

Decision Maker: **General Purposes and Licensing Committee Council**

Date: 14 March 2012
26th March 2012

Decision Type: Non-Urgent Non-Executive

Title: **REVISION OF LICENSING POLICY 2012**

Contact Officer: Paul Lehane, Head of Food, Safety & Licensing
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Chief Officer: Nigel Davies - Director of Environmental Services

Ward: All

1. Reason for report

Members considered suggested changes to the Statement of Licensing Policy on 28 September 2011 as the basis for statutory consultation. That process has been completed and the responses are summarised in this report.

Members are asked to consider these and decide whether to recommend changes to the Policy at the next Council meeting.

2. **RECOMMENDATION(S)**

Members are asked to

1. Consider the responses to the public consultation exercise summarised at paragraph 3.7 and in Appendix 4. Particular attention is drawn to the comments by Waitrose Limited on the legality of including Off Licences in the Special Policy of Cumulative Impact.

2. Decide if the proposed changes to the Statement of Licensing Policy set out in appendices 1, 2 & 3 should be recommended to Full Council for adoption.

Corporate Policy

1. Policy Status: Existing policy. Statement of Licensing Policy 2011-2014
 2. BBB Priority: Safer Bromley. Excellent Council, Vibrant thriving town centres and a Quality Environment
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Financial

1. Cost of proposal: No cost
 2. Ongoing costs: N/A.
 3. Budget head/performance centre: Public Protection
 4. Total current budget for this head: £3.7m
 5. Source of funding: Existing Revenue Budget
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Staff

1. Number of staff (current and additional): 59
 2. If from existing staff resources, number of staff hours:
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Legal

1. Legal Requirement: Statutory requirement. The Council is the Licensing Authority under the Licensing Act 2003 and has to adopt and publish a statement of Licensing Policy. That policy must be kept under review and any changes must be subject to consultation. The policy requires full Council approval.
 2. Call-in: Call-in is not applicable.
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected): 900 licenced premises & clubs and the residents and other businesses in the vicinity
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? Yes.
2. Summary of Ward Councillors comments: included in the general responses

3. COMMENTARY

- 3.1 On 28 September 2011 Members received a report ref ES 11115 setting out suggestions for alterations to the Councils Statement of Licensing Policy. This was requested by Councillor Owen following the success of Brighton Council in refusing a licence to a Sainsbury's store in an area covered by a Cumulative Impact Policy. Bromley has two areas covered by such policies – Bromley and Beckenham Town Centres.
- 3.2 Good practice was identified in Brighton's Statement of Licensing Policy and was adapted for consideration for adoption in Bromley. That resulted in the suggested wording for the revised section on Cumulative Impact set out in Appendix 1.
- 3.3 At the same time changes were suggested to the section of the policy dealing with the making of 'Representations', specifically relating to petitions following a complaint by a service user. Those changes are set out in Appendix 2.
- 3.4 There was also a suggestion that the Policy could be improved by drawing a distinction between 'minor' and 'major' variations to a licence. Only 'representations' against 'Major' variations would be germane to the Licensing Policy as an objection to a 'Minor' variation results in its automatic refusal. These changes are included in Appendices 1, 2 & 3 (Planning & Building Control) .
- 3.5 Public consultation was undertaken between 6 October 2011 and 9 December 2011 on these proposals. Approx 1000 letters were sent to all Ward Councillors, licence holders, Responsible Authorities and known Residents Associations inviting comments.
- 3.6 44 responses were received, comprising 22 from licence holders, 17 from residents or resident associations, 1 ward Councillor and 4 who did not indicate.
- 3.7 Comments on the Saturation Policy (Details of proposed policy in Appendix 1)

	Agree	Disagree	No Comment
Licence holders	15	1	6
Residents / Associations	13	1	3
Ward Cllrs & Others	3	1	1
Total	31	3	10

Comments on Making Representations (Details of proposed policy in appendix 2)

	Agree	Disagree	No Comment
Licence holders	15	0	7
Residents / Associations	12	1	4
Ward Cllrs & Others	3	0	2
Total	30	1	13

Comments on 'Material Variations' (Building Control & Planning sections)

(Details of proposed policy in Appendix 3)

	Agree	Disagree	No Comment
Licence holders	15	7	1
Residents / Associations	11	4	3
Ward Cllrs & Others	1	2	0
Total	27	13	4

3.8 Where respondents have included a specific comment in their response these have been included in Appendix 4. Members attention is particularly drawn to the response from Waitrose (page 1 in Appendix 4) in which they argue that the inclusion of 'Off Licences' in the Cumulative Impact Policy is 'Ultra Vires'. For comment on this please refer to section 5 - Legal Implications.

4. POLICY IMPLICATIONS

The Council has a duty to prepare and publish a 'Statement of Licensing Policy' every three years and to keep that policy under review. The Council has adopted and published its Policy for the period 2011 – 2014 and this policy includes the two areas of Cumulative Impact. Ward Members for Copers Cope have expressed concerns about the strength of the Cumulative Impact Policy following Bromley Magistrates decision to allow a variation of a licence in that area on appeal. In keeping with its legal duty to keep the Licensing Policy under review, this Committee has considered suggestions based on Brighton City Councils policy and have consulted appropriately.

5. LEGAL IMPLICATIONS

The Council is the Licensing Authority under the Licensing Act 2003 and is under a duty to promote the four licensing objectives when undertaking its functions. Those are to

1. Prevent crime & disorder
2. Prevent public nuisance
3. Protect public safety
4. Protect children from harm

The Council must also have regard to the Statutory Guidance issued by the Secretary of State.

The representation from Waitrose makes some specific legal points which are addressed below.

a. The Councils existing statement of Licensing Policy and declaration of the two areas subject to 'Cumulative Impact' have been made following all appropriate procedures and having regard to the Statutory Guidance. Final determination of the Policy has been by agreed full Council.

b. The existing 'cumulative impact' areas already cover all licensed premises, whether selling alcohol for consumption 'On' or 'Off' the premises. Whilst Waitrose are correct in stating that the Secretary of States Guidance says at paragraph 13.33

‘It would normally not be justifiable to adopt a special policy on the basis of a concentration of shops, stores or supermarkets selling alcohol for consumption off the premises. Special policies will usually address the impact of a concentration of licensed premises selling alcohol for consumption on the premises’.

Members are reminded that Bromley’s two areas of ‘cumulative impact’ were not adopted on the basis of a concentration of shops, stores or supermarkets selling alcohol for consumption off the premises, but because of general problems associated with crime and disorder and public nuisance. The declaration of an areas as being subject to a Special Policy of Cumulative Impact is not limited to any one type of ‘licensed’ activity but to all licensed premises.

Waitrose also make the point that the proposal to make specific reference to ‘Off Licences’ in the policy should be evidence based. Members may wish to be reminded that there have been three (3) successful underage sales from ‘Off Licences’ in Cumulative Impact Areas and that ‘Alcohol Exclusion Zones’ have been established in both Bromley and Beckenham town centres to address problems caused by street drinking, where the alcohol is typically obtained from premises licensed for ‘Off’ sales.

In proposing the specific reference in the Policy to ‘Off Licences’ Members are clarifying the existing policy. Members will of course be well aware of the overriding need to determine all applications on individual merits and that they can grant an application where they are satisfied that the licensing objectives will not be undermined.

Non-Applicable Sections:	FINANCIAL IMPLICATIONS. PERSONNEL IMPLICATIONS
Background Documents: (Access via Contact Officer)	<ol style="list-style-type: none"> 1. Bromley’s Statement of Licensing Policy 2011-2014, 2. Report ES 11115 dated 28 September 2011 to General Purposes and Licensing Committee, 3. Secretary of States Guidance issued under Section 182 of the Licensing Act 2003