted by way of a page on the consultation section of our website, a press release to local media, a social media campaign, and an email alert to all subscribers in the following categories: - Consultations, Business News, Community Involvement Groups, Community Safety Partnership.
- 7.3 As a result, the Authority received 94 responses which can be viewed at Appendix 1.

7.4 A summary of the responses are as follows:

Question:	Do you think the Cumulative Impact Area should:		
Answers:		Percentage	Numbers
1)	Be reduced (by removing streets in the Little Chelsea area)	13.83%	13
2)	Kept the same	76.60%	72
3)	Be Removed completely	3.19%	3
4)	Other (please specify)	6.38%	6
Total		100%	94

7.5 The survey allowed consultees the opportunity to clarify the reason behind their decision and this feedback can also be viewed in Appendix 1.

7.6 A letter referred to in the consultation responses is attached as Appendix 2.

8.0 Recommendations

8.1 That Members note the responses received during consultation periods and information set out in this Report and agree one of the option below;

8.1.1 To reduce the size of the existing area by removing streets in the Little Chelsea area of the town.

8.1.2 To make no change to the existing Policy.

8.1.3 To remove the existing CIP from the Licensing Policy.

8.2 That if Members approve options 8.1.1 or 8.1.3 they recommend that option to Full Council for approval.

9.0 Financial & resource Implications

9.1 The cost of administering the Licensing Service is met through licence fees.

10.0 Resource Implications

10.1 The cost of administering the Licensing Service is met through licence fees.

11.0 Legal Implications

- 11.1 Section 5 Licensing Act 2003 requires a Licensing Authority to prepare and publish a Licensing Policy at least every 5 years. During this period the Policy must be kept under review and the Licensing Authority may make any revisions it considers appropriate.
- 11.2 Guidance issued under section 182 Licensing Act 2003 states that the cumulative impact of licensed premises on the promotion of the Licensing Objectives is a proper matter for the Licensing Authority to consider in its Licensing Policy. Section 141 Police and Crime Act 2017 has made some changes to the CIP process but the changes are not yet effective.
- 11.3 Section 5(3) Licensing Act 2003 specifies those who should be consulted and those organisations and individuals have been consulted.
- 11.4 The statutory guidance is that in considering whether to adopt or revise a CIP the Licensing Authority shall identify any concerns about the Licensing Objectives, consider the evidence relating to those concerns, identify whether those problems are caused by customers of licensed premises, and identify the areas where problems are occurring. There should be an evidential basis for the decision to include a CIP in the Licensing Policy.
- 11.5 The Legal Section of the Council have considered this report (IKEN 6677-EBC-MW. 8.9.2017)

12.0 Human Rights Act 1998 Implications

- 12.1 The provisions of the Human Rights Act 1998, must be borne in mind by the Committee when taking licensing decisions. Particular regard should be had to Article 1 of the First Protocol, which relates to the protection of property and the peaceful enjoyment of possessions and property, and Article 8 - which relates to the right to respect for private and family life, home and correspondence - should also be borne in mind. While the Human Rights Act makes it unlawful for a local authority to act or to fail to act in a way that is incompatible with a Convention right, Article 1 of the First Protocol and Article 8 are both qualified rights which means that interference - to a justifiable extent - may be permitted as long as what is done:
- Has a basis in law;
 - Is intended to pursue a legitimate purpose
 - Is necessary and proportionate; and
 - Is not discriminatory.

Background Papers:

The Background Papers used in compiling this report were as follows:

- Section 182 Guidance issue under the Licensing Act 2003, April 2017.
- Licensing Act 2003

Appendices:

Appendix 1 – Consultation feedback - Survey response

Appendix 2 – Consultation feedback – Letter from Mr A Morris