

Report to: Licensing Committee.

Date: 27 June 2019

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

Report of: Tim Whelan – Director of Service Delivery

Ward(s): All

Purpose of report: To review the responses to an eight week consultation of the proposed new Statement of Licensing Policy including the Cumulative Impact Assessment. That a final Statement of Licensing Policy be agreed and recommended to Full Council.

Officer recommendation(s):

- (1) That the Committee considers the submissions in relation to the removal of the Cumulative Impact Assessment with options outlined in para 5.6 & 5.7.
- (2) That the Committee agree a final Statement of Licensing Policy and recommend the Policy to Full Council.
- (3) Delegate the Functional Lead Quality Environment to make any necessary changes to the Statement of Licensing Policy before submission to Full Council.
- (4) That the Committee agrees to recommend to Full Council that further minor amendments during the period of the recommended Policy may be made by the Functional Lead Quality Environment with the agreement of the Chair of the Licensing Committee.

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;
- The Promotion of 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 April 2018 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 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 Assessment 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 Assessment and designated zone, outlined in blue, can be found in the new draft Policy, Appendix 1.
- 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”*. Section 5A of the Act requires that when 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.
- 4.3 Sussex Police support the keeping of the 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 in the new Policy.
- 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 supports Cumulative Impact as a way of ensuring that existing and new applications continue to actively promote the licensing objectives, specifically the prevention of crime and disorder and protecting children from harm. This is on the basis that it has not been used to place a strangle hold on any new business, or to manage existing responsibly operated enterprises out of business. They consider that the Policy has also been used to good effect to ensure clarity and control over conditions on the premises licence within the Zone.
- 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 by the Police that by maintaining cumulative impact it provides proportionate and effective measures to address these issues and assists both the Police and the Community Safety Partnership to manage the threat around violent crime, whilst also supporting the local economy and social choice.

5.0 Consultation Responses

- 5.1 An eight week consultation period was conducted and a total of 6 responses were received within the time period. These consultation responses can be found in Appendix 2. Following the end of the consultation period a response was received from the Community Safety Partnership and is attached as Appendix 3. No other late responses were received.
- 5.2 One of the responses was a letter regarding the Sex Establishment and Encounter Policy dated December 2015. However these comments are not material to the Statement of Licensing Policy but rather to the Sex Establishment and Encounter Policy which is not currently under review.
- 5.3 A further 5 consultation responses have been received from the Eastbourne Chamber of Commerce and its members concerned that the Policy doesn't do enough to promote the night time economy and raises questions over the validity

of the Cumulative Impact Assessment.

The Chamber and its members are of the view that the Cumulative Impact Assessment (CIA) stifles the night time economy and urges the Committee to seriously consider whether the CIA is necessary as it deters potential business and they believe that a well-maintained licensed establishment with proper licensing controls is sufficient and that the CIA imposes an arbitrary ban on new properties opening and that its viability and usefulness should be considered.

- 5.4 The Chamber and its members propose that the CIA be removed and the Council should form a partnership with residents, statutory agencies and stakeholders to develop a plan for the night time economy.
- 5.5 The responses do not raise any concerns about the majority of the Policy but do raise concern in relation to the CIA and it is therefore necessary for the Committee to consider these responses and decide upon the following two options.
- 5.6 Option 1: Retain the Cumulative Impact Assessment as part of the Statement of Licensing Policy.
- 5.7 Option 2: Rescind the Cumulative Impact Assessment and instead the Functional Lead Quality Environment shall form a partnership with residents, statutory agencies and stakeholders to develop a plan for the night time economy.

6.0 Legal implications

- 6.1 The Legal Section considered this Report on 17 June 2019 (Iken-8104-MW).

7.0 Appendices

- Appendix 1 – Draft Statement of Licensing Policy 2019 – 2024
- Appendix 2 – Consultation Responses
- Appendix 3 – Community Safety Partnership Response

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/>