

**Report to:** Licensing Act Committee

**Date:** 11 March 2019

**Title:** Review of Eastbourne Borough Council's Statement of Licensing Policy including the Cumulative Impact Policy, Licensing Act 2003

**Report of:** Ed Hele, Functional Lead Quality Environment

**Ward(s):** All

**Purpose of report:** To review the Council's Statement of Licensing Policy and Cumulative Impact Assessment and authorise the Senior Specialist Advisor to start an eight week consultation of the proposed new Statement of Licensing Policy including the Cumulative Impact Assessment.

**Officer recommendation(s):** (1) That the Committee considers the revised draft Statement of Licensing Policy and Cumulative Impact Assessment.

(2) That the Committee agree the contents of the draft policy and assessment and authorise the Senior Specialist Advisor to start an 8 week consultation on the revised Policy and Assessment.

(3) That a further report is presented to the Committee following the results of the consultation with a final Policy to be agreed and recommended to Full Council unless there are only minor amendments and these can be made by the Functional Lead in consultation with the Chair before Full Council.

**Reasons for recommendations:** To ensure the Statement of Licensing Policy is reviewed in accordance with statutory guidelines.

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## **1.0 Introduction**

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 Schedule 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 2019 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 Statement of Licensing Policy**

2.1 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.

2.2 The draft Policy Statement has been updated to reflect changes in Section 182 Guidance and other legislation. Updates of particular note are the scheme of delegation for Officers, the Policing and Crime Act 2017, applications for personal licences including suspension and revocation, the Immigration Act 2016 and the Legislative Reform (Entertainment Licensing) Order 2014.

## **3.0 The Cumulative Impact Assessment**

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 Statement of Licensing Policy will help to promote the Licensing Objectives.

3.2 The effect of adopting a special policy of this kind within the Statement of Licensing Policy 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 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 Cumulative Impact Policy 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**

4.1 A copy of the new draft Statement of Licensing Policy and the Cumulative Impact Policy and designated zone, outlined in blue, can be found as an appendix 2 to the new draft Policy.

4.2 It is important that the Committee regularly review Cumulative Impact 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”*.

4.3 Sussex Police are in support of keeping Cumulative Impact within the Statement of Licensing Policy, thereby promoting the licensing objectives in accordance with Licensing Act 2003.

4.4 Overall, crime has reduced throughout Eastbourne District in the recent rolling year February 2018 – January 2019 with 269 less offences on the previous rolling year Feb 2017 – Jan 2018, with the exception of violent crime. Crime data for Eastbourne Town Centre produced by Sussex Police is provided as Appendix 1 (A) and will form part of the consultation.

4.5 The breakdown of crime data by Police Beat area over the latest rolling year period of February 2018 – January 2019 shows 30% of all recorded crime in Eastbourne occurred within Devonshire Police Beat. Breaking it down further for Devonshire Ward:

- The main crime type recorded was Violent Crime, responsible for 51% of all crime in this location.
- Devonshire also recorded the highest proportion of Violent Crime (29%) out of the nine police beat areas in Eastbourne.
- Over the last 12 month period, the total number of overall violent crime offences in Devonshire has increased (+126).
- However, the breakdown of Violent Crime and Violence against the Person offences recorded as Public Place (excluding Domestic) shows offences have reduced compared to the previous 12 month period.
- Incident data for reports of anti-social behaviour and incidents flagged as being alcohol related show that the overall number of incidents reported in Devonshire over the last 12 months have reduced as well as the percentage of these types of incidents occurring in the area compared to

the rest of Eastbourne.

- 4.6 Sussex Police has applied Cumulative Impact to ensure that existing and new applications continue to actively promote the licensing objectives, specifically the prevention of crime and disorder and protecting children from harm. It has not been used to place a strangle hold on any new business, or to manage existing responsibly operated enterprises out of business. The policy has also been used to good effect to ensure clarity and control over conditions on the premises licence within the Zone to help protect from any opportunity to convert for example from café to vertical drinking establishment in the future.
- 4.7 The crime data demonstrates that weekends in the town centre continue to offer a level of risk which is largely mitigated by some of the partnership measures in place; however the link between place of purchase and impact is now often blurred by distance and time. Sussex Police have particular concerns regarding the proliferation of off-licensed premises in Eastbourne town centre. Pre-loading and public space drinking after the purchase of alcohol from off-licences creates challenges within any acceptable walking distances of the town centre, and this applies to the end of a night out when further purchases of food and alcohol are made, as well as the start.
- 4.8 Affordability and availability of alcohol, particularly high strength alcohol and controlled drugs such as Cocaine, present an ongoing threat of harm. Premises Licence Holders have a key role to play in how their premises are managed and should be proactive to ensure that the sale and consumption of alcohol is carried out responsibly and measures are put in place to reduce the use of controlled drugs on their premises. It is felt that by maintaining cumulative impact it provides proportionate and effective measures to address these issues and assists both the Police and Partnership to manage the threat around violent crime, whilst also supporting the local economy and social choice.

## **5.0 Financial appraisal**

- 5.1 There are no significant financial risks arising from this report.

## **6.0 Legal implications**

- 6.1 Section 5 Licensing Act 2003 (as amended) requires the licensing authority to prepare and publish a Statement of Licensing Policy in respect of each five year period.
- 6.2 Before determining the Policy the Licensing Authority must under section 5(3) of the Act consult with the Police, Fire and Rescue Authority, the Director of Public Health, representatives of local premises licence holders, representatives of local club premises, representatives of personal licence holders and representatives of businesses and residents in its area. Those views will be given appropriate weight.
- 6.3 During the five year period the Policy must be kept under review and the licensing authority must make such revisions as it considers appropriate.

- 6.4 As a result of section 141(3) Policing and Crime Act 2017, a new section 5A was added to the Act to place Cumulative Impact Assessments (CIA) on a statutory footing. The legislation states that a licensing authority may publish a CIA stating that it considers that the number of premises licences and club premises certificates in respect of premises in one or more parts of its area, described in the assessment, is such that it is likely to be inconsistent with the promotion of the licensing objectives to grant any further licences or certificates in that part or parts. The section 182 Guidance at para 14.24 states “A CIA may be published by a licensing authority to help it to limit the number or types of licence applications granted in the area where there is evidence to show that the number or density of licences premises in the area is having a cumulative impact and leading to problems which are undermining the licensing objectives.” The Guidance also provides a checklist for the consultation process and details on the gathering of the evidence to be considered.
- 6.5 The Guidance confirmed that there was no transitional provisions for an existing Cumulative Impact Policy but advised that such a policy be reviewed within three years of the commencement of the legislation (6 April 2018) or when the policy is next due for review, whichever is soonest.
- 6.6 Section 5A also requires that where a licensing authority publishes a CIA it must before the end of every three year period carry out a further consultation and consider whether it remains of the opinion stated in the assessment.
- 6.7 The Legal Section has considered this Report on 28 February 2019 (Iken-8104-MW).

## **7.0 Appendices**

- Appendices 1-5 – Draft Statement of Licensing Policy 2019 – 2024
- Appendix A – Sussex Police Eastbourne Town Centre Crime and ASB Data

## **8.0 Background papers**

The background papers used in compiling this report were as follows:

- <https://www.lewes-eastbourne.gov.uk/licensing-and-registrations/sex-establishment-licence/>