

Body: Licensing Act Committee

Date: 20th March 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 recent consultation carried out for the review of the Council’s Cumulative Impact Policy.

Recommendation
:

1. 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 make no changes to the existing CIP
 - (ii) To decrease the size of the existing area/zone covered by the CIP
 - (iii) To remove the existing CIP from the Licensing Policy
 - (iv) To undertake a comprehensive data analysis to consider the need for a CIP and report back to the committee with those findings.
2. That if Members approve any of options i,ii, iii, 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 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 March 2015 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 Cumulative Impact Policy. 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 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 experience 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 Cumulative Impact Policy 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 Cumulative Impact Policy 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 it those which are contained in the statement of licensing policy should be amended"*.

5.0 Consultation

- 5.1 Public consultation of the current cumulative impact Policy 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 organisation and individuals have been directly consulted, including:
- Responsible Authorities
 - Ward Councillors
 - All Premises Licence and Club Premises Certificate holders within the Cumulative Impact Zone
 - Town Centre Neighbourhood Panel
 - Nightwatch & Shopwatch co-ordinator
 - Eastbourne Community Safety Partnership (CSP)
 - Chamber of Commerce

6.0 Overview of feedback

- 6.1 The Authority has received 6 responses. Full copies of the feedback is included at Appendix 1 to 6, however a summary for each appears below:

6.2 Member of the Public (Appendix 1):

A comprehensive data analysis is required.

A comparative temporal data analysis should be collated that documents the number, nature and density of licensed premises in the CIZ commencing from before the inception of the policy to date. In conjunction with this, incidents of; crime, noise disturbance and hospital admission directly attributed to licensed premises can be plotted alongside to measure the effect of the policy on reducing such incidents.

Committee will then be better informed as to the impact of the policy on licensed premises and the reduction of incidents. Importantly it will provide evidence whether or not there is indeed a cumulative impact of licensed premises in the area.

6.3 Eastbourne Community Safety Partnership (Appendix 2):

The Partnership recommends no change to the CIP.

CIP has been an effective deterrent to the development of unsuitable licensed premises and any change would negatively impact its positive contribution to community safety and with particular regard to the night time economy in Eastbourne.

6.4 Sussex Police (Appendix 3):

The District Commander for Eastbourne Police is in full support of maintaining the CIP.

An analysis of the crime and incident data has been supplied which shows that the number of reported crimes in Eastbourne as a whole over the period has risen, however the proportion of crime committed within the CIP area has reduced.

The actual number of violent crimes with a public place marker (PPC) has increased over the time period both in the area analysed and Eastbourne as a whole, although the proportion of PPVC occurring in the determined area has reduced year on year.

The highest proportion of incidents of alcohol related PPVC was in the town centre significantly between 2300hrs and 0200hrs and Friday and Saturday nights, showing these incidents are clearly linked to the night time economy.

6.5 Chamber of Commerce (Appendix 4)

In favour of keeping the policy but the area should be reduced.

The success of the CIP has helped build our town centre's reputation as a

safe place to visit. However, the current CIP needs to be updated to take in account the changes to the towns economy and expectations of customers and ensure a balanced approach.

The new Arndale Centre allows us and the wider business community a unique opportunity to take advantage of a night-time economy in our town and it is crucial that current and future licensed establishments in our town centre are given the space and support to expand their business.

6.6 Licensee (Appendix 5)

Would like the policy withdrawn.

The night time economy has severely suffered in Eastbourne because of the CIP. Great investment is coming into our town and we need to make sure the night time economy can thrive.

The Policy should be revoked and our industry should be encouraged to grow. Alternatively, if it does remain in place it should be completely re-written and made smaller to suit the current times.

6.7 Licensee (Appendix 6)

Would like the policy withdrawn.

The Policy has stopped the growth to the night time economy in Eastbourne which is vital for the rejuvenation of the town. Irresponsible licensee's should be targeted directly rather than a blanket policy.

The issues are not the same as they were in 2006. Anti-social behaviour is more prevalent during the day by street drinkers and drug dealing.

7.0 Recommendations

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

7.1.1 To make no changes to the existing CIP.

7.1.2 To decrease the size of the existing area/zone covered by the CIP as per the map attached at Appendix 7.

7.1.3 To remove the existing CIP from the Licensing Policy.

7.1.4 To undertake a comprehensive data analysis to consider the need for a CIP and report back to the Committee with those findings.

7.2 That Members if approve any of options 7.1.1 or 7.1.2 or 7.1.3 recommend that option to Full Council for approval.

8.0 Financial & resource Implications

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

9.0 Resource Implications

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

10.0 Legal Implications

10.1 The Legal Section of the Council have considered this report (6084-MW 8.3.17)

11.0 Human Rights Act 1998 Implications

11.1 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, March 2015
- Licensing Act 2003

Appendices:

Appendix 1 – Consultation feedback from Mr J Virgo

Appendix 2 – Consultation feedback from Eastbourne Community Safety Partnership

Appendix 3 – Consultation feedback from Sussex Police

Appendix 4 – Consultation feedback from Chamber of Commerce

Appendix 5 – Consultation feedback from Shoes Simes, Dew Drop Inn & The Eagle

Appendix 6 - Consultation feedback from Heidi Lane, Crown & Anchor

Appendix 7 – Current CIP zone with removal of Little Chelsea area