



Report to Council

4th July 2012

LEADER

Councillor Nicholas Botterill

TITLE Revised Statement of Licensing Policy 2012

Wards

All

SUMMARY:

CABINET MEMBER FOR RESIDENT SERVICES

Cllr Greg Smith

This report seeks approval for the Council's Revised Statement of Licensing Policy 2012, which has been publicly consulted upon.

In April 2012 a number of amendments were made to the Licensing Act 2003 which made certain areas of the Council's Statement of Licensing Policy factually incorrect.

Following legal advice the Statement of Licensing Policy 2010 has been reviewed and updated to ensure that it is in line with the new legislation and associated guidance.

This report outlines the review and consultation process, issues for consideration and the proposed amendments which were subject to public consultation. .

CONTRIBUTORS

Transport & Technical Services Department

Legal and Democratic Services

Finance and Corporate Services

RECOMMENDATIONS:

Council is asked to :

Approve the Council's Revised Statement of Licensing Policy 2012 as set out in Appendix 1 of this report.

1. BACKGROUND

- 1.1 The Current Statement of Licensing Policy 2010 at Appendix 2 was adopted by Full Council and was published by the London Borough of Hammersmith and Fulham in January 2011.

This revised Statement of Licensing Policy 2012 is our fourth edition since the introduction of the Licensing Act 2003.

The proposed amendments to the draft revised Statement of Licensing Policy 2012 are detailed in section 2.3 of this report.

2. REPORT

2.1 Introduction

- 2.1.1 The Licensing Act 2003 Act came into force in 2005 and provides a unified system of regulation of the activities of the sale and supply of alcohol, the provision of regulated entertainment, and the provision of late night refreshment.
- 2.1.2 Each licensing authority is required to determine and publish a statement of the principles that they propose to apply in exercising their functions under the Act during the five year period to which the licensing policy applies.
- 2.1.3 The 2003 Act sets out four licensing objectives which the licensing authority has a duty to promote. These are:
- the prevention of crime and disorder,
 - public safety,
 - the prevention of public nuisance, and
 - the protection of children from harm.
- 2.1.4 This Licensing Authority has approximately 925 licensed premises which include the following:-
- Pubs, Bars, Clubs
 - Restaurants
 - Shops (Off Licences)
 - Social Clubs, halls, and Staff restaurants
 - Hotels
 - Cinemas and Theatres
 - Take Aways selling hot food or drink between 11pm and 5am.
- 2.1.5 The licensing authority can only consider matters within the scope of the Licensing Act, and guidance documents, and cannot become involved in the moral issues relating to licensing.
- 2.1.6 The Police Reform and Social Responsibility Act 2011 received Royal Assent. Part 2 of this Act has the effect of amending several sections of the Licensing Act 2003. On 25 April 2012 a number of Commencement Orders were laid in Parliament enabling a number of these amendments to become effective.

2.1.7 The amendments to the Licensing Act 2003 have required the Home Office to revise the Secretary of State's guidance to Licensing Authorities issued under Section 182 of the Licensing Act 2003. In accordance with the Act the Licensing Authority must have regard to the Guidance when carrying out its licensing functions.

2.2 Review Process

2.2.1 Amendments to the Licensing Act 2003 and the Statutory Guidance has necessitated the review of the Hammersmith & Fulham Statement of Licensing Policy. However, this review is purely for technical, legal reasons, and not to consider any change in Council policy.

2.2.2 The Statement of Licensing Policy has been duly revised to reflect changes in legislation and the Guidance, and was reviewed in consultation with the respective responsible authorities as defined by the Licensing Act 2003.

2.2.3 The main amendments to the Licensing Act 2003 and the Secretary of State Guidance are as follows;

- Licensing Authorities and Local Health Bodies become "Responsible Authorities"
- The "vicinity" test for persons/businesses making representations for/against licence applications is abolished.
- In addition to the Police, Environmental Health Officers may now submit objections to a Temporary Event Notice (TEN). Objections from both bodies may now be made in connection with any of the four licensing objections, and not just the "prevention of crime and disorder" objective and existing licence conditions, can be attached to TENs, in some circumstances.
- The limit for the number of days per calendar year an individual premises may hold a TEN is increased from 15 to 21 days.
- The limit that an individual TEN can last is increased from 96 to 168 hours.
- The provision for applicants to submit 'Late TENs'
- A non payment of the annual licensing fee by a premises licence/club premises certificate holder may result in the premises licence being suspended.
- The statutory review period for a Statement of Licensing Policy's has been extended from 3 to 5 years.
- The criteria on which licensing decisions must be made has been changed from being "necessary" to "appropriate".

2.2.4 Further amendments to the Licensing Act 2003 are proposed to take effect in October 2012. The proposed amendments are in relation to a Late Night Levy (LLN) and Early Morning Restriction Orders (EMROs).

2.3 Proposed amendments to the draft Revised Statement of Licensing Policy 2012

2.3.1 In summary the proposed amendments to the Statement of Licensing Policy 2011 are:

- Requirement for Licensing Authorities to review their Statement of Licensing Policy every three years has been deleted and replaced with five years.
- Replacing 'Department of Culture Media & Sport' with the 'Home Office'.
- To update the information in relation to numbers, hours and 'late notices' for Temporary Event Notices (TENs).
- Replacing the term 'Interested party' with 'other persons'.
- Replacing the term 'necessary' with 'appropriate'.

- To update advice regarding non payment of annual licence fees.
- To include additional advice for applicants regarding information to be provided in their operating schedule when submitting an application.
- To include information regarding the Shepherds Bush Cumulative Impact Policy, which was approved by Full Council in 2011.
- Removal of the word 'vicinity' in relation to representations.
- To include the Primary Care Trust and the Licensing Authority as responsible authorities.
- Make minor amendments to some wording of the policy to provide clarity.

2.4 Consultation Process

- 2.4.1 Due to minor factual alterations to the Policy it was considered that a reduced consultation period of three weeks was appropriate to ensure that the Statement of Licensing Policy remains up to date in order to consider and determine licensing objectives.
- 2.4.2 Furthermore the consultation period was justified in these circumstances in order that a valid Statement of Licensing Policy can be produced quickly. This is reinforced by paragraph 13.6 of the Secretary of State's Guidance which states that "it is for each licensing authority to determine the extent of the consultation it should undertake".
- 2.4.3 The Consultation was undertaken between 21st May 2012 and the 11th June 2012.
- 2.4.4 Section 5(3) of the Act requires the licensing authority to consult on its statement of licensing policy with the police, the fire authority and such person's representative of:
- Holders of premises licences issued by that authority
 - Holders of club premises certificates issued by that authority,
 - Holders of personal licences issued by that authority, and
 - Businesses and residents in its area.
- 2.4.5 In addition to the statutory consultees, the following were consulted;
- Responsible Authorities
 - Councillors
 - Resident groups, tenants associations and societies;
 - The Area Child Protection Committee; Health service including PCT, Accident and Emergency and the London Ambulance service;
 - British Transport Police;
 - Public transport undertakers;
 - Neighbouring authorities;
 - British Institute of Inn keeping;
 - Chamber of Commerce;
 - Drug and alcohol action team;
 - Crime and Disorder Reduction Partnership;
 - Trade unions;
 - Other relevant organisations that could be affected by this policy

2.5 Summary of Key Responses

2.5.1 Responses for Residents

We have received two comments from local residents who stated the following:-

"I am glad to see the extension of TENs to 21 days, this can be very useful, and the individual TEN to last up to 168 hours"

"I would like to object any change for Licences policy"

Officer Comments

Due to the amendments to the Licensing Act 2003 the Council has had no option but to change it's licensing policy to ensure that it is factually correct.

2.5.2 Responses from Residents Associations

Two Residents Associations made the following comments :

"Hammersmith Embankment Residents Association : Do not abolish the vicinity test for persons/businesses making representations for/against a licence. Not only is this undemocratic, it strangles the voice of local people who have to suffer from late night licences and the noise and anti-social behaviour this can bring. It is the only leverage we have as a community to barter with local pubs and clubs to limit their hours and control the doors professionally. The limit increase for TENS is also unwelcome. Temporary events should be infrequent and controlled and 15 days should be ample. Why change it ?"

"PRARA - Peterborough Road and Area Residents' Association : We are responding to the written request received by PRARA to contribute to this consultation. We are happy to accept the revised Statement of Licensing Policy 2012"

Officer Comments

The Council has had to amend it's licensing policy to reflect the changes to the Licensing Act 2003. The removal of the vicinity test and an increase in the TENs allocation are two of the many changes which are outside of the Council's control. However the removal of the vicinity test would actually be less restrictive and would allow many more residents to make representation to applications.

2.5.3 Responses from local businesses

Five local businesses responded to the consultation, one of these businesses left the following comment :

"Not happy about this new policy, late payment will suspend the licence"

Officer Comments

The potential suspension of a licence for non payment is another one of the changes to the Licensing Act which have had to be reflected in the Council's policy. The policy does make clear that any non payment could (rather than will) result in the suspension of the licence.

2.5.4 Response from Responsible Authority

2.5.4.1 The Commercial Services team, stated the following:

“18.8 Applicants for such events must consider “The Event Safety Guide” and other guidance published or recommended by the Health and Safety Executive on all aspects of arranging and staging events safely. <http://www.hse.gov.uk/event-safety/index.htm>

Annex 3 Any special effects or mechanical installation shall be planned, commissioned, arranged, subject to inspection and maintenance, operated and stored so as to minimise any risk to the safety of the audience, performers and staff.

The Licensing team stated the following :

Section 18.7 of the Policy should be strengthened to give details of the ‘exceptional circumstances’ when the Council will accept late TENs. Without this information the late TENs process could be used to resubmit TENs when the original ten working day deadline has been missed.

Officer Comments

Section 18.8 of the policy has now been amended to include the proposed wording as has the first ‘special effects’ condition in the pool of conditions at Annex 3.

The Council’s legal team provided the following comments in relation to an amendment of the late TENs process :

“The law doesn’t prevent the application of late tens, but they are dealt with differently, and gives the Police and EH an absolute non-appealable right to say no. This seems to be to the main difference in approach and why they are exceptional - essentially - removing a right a fair hearing because of the lateness. If you wish to introduce a policy in this regard, I would advise that we seek counsel’s advice on this matter”.

In light of the above comments we will reiterate the guidance in relation to exceptional circumstances throughout the policy

2.5.4.2 The Trading Standards team, stated the following:

“15.11 to remove ‘public nuisance and replace with “protecting children from harm”

Officer Comments

15.11 has now been amended as follows :

“The following provides a non-exhaustive list of risks associated with the public nuisance objective that applicants may want to consider when preparing their Operating Schedule:”

has now been replaced with :

“The following provides a non-exhaustive list of risks associated with the protection of children objective that applicants may want to consider when preparing their Operating Schedule”

2.5.4.3 The Metropolitan Police, stated the following:

"We support the proposed changes to the licensing policy in light of the factual amendments to the Licensing Act 2003. We have no other comments."

Officer Comments

No comments

2.5.5 **Response from the Chairman of the Licensing Committee.**

2.5.5.1 It was requested that the two CCTV conditions currently contained in the pool of conditions are replaced with more substantial conditions and endorsed by the Police:

Officer Comments

The following CCTV conditions have replaced the existing two CCTV conditions in the pool of conditions. These conditions have also been endorsed by the Police;

- Appropriate signage will be displayed, in a prominent position, informing customers they are being recorded on CCTV.
- CCTV covering areas inside and outside of the premises should be installed and maintained to police recommendations with properly maintained log arrangements. All images will be stored for a minimum of 31 days.
- A staff member from the premises that is conversant with the operation of the CCTV system will be on the premises at all times that the premises are open to the public. This staff member will be able to show police or authorised local authority officers recent data footage with the minimum of delay when requested. This data or footage reproduction should be almost instantaneous.

2.5.5.2 It was also requested that section 21.3 of the draft revised policy is strengthened to include advice on representations which are made where the author lives a significant distance from the premises. Section 21.3 currently says :

21.3 This Licensing Authority will, however, look at the geographical location of the author of any representation or review application received. Where the author lives or works a significant distance from the premises subject of an application or review, this Authority will examine the content of the representation particularly closely to ensure that it is valid and complies with the requirement of the Licensing Act 2003.

Officer Comments

The following amendment has been suggested in light of the comments :

21.3 This Licensing Authority will, however, look at the geographical location of the author of any representation or review application received. Where the author lives or works a significant distance from the premises subject of an application or review, this Authority will examine the content of the representation particularly closely. We would expect the author to explain in detail how, in terms of the licensing objectives, they would be affected by the application. The Licensing Service would consider rejecting any representations which did not include sufficient detail to outline any harm or disturbance which may be caused.

- 2.5.5.3 It was requested that a separate Annex is added to the Policy to include the Shepherd's Bush Cumulative Impact Policy.

Officer Comments

The Shepherd's Bush Cumulative Impact Policy has now been included as Annex 5 to the policy.

3. RISK MANAGEMENT IMPLICATIONS

- 3.1 The Licensing Authority can only consider matter within the scope of the Licensing Act 2003 and relevant guidance documents and cannot become involved in the moral issues relating to licensing.
- 3.2 Consideration must be given to the four licensing objectives as well as providing the necessary protection to residents, whilst promoting greater choice and flexibility to businesses and their customers.
- 3.3 The review of the Statement of Licensing Policy 2011 will be added to the departmental Risk register to ensure that the risks are managed.

4. CONCLUSION

- 4.1 Careful consideration has been given to the consultation responses and amendments have been made to the revised Statement of Licensing Policy 2012 where it was considered as appropriate.
- 4.2 The Key responses have been summarised in section 2.5 of this report. The Revised Statement of Licensing Policy 2012 at Appendix 1 of this report includes the necessary changes.

5. COMMENTS OF THE EXECUTIVE DIRECTOR OF FINANCE AND GOVERNANCE SERVICES

- 5.1 There are currently approximately 925 premises issued under Licensing act licences that have to pay an annual charge due on the anniversary of the initial grant of the licence.
- 5.2 The main amendment that will impact financially will be the proposal to introduce more robust procedures to pursue any unpaid licence fees. Premises may have their licences suspended if they do not pay their annual maintenance fees on a timely basis. This amendment will provide for improved debt recovery across licensing activities.

6. COMMENTS OF THE DIRECTOR (LEGAL AND DEMOCRATIC SERVICES)

- 6.1 The council is under a duty to keep its policy under review and in light of the legislative changes, it is considered appropriate to make these revisions now before the next statutory period (January 2016). The changes to the Licensing Act 2003 and the process of making these revisions are set out above. Once these revisions are adopted, the Council must publish the revised policy.

LOCAL GOVERNMENT ACT 2000
LIST OF BACKGROUND PAPERS

No.	Description of Background Papers	Name/Ext. of Holder of File/Copy	Department/ Location
1.	Licensing Act 2003	Adrian Overton Ext 3081	ENV
2	Guidance Issued under section 182 of the Licensing Act 2003	Adrian Overton Ext 3081	ENV
3	Police Reform & Social Responsibility Act 2011	Adrian Overton Ext 3081	ENV
4	List of Consultees	Adrian Overton Ext 3081	ENV
5	Consultation Letter	Adrian Overton Ext 3081	ENV
6	Consultation Questionnaire	Adrian Overton Ext 3081	ENV
7	Full Consultation Responses	Adrian Overton Ext 3081	ENV
8	Draft Revised Statement of Licensing Policy 2012	Adrian Overton Ext 3081	ENV
Responsible officer: Sanju Manji EXT 3392			

APPENDICES

Appendix 1	Draft Revised Statement of Licensing Policy 2012
Appendix 2	Current Statement of Licensing Policy 2011
Appendix 3	Final Draft Statement of Licensing Policy 2012