

North Tyneside Council

Report to Council

Members

Date: 21 September 2023

Title: Review of North Tyneside Council's Statement of Licensing Policy 2023 – 2028

Portfolio(s): Public Health and Wellbeing

Cabinet Member(s): Cllr K Clark

Report from Service Area: Regeneration and Economic Development
Responsible Officer: John Sparkes Director of (Tel: (0191)643
Regeneration and Economic 6091)
Development
Wards affected: All

PART 1

1.1 Executive Summary:

Local authorities are required by the Licensing Act 2003 (“the Act”) to publish a Statement of Licensing Policy and to revise the Policy at least every five years. The Statement of Licensing Policy provides guidance as to how the Authority will exercise its functions under the Act. The Policy has proved to be a vital part of the licensing of alcohol and entertainment activities.

This report presents to Council the final proposals for the formal approval of the revised Policy.

1.2 Recommendation(s):

It is recommended that Council:

- (1) Approve the draft revised Statement of Licensing Policy attached at Appendix 1 to this report, including the delegation scheme included in the Policy.

1.3 Forward Plan:

Twenty-eight days' notice of this report has been given and it first appeared on the Forward Plan that was published on 21 July 2023.

1.4 Council Plan and Policy Framework

This report relates to the following priorities in the 2021 – 2025 Our North Tyneside Plan:

A secure North Tyneside:

- We will tackle health and socio-economic inequalities across the borough including through our Poverty Intervention Fund to tackle food poverty.

A thriving North Tyneside

- We will bring more good quality jobs to North Tyneside – by helping local businesses to sustain and grow, making it attractive for new businesses to set up or relocate in the borough.

1.5 Information

- 1.5.1 The Licensing Act 2003 (“the Act”) places the responsibility for licensing the sale and supply of alcohol, the provision of regulated entertainment (previously referred to as public entertainment), and the provision of late-night refreshment with the Authority as a Licensing Authority.
- 1.5.2 Any licensing function undertaken by the Authority is the responsibility of full Council, including the approval of the Statement of Licensing Policy.

- 1.5.3 In carrying out its licensing functions under the Act, full Council, through its Licensing Committee, Sub-Committees or officers must do so with a view to promoting the four licensing objectives: -
- a) The prevention of crime and disorder;
 - b) Public safety;
 - c) The prevention of public nuisance; and
 - d) The protection of children from harm.
- 1.5.4 Section 5 of the Act requires the Authority to prepare and publish a Statement of Licensing Policy every five years after undertaking the necessary consultation. There is a requirement for the Authority to keep the Policy under review and make revisions to it when considered appropriate.
- 1.5.5 Whenever the Licensing Committee, a Licensing Sub-Committee or officers are exercising a function under the Act, they must have regard not only to the Statutory Guidance issued by the Secretary of State but also to the Authority's Statement of Licensing Policy.
- 1.5.6 Cumulative Impact Assessment

In April 2018 section 5A of the Act came into force as a result of the Policing and Crime Act 2017. This section permits a Licensing Authority to publish a "Cumulative Impact Assessment" stating that the Licensing Authority considers that the number of premises licenses and club premises certificates in one or more parts of the Borough is such that it is likely that granting any further licences or club premises certificates in that area, or areas, would be inconsistent with the promotion of the licensing objectives.

The concept of cumulative impact is a recognition that the number of licensed premises or clubs concentrated in one area can result in problems such as public nuisance, crime and disorder or anti-social behaviour at or near licensed premises. Such problems may occur because of a large number of people being concentrated in a particular area.

Section 5A of the Act requires any Cumulative Impact Assessment to set out the evidence that the Authority has relied upon for arriving at the opinion that issuing further premises licences or club premises certificates would undermine the licensing objectives.

On 11 October 2021 this Authority published a Cumulative Impact Assessment. The Authority is required, when revising its Statement of Licensing Policy, to have regard to the Cumulative Impact Assessment and for the Policy to summarise the contents of the Cumulative Impact Assessment. Section 14 of the Statement of Licensing Policy deals with the Cumulative Impact Assessment and Policy and how the Assessment has influenced the formulation of the Policy. The Assessment demonstrated an evidential basis to justify creating a rebuttable presumption against granting Premises Licence applications, or variations of existing licences, in relation to alcohol led licensed premises (where alcohol is consumed on the premises) within areas of Whitley Bay and Tynemouth as specified in the Assessment.

1.5.7 Revised Statement of Licensing Policy

An officer working group was established to review the Policy since it's last revision in 2018 and to provide an updated document prior to a period of public engagement. The draft revised Policy includes the following changes:

- Addition of Chapter 3 – role of Public Health as a Responsible Authority
- Updated Temporary Event limitations.
- Addition of information about responses to the threat of terrorism
- Addition of glossary at Appendix 1
- Addition of reference to spiking
- Addition of supporting information re alcohol harms at Appendix 5.

It also has regard to the updated Cumulative Impact Assessment (Chapter 14) following the publication of an updated Cumulative Impact Assessment on 11 October 2021.

1.5.8 Public Engagement

The Statement of Licensing Policy was prepared having regard to the Secretary of State's statutory guidance and was the subject of a 6-week period of engagement in line with the Cabinet Office guidance on public consultations. As is required by the Act, the consultees have included the Chief Officer of Police, the Fire and Rescue Authority, Director of Public Health, representatives, and holders of Premises Licences and Club Premises Certificates issued by the Authority, representatives of personal licence holders, representatives of residents and businesses in the Borough as well as Councillors. An online survey was available for respondents and the draft Policy was available for inspection on the Authority's website as well as Council offices during the consultation period. A list of the consultees is appended to the Policy at Appendix 2.

In total 12 responses were received, 9 via the survey and 3 written responses. A summary of the responses is attached at Appendix 2 of the report.

Officers met with a representative Member from Political Groups to consider the responses received. The summary document includes the suggestions made and the draft Policy has been updated to reflect the proposed amendments to the Policy in consideration of the responses received where considered appropriate to do so. The draft Policy is attached Appendix 1.

1.6 **Decision options:**

The following decision options are available for consideration by Council:

Option 1

To adopt the draft updated Statement of Licensing Policy including the delegation scheme contained in the Statement.

Option 2

Not to adopt the draft updated Statement of Licensing Policy but with amendments to it as Council sees fit.

Option 3

Not to adopt the draft updated Statement of Licensing Policy but with amendments to it as Council sees fit.

Option 1 is the recommended option.

1.7 Reasons for recommended option:

Option 1 is recommended for the following reasons:

By adopting the draft Statement of Licensing Policy, the Authority will be in a position to publish the same and ensure that the Authority, as a Licensing Authority, has a Policy in force which reflects the updated legislation and proposed changes including having regard to the Cumulative Impact Assessment published by the Authority in October 2021.

If Council decides that the Statement of Licensing Policy should be amended then, if the proposed amendments are fundamental changes, it may be necessary to consult on those proposed changes before they can be introduced into the Policy. It may therefore be necessary to adopt the Policy in its current form but for it to be amended after a further period of consultation.

If the Policy is not approved by Council, then the existing Policy will effectively cease to have effect on 22 November 2023 when the Policy will be over 5 years old. Section 5 of the 2003 Act is clear that a Statement of Licensing Policy can only remain in place for a 5-year period. If the Policy is not reviewed and no further Policy published by the Authority, it will be operating outside the Act and will not have a Statement of Licensing Policy to refer to when determining applications for licences or certificates. This will make the Authority vulnerable to legal challenge by those seeking licences or certificates.

1.8 Appendices:

Appendix 1: Draft Statement of Licensing Policy

Appendix 2: Summary of consultation responses

1.9 Contact officers:

Joanne Lee, Head of Public Protection, (0191) 643 6901

Stephanie Graham, Senior Licensing Officer, (0191) 643 6969

David Dunford, Senior Business Partner, (0191) 643 7027

John Barton, Manager Regulatory, Legal Services (0191) 643 5354

1.10 Background information:

- 1) [Licensing Act 2003](#)
- 2) [S182 Guidance Licensing Act 2003](#)
- 3) Equality Impact Assessment
northtynesideintranet.moderngov.co.uk/ecSDDisplay.aspx?NAME=SD362&Test=yes&Id=362&RPID=1755819#

PART 2 – COMPLIANCE WITH PRINCIPLES OF DECISION MAKING

2.1 Finance and other resources

There are no financial implications directly arising from the report. The costs of preparing the Policy and the associated consultation arrangements can be met from existing revenue budgets.

2.2 Legal

The Authority is required to produce and publish a Statement of Licensing Policy under the Licensing Act 2003. This statement must be reviewed, and if necessary revised, at least every five years.

The Statement of Licensing Policy is a statutory requirement and without such a Policy the Authority as Licensing Authority could not properly undertake its statutory duties under the 2003 Act.

As the Authority has published a Cumulative Impact Assessment, the Assessment must be considered when reviewing the Statement of Licensing Policy and the fact that the Assessment has been made that the Authority is of the opinion that in specified areas of the Borough, granting further licences or variations of licences relating to alcohol led licensed premises will undermine the licensing objectives.

The determination of the Statement of Licensing Policy is a matter for full Council and section 7(2)(a) of the Licensing Act 2003 is clear that such a determination is reserved to full Council.

2.3 Consultation/community engagement

2.3.1 Internal Consultation

Internal consultation took place with Cabinet Members, Members, and service areas.

Officers met with a representative of each Party to consider the responses received to the engagement exercise. The draft Policy was updated accordingly.

2.3.2 External Consultation/Engagement

As outlined in section 1.5.8 of the report, an engagement process took place over a six-week period via an online survey. In total 12 responses were received from a mixed range of respondents.

2.4 Human rights

There are aspects of the administration of the Licensing Act 2003 that may impact on the human rights of individuals residing in the Borough and licence holders. Article 8 of the European Convention of Human Rights entitles a person to the right to enjoy a private and family life.

The decisions made by the Licensing Committee/Sub-Committees and officers can have implications under the Human Rights Act 1998. Decisions of the Authority as Licensing Authority could be said to interfere with the property of the licence holder (a licence, or its goodwill, is classed as property) and also impact on the rights of parties to a family and private life. However, these rights are qualified rights, and those rights can be interfered with if such interference is permitted in law. Any party who wishes to make representations in relation to a licensing matter has the right to express their views without interference and any person appearing before a Committee/Sub-Committee will be afforded an opportunity to a fair hearing.

There is also an appeal process available to those aggrieved by a decision of a licensing Committee or Sub-Committee.

Article 6 of the European Convention also entitles an individual to a fair hearing. Any individual appearing before a licensing sub-committee will be given an opportunity to express their views as provided by the Act.

Article 1 of the First Protocol entitles a person to the peaceful enjoyment of his possessions. A possession may include the goodwill that such a Licence would generate. However, balanced against that is the ability of the Licensing Authority to enforce such laws under the Act as is necessary to control the use of such property, including a licence.

2.5 Equalities and diversity

The Policy has been drafted having regard to the Authority's Public Sector Equality Duty. An Equality Impact Assessment was undertaken to inform the consultation process and has now been updated to assess the potential impact of the Policy. The consultation process ensured that all persons, groups and organisations had an opportunity to participate in the consultation of the draft Policy, including those with protected characteristics.

Individual decisions taken under the Policy were also be taken with due regard to the Public Sector Equality Duty

2.6 Risk management

There are no risk management implications directly arising from this report. Risks associated with delivery of the Authority's Public Protection function are monitored via the Public Health risk arrangements.

2.7 Crime and disorder

The prevention of crime and disorder is one of the licensing objectives that may be engaged when dealing with a licensing application. It is a requirement under the Licensing Act 2003 and subordinate Regulations that the Police are forwarded a copy of an application for a licence or certificate so that the Police are able to scrutinise the application and make representations in relation to the application insofar as the prevention of crime and disorder licensing objective is concerned.

2.8 Environment and sustainability

There are no direct implications for environment and sustainability arising from this report.

PART 3 - SIGN OFF

- Chief Executive x
- Director(s) of Service x
- Mayor/Cabinet Member(s) x
- Chief Finance Officer x
- Monitoring Officer x
- Assistant Chief Executive x