

**Report to:** Licensing Committee

**Date:** 27<sup>th</sup> July 2021

**Title:** Review of the Eastbourne Borough Council Cumulative Impact Assessment part of the 'Statement of Licensing Act Policy 2019-2024 (Licensing Act Policy)

**Report of:** Tim Whelan – Director Service Delivery

**Ward(s):** All

**Purpose of report:** To review the Eastbourne Borough Council Cumulative Impact Assessment part of the Licensing Act Policy and agree a six-week public consultation.

**Officer recommendation(s):**

(1) The Committee review the Cumulative Impact Assessment part of the Eastbourne Borough Council Licensing Act Policy

(2) The Committee authorise the Senior Specialist Advisor to start a six-week consultation with the public, trade and interested bodies.

(3) That following the consultation period that a report be brought to a Licensing Committee to consider the consultation responses in relation to the Community Impact Assessment and recommend a decision for approval to Full Council.

**Reasons for recommendations:** Statutory requirement to review the Cumulative Impact Assessment part of the Licensing Act Policy every three years.

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## **1 Introduction**

- 1.1 The Licensing Act 2003 (“the Act”) requires Licensing Authorities to prepare and publish for a five-year period, a Policy for their area which applies when exercising its functions under the Act. Eastbourne Borough Councils current Licensing Policy runs 2019-2024, the only part that is reviewed at this time is the Cumulative Impact Assessment, this must be reviewed every 3 years.

1.2 The Statement of Licensing Policy should be regarded as a local framework for decision making when considering licensing applications and the licensing committee and its sub-committees are required to have due regard to this when forming a decision.

## **2 Licensing Act Policy**

2.1 The current Eastbourne Borough Council Licensing Policy Statement runs from 2019-2024. Part 8 of the main part of this policy refer to the Cumulative Impact Assessment and appendix 2 and 3 mention the Cumulative Impact Assessment. The full policy is included at **Appendix 1** and all parts of the current policy that are highlighted make reference to the Cumulative Impact Assessment.

2.2 As a background Members are asked to note that the Council has had a Cumulative Impact Assessment as part of its Licensing Act Policy since July 2007. In brief, 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.

2.3 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.

2.4 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.

2.5 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.

## **3 Review of the Cumulative Impact Assessment**

3.1 Section 182 Guidance 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”.*

3.2 Some other Authorities have removed such special policies to help assist businesses in town centres in their COVID-19 recovery.

- 3.3 Eastbourne has suffered with COVID 19, businesses have been affected and generally, footfall has been dramatically reduced. Thus the rationale behind the introduction of a Cumulative Impact may no longer apply or at least not at this time. If the Cumulative Impact Assessment were to be removed Eastbourne may attract more businesses into the Town and increase footfall. The policy could be reintroduced if evidence were provided to suggest this was required.
- 3.4 If there is not enough evidence to justify keeping a special policy, it should be removed.
- 3.5 Therefore, The Licensing Committee may consider it appropriate to consider removing the Cumulative Impact Assessment. As alternative members are asked to consider applying new principles for those making a new or variation application for premises licences or club premises certificate.
- 3.6 These principles must strike a balance between encouraging hospitality businesses to the Town and recognising the rights of the local community and its annual influx of visitors.
- 3.7 Whilst the Cumulative Impact Assessment zone relates to a specific part of Eastbourne Town Centre it is proposed that these principles will apply to the whole area covered by Eastbourne Borough Council.
- 3.8 The Licensing Authority must accept all applications even if they do not engage with the Principles listed. It is suggested that applications should only be granted against the proposed principles in exceptional circumstances.
- 3.9 The following principles are suggested to take the place of the Cumulative Impact Assessment. It is suggested these apply to all parts of the Borough and for clarification, the principles will apply unless there are exceptional circumstances.
- a. Premises applying for a new licence or variation to their existing licence will not be authorised to have an outside area open after 23:00 hours.
  - b. Premises applying for a new licence or variation to their existing licence will not be authorised for sale of alcohol for consumption 'off the premises only' after 23:00 hours.
  - c. Premises applying for a new licence or variation to their existing licence will not be authorised for late night refreshment after 01:00 hours (on or off premises) save in exceptional circumstances.
  - d. Premises applying for a new licence or variation to their existing licence will not be authorised for the sale of alcohol for consumption on the premises or regulated entertainment after 02:00 hours.
  - e. Premises applying for a new licence or variation to their existing licence that wish to sell alcohol for consumption on the premises between midnight and 02:00 hours will be expected to provide where appropriate the provision of CCTV and SIA door staff in their Operating Schedules.
  - f. Premises applying for a new licence or variation to their existing licence that wish to provide regulated entertainment on the premises between midnight and 02:00 hours will be expected to provide where appropriate

the provision of CCTV, SIA door staff and a Noise Management Policy in their Operating Schedules.

#### **4 Options for the Committee**

4.1 The Committee could offer the following options during a consultation, the public along with everyone listed in section 5(3) of The Licensing Act 2003 will form part of the consultation:

- a. Keep the current Cumulative Impact Assessment.
- b. Change the area covered by the current Cumulative Impact Assessment (map of zone is included as part of the current policy in Appendix 1).
- c. Remove the whole Cumulative Impact Assessment part of the policy at this time with an option to reintroduce if it becomes necessary..
- d. Remove the current Cumulative Impact Assessment part of the policy but replace with a set of principles (those suggested at 3.9) that the Licensing Authority would expect to be considered on all new or variation applications.

4.2 The results from the public consultation will be brought back to Licensing Committee for a decision to be recommended to Full Council.

#### **5 Financial Impact**

5.1 There are no additional financial implications to this report.

#### **6 Legal Implications**

6.1 Section 5A Licensing Act 2003 states that a licensing authority may publish a cumulative impact assessment stating that it considers that the number of relevant authorisations in respect of premises in one or more parts of its area is such that it is likely to be inconsistent with the authority's duty to grant any further relevant authorisations. If it does so it must set out the evidence for that opinion in the cumulative impact assessment.

6.2 If the licensing authority has published a cumulative impact assessment it must before the end of the relevant period (within three years of the last revision) consider whether it remains of the opinion stated in the assessment. Thus, the licensing authority need to consider whether it wishes to retain this part of its Licensing Act Policy.

6.3 Before deciding whether it remains of the opinion, that such a 'special' policy is still required, the licensing authority must consult the persons and bodies referred in section 5(3) of the Act.

6.4 If the licensing authority decides to retain this 'special' policy then it must revise the cumulative impact assessment so that it includes a statement to that effect and sets out the evidence as to why it remains of that opinion.

6.5 The licensing authority must publish any revision of a cumulative impact assessment.

6.6 The Legal Section considered this Report on the 8<sup>th</sup> July 2021 (Iken 10268-EBC-MW).

## **7 Risk management implications**

7.1 In accordance with the Council's Risk Management Strategy, consideration has been given to the potential risks associated with the recommendations set out in this report. Failure to review the Cumulative Impact Assessment within the timescales would contravene section 5A of The Licensing Act.

## **8 Equality analysis**

8.1 There are no Equality implications associated with this report.

## **9 Environmental sustainability implications**

9.1 There are no sustainability and/or carbon reduction implications associated with this report.

## **10 Appendices**

10.1 Appendix 1 - Current Statement of Licensing Policy including Cumulative Impact Assessment.

## **11 Background papers**

11.1 None.