

Body: Licensing Act Committee

Date: 8th January 2018

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

Report of: Ed Hele, Functional Lead Quality Environment

Ward(s): All

Purpose: To inform Members of the results of the second consultation carried out for the review of the Council’s Cumulative Impact Policy and to address issues raised at the Licensing Act Committee on 2 October 2017.

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 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
2. That if Members approve any of options i, ii, 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 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 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 In July 2007 the Cumulative Impact Policy came into effect and the Committee reviewed this in 2013 with the current Licensing Statement Policy currently in place 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 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 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 <http://www.lewes-eastbourne.gov.uk/licensing-and-registrations/alcohol-entertainment-and-late-night-refreshment-licensing/premises-licences/>
- 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 Additional Information

- 5.1 At the previous meeting in October the Committee requested clarity on a number of points.
- (i) The number of premises trading when the CIP was implemented and now, compared with the number of premises with licences attached. This is shown in table 1 below. There has been an overall increase within the Borough both of premises within the CIP and those outside the zone albeit by only 6 with the CIP.

Table 1

| Licensed Premises 2013 | | Licensed Premises 2017 | |
|------------------------------------|-----|------------------------------------|-----|
| Total Licensed across Borough | 432 | Total Licensed across Borough | 449 |
| Type of Premises within CIP | | Type of Premises within CIP | |
| Pub | 44 | Pub | 33 |
| Café/Restaurant | 78 | Café/Restaurant | 104 |
| Off License | 32 | Off License | 32 |
| Hotel | 59 | Hotel | 45 |
| Late Night Refreshment | 19 | Late Night Refreshment | 22 |
| Other | 21 | Other | 19 |
| Total within CIP | 253 | Total within CIP | 256 |

(ii) Crime and disorder data from Sussex Police when the CIP was implemented and now, with any possible explanation for disturbances. The information provided Sussex Police is shown in Appendix 3.

(iii) Map of the CIP zone and premises located within and what type they are (restaurant, public houses, nightclubs etc.) At the time of going to print this was not available but a map showing extent of current CIP is shown below.

Map 1



(iv) Extend an invitation to Sussex Police to attend the next meeting that the CIP is considered. Sussex Police have been invited to this meeting.

(v) Extend an invitation to an officer focused on tourism and economic development to attend the next meeting that the CIP is considered to talk about premises in “The Beacon” and the surrounding area that are likely to apply for premises licence. An invitation has been extended for someone from tourism to attend this meeting.

6.0 Consultation

6.1 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.

6.2 A range of organisations and individuals were directly consulted and the Authority received 6 responses which were fed back to the Licensing Act Committee on 20th March 2017.

7.0 Second Consultation and feedback

7.1 A second consultation exercise took place between 24th July 2017 and 3rd September 2017 following the request from the Committee to ask additional questions. A letter was sent to all premises and club certificate licence holders which included a paper survey and the web address to complete 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 to the survey, which can be viewed at Appendix 1 and 1 letter which can be view at Appendix 2

7.3 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 |

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

8.0 Recommendations

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

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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 these organisations were consulted during both consultation periods.

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 (6974-MW 19 December 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.
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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

Appendix 3 – Sussex Police Statistics