

Licensing Committee Report

Ward(s) affected: All

Report of the Licensing Team Leader

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## **Licensing Act 2003**

### **Statement of Policy 2021-26 – Review**

#### **Executive Summary**

This report seeks the views of the Licensing Committee on the strategic direction for the proposed review of the Licensing Act Policy in 2020.

#### **Recommendation to Licensing Committee**

That the Licensing Committee consider the proposals in this report and recommends the following areas of Policy are incorporated within the Council's Licensing Act 2003 Policy to be consulted upon:

Film Classification

Internet sales/delivery of alcohol

Agent of Change

Safeguarding

#### Reason for Recommendation:

To allow Officers to develop a revised Statement of Licensing Policy under the Licensing Act 2003 for public consultation; and

To enable the Council to make decisions on licensing premises applications with a current Statement of Licensing Policy.

#### **1. Purpose of Report**

1.1 The purpose of this report is to seek the Committee's views on the strategic direction for the proposed review of the Licensing Act 2003 Policy.

## 2. Strategic Priorities

2.1 The review of the Licensing Act 2003 Policy will contribute to our fundamental themes as follows:

- **Place making** – regenerating and improving Guildford town centre through well regulated licensed establishments.
- **Community** – enhancing sporting, cultural, community and recreational facilities.
- **Innovation** – Encouraging sustainable and proportionate economic growth to help provide the prosperity and employment that people need.

## 3. Background

3.1 The Council in its role as the Licensing Authority under the Licensing Act 2003 has a duty to prepare, and keep under review its Statement of Licensing Policy.

3.2 The policy sets out how the Licensing Authority seeks to promote the four licensing objectives during the licensing process. The four Licensing objectives under the Act are:

- The prevention of crime and disorder
- Public safety
- Prevention of public nuisance
- Protection of children from harm

3.3 The current Statement of Licensing Policy, adopted by Council on 8 December 2015, took effect from 7 January 2016 for a maximum period of 5 years. Consequently the current Policy is due for review by 7 January 2021.

3.4 The House of Lords Select Committee published its review into the Licensing Act in April 2017, with the Government responding in November of the same year. The Select Committee was critical of the many 'piecemeal' amendments to the Act which have taken place since its introduction and critical of the lack of cohesion between planning and licensing. However since the Government response, there has been minimal legislative change concerning the Licensing Act 2003 since the Policy was last reviewed.

3.5 During the development of the current Policy, the Deregulation Act 2015 came into force which altered the Licensing Act in respect of regulated entertainment and late night refreshment:

### Regulated Entertainment:

Some previously 'regulated' activities no longer require a licence include:

- exhibitions of films where they are incidental to another activity which is exempt from licensing;
- 'not-for-profit' film exhibitions\* held in community premises provided that the audience does not exceed 500 and the organiser obtains consent to the screening from a person who is responsible for the premises and ensures that each such screening abides by age classification ratings;

- a performance of amplified live music or playing of recorded music\* on premises authorised to sell alcohol for consumption on the premises provided that the audience does not exceed 500 (subject to satisfying other conditions);
- a performance of amplified live music or playing of recorded music\* in a church hall, community hall, or other similar community premises, that is not licensed by a premises licence to sell alcohol, provided that the audience does not exceed 500 and the organiser obtains consent for the performance from a person who is responsible for the premises;
- a performance of amplified live music or playing of recorded music\* at the non-residential premises of a local authority, a school or a hospital provided that the audience does not exceed 500 and the organiser obtains consent for the performance on the relevant premises from the local authority concerned or the school or the health care provider for the hospital;

\* between 08:00 and 23:00 on any day

### Late night refreshment

The Deregulation Act also allows Local Licensing Authorities to choose to exempt some forms of late night refreshment at premises which are either:

- Motorway service areas;
- petrol stations;
- local authority premises (except domestic premises) unless there is an event taking place at which more than 500 people are present;
- schools (except domestic premises) unless there is an event taking place at which more than 500 people are present;
- hospitals (except domestic premises);
- community premises (church, chapel, village, parish or community hall or other similar building) unless there is an event taking place at which more than 500 people are present;
- licensed premises authorised to sell by retail alcohol for consumption on the premises between the hours of 11pm and 5am

However it is not believed that any Licensing Authorities have adopted these provisions.

3.6 The Licensing Act was updated by the Immigration Act 2016 which introduced a requirement on Licensing Authorities to check that applicants for a Premises Licence or Personal Licence have the right to work.

3.7 The Section 182 Guidance was most recently updated in April 2018 with minor changes, including:

- Several changes in relation to guidance on Temporary Event Notices (TENS), including clarification that TENS' users shall provide clear description of locations when events are held in open spaces and particularly when adjacent plots are used; how the user will ensure that each 499 occupancy limit is maintained; and putting their TENS' register on the council's website to facilitate public access.

- a new section on beer gardens, providing useful confirmation about where the sale of alcohol takes place, that the sale is not outside unless there is an outdoor bar and that if the area is simply for consumption of alcohol then there is no requirement to put the outside area on the licensing plan.
- an amendment to remove the reference to Licensing Authorities accepting all reasonable police representations.
- clarity on the hearing process and the use of adjournments to extend time limits if it is in the public interest and if the parties are in negotiation.
- emphasis that it is important following an appeal to give clear reasons if there is a settlement particularly when local residents are not involved.

3.8 Additionally, from 6 April 2018 Cumulative Impact Assessments now have a statutory footing following the commencement of section 141 of the Policing and Crime Act 2017. Previously, “Cumulative Impact” and Cumulative Impact Policies (CIPs) were only described in Home Office guidance on the Licensing Act. Guildford removed its CIP for Bridge Street and Onslow Street with the commencement of the current policy due to the changes to the area and reduction of alcohol related crime. Crime remains low in this area and management of the night time economy continues to improve through partnership working through initiatives such as the Purple Flag.

#### **4. Proposed changes**

4.1 The Current Policy was comprehensively rewritten in 2015 and as such wholesale changes are not considered necessary. There are however some areas, where due to emerging issues that Officers believe the current Policy could be strengthened and these are presented for the Committee’s views prior to developing the draft:

##### 4.2 Film Classification

The current Policy does not specify a procedure for circumstances when the Licensing Authority is called upon to exercise its powers to classify a film or issue an overriding recommendation. Such situations can be approximately characterised in one of three groups:

1. In cases where the licensing authority has concerns about a particular film, and has of its own volition made an alternate recommendation. This may allow admission of persons of a higher or lower age than the recommendation made by the BBFC, or in extreme circumstances may prevent the showing of a particular film. This power will be rarely, if ever, utilised.
2. In cases where a film has not been classified by the BBFC. This is likely to be the case with small, local, independent films, or foreign films, where a wider UK release is not intended.
3. In cases where the licensing authority is approached by a third party, asking the authority to override a recommendation made by the BBFC.

The third of these groups may include films intended to be shown at 'parent and baby' screenings, which have increased in popularity in recent years. The Act and Guidance are silent on the admission of babies to a film which is subject to an age-related recommendation – therefore on a strict interpretation of the Act, babies must be excluded from such screenings. The licensing authority is aware that some cinemas across the country have agreed schemes whereby the applicable licensing authority makes an alternate recommendation in respect of a specified film, expressly permitting the admission of babies and very young children to special screenings of that film with only parents of such children in attendance.

Consequently, the Committee are invited to consider which strategic direction the Licensing Act Policy should take for these circumstances.

#### 4.3 Internet sales/delivery of alcohol

According to research (Profitero Report 2017), 1 out of 5 sales of alcohol now takes place online. The House of Lords Select Committee during their review of the Act commented:

*“Whilst we do not believe this is currently a substantial problem, online deliveries will only increase, and online sales and delivery of alcohol should be closely monitored in future.”*

It is an offence under section 149 of the Licensing Act to sell alcohol to a person who is under 18. The current policy focusses on protection of children from harm, and measures which licence holders would be expected to take to safeguard children on their premises. The policy does not however address potential underage sales through the internet or delivery of alcohol, and officers recommend drafting some expectations of applicants/licence holders in the Policy.

#### 4.4 'Agent of Change'

The 'Agent of Change' principle encapsulates the position that a person or business (ie the agent) introducing a new land use is responsible for managing the impact of that change. The practical issue that has arisen on occasion is that in circumstances where residents move into an area where noise is emanating from, for example, a long-standing music venue, this may have resulted in the Licensing Authority imposing additional licensing restrictions on the established licensed venue. Campaigners on behalf of licensed premises have long advocated support for implementation of an 'agent of change' principle to place the responsibility for noise management measures on the incoming 'agent of change'.

The House of Lords Select Committee in 2017 recommend that a full 'Agent of Change' principle be adopted in both planning and licensing guidance to help protect both licensed premises and local residents from consequences arising from any new built development in their nearby vicinity.

National Planning Guidance has been updated to include reference to the agent of change principle in NPPF2. The new paragraph 182 of NPPF2 now states that both planning policies and planning decisions should ensure that new development can be integrated effectively with existing businesses and community facilities (eg places of worship, pubs, music venues and sports clubs). "Unreasonable restrictions" should not be placed on existing businesses as a result of development permitted after they were established. "Where the operation of an existing business or community facility could have a significant adverse effect on new development (including changes of use) in its vicinity, the applicant (or 'agent of change') should be required to provide suitable mitigation before the development has been completed."

Whilst National Planning Policy has been updated to incorporate the 'Agent of Change' principle, the Section 182 Guidance makes no reference to it.

Consequently, the Licensing Committee are invited to discuss whether they wish to adopt the 'Agent of Change' principle within the current Licensing Act Policy review.

The practical implications for incorporating 'Agent of Change' principles are that should a premises licence be subject of a review application as a result of complaints from local residents who are experiencing nuisance arising from a change of use and moving into the area, the Licensing Authority should not be placing 'unreasonable restrictions' on that premises, if it were operating legally beforehand. Currently, upon review, the Authority is required to take any steps it considers necessary to promote the licensing objectives. This could mean, that a venue which is subject of complaints arising from residents new to the area could have activities curtailed.

#### 4.5 Safeguarding

Local authorities have an overarching responsibility for safeguarding and promoting the welfare of all children and young people in their area. While local authorities play a lead role, safeguarding children and protecting them from harm is everyone's responsibility. Safeguarding responsibilities are highlighted in the Policy of other areas of licensing such as taxis, but not in the Licensing Act Policy.

Officers therefore propose to include a section on safeguarding (to include child sexual exploitation and county lines) that those who are licence/certificate holders and operators of licensed premises should ensure they are aware of the signs of child abuse and child sexual exploitation and how to raise concerns about perpetrators or victims in their areas.

### 5. Consultation

#### 5.1 Consultation is critical to ensure any changes to the Licensing Act Policy are clear and transparent for licence holders and the public.

- 5.2 Once the Policy has been drafted and approved for consultation, full public consultation will take place with the results presented for consideration by the Committee.
- 5.3 In drafting the report, the Lead Councillors views have been sought who agrees with the topics outlined for inclusion in the draft Policy.
- 5.4 It is probably also important to emphasise that this report is intended to form a basis for the Policy direction of the Council, and for officers to develop a Policy which will be presented for consultation with the approval of the Committee.

## **6. Equality and Diversity Implications**

- 6.1 Under the general equality duty as set out in the Equality Act 2010, public authorities are required to have due regard to the need to eliminate unlawful discrimination, harassment and victimisation as well as advancing equality of opportunity and fostering good relations between people who share a protected characteristic and those who do not.
- 6.2 The protected grounds covered by the equality duty are: age, disability, sex, gender reassignment, pregnancy and maternity, race, religion or belief, and sexual orientation. The equality duty also covers marriage and civil partnership, but only in respect of eliminating unlawful discrimination.
- 6.3 The law requires that this duty to have due regard be demonstrated in decision making processes. Assessing the potential impact on equality of proposed changes to policies, procedures and practices is one of the key ways in which public authorities can demonstrate that they have had due regard to the aims of equality duty.
- 6.4 Improving measures in the Council's Licensing Policy to promote the Safeguarding and Equalities agendas will encourage members of the public from all groups to enjoy licensed venues in Guildford. Additionally, venues providing a varied offering contribute to Guildford's Purple Flag aims of offering a safe and diverse night out.

## **7. Financial Implications**

- 7.1 There are no financial implications for the Council as a result of carrying out a public consultation on draft Statement of Licensing Policy.

## **8. Legal Implications**

- 8.1 The Statement of Licensing Policy provides the framework in which the licensing function is administered and sets out the Council's approach under the Licensing Act 2003.
- 8.2 The Licensing Act 2003 requires a statutory review of the Statement of Licensing Policy every 5 years but it does not prevent an earlier review.

- 8.3 The Licensing Authority must have regard to the statutory guidance issued under section 182 of the Licensing Act 2003 when drafting its policy. The latest version, issued by the Home Office in April 2018, has been referred to during the drafting of this report.

## **9. Human Resource Implications**

- 9.1 The review of the Licensing Act Policy will take considerable officer time, however can be managed from within the current licensing resource, although it is recognised that the work is taking place during the Future Guildford review.

## **10. Recommendation**

- 10.1 That Licensing Committee consider the proposals in this report and discusses the strategic direction which the Policy should take in the areas highlighted.
- 10.2 That Licensing Committee recommends that Officers progress work to incorporate the measures discussed by the Committee within the Council's Licensing Act Policy to be consulted upon.
- 10.3 Similarly, members of the Committee are invited to put forward any other areas for inclusion in the draft policy to be consulted upon.

## **11. Conclusion**

- 11.1 A review must be complete by January 2021 of the current Statement of Licensing Policy. The report provides information and guidance on measures for inclusion within the draft Statement of Licensing Policy under the Licensing Act 2003, to be approved by the Committee for public consultation.

## **12. Background Papers**

- 12.1 [Guildford Borough Council Statement of Licensing Policy](#)
- 12.2 [Revised Guidance issued under Section 182 of the Licensing Act 2003](#)
- 12.3 [House of Lords Select Committee Report: The Licensing Act 2003: post legislative scrutiny](#)
- 12.4 [Government Response to the House of Lords Select Committee Report on the Licensing Act 2003](#)

## **13. Appendices**

There are no Appendices to this report.

**14. Consultation**

<b>Service</b>	<b>Sign off date</b>
Finance / 151 Officer	<i>21 October 2019</i>
Legal / Governance	<i>15 October 2019</i>
HR	<i>25 October 2019</i>
Equalities	<i>25 October 2019</i>
Lead Councillor	<i>9 October 2019</i>
CMT	<i>22 October 2019</i>
Committee Services	<i>14 October 2019</i>