

**Report to:** Cabinet

**Date of Meeting:** 31<sup>st</sup> January 2022

**Report Title:** Reviewing the Council's Licensing Act 2003 Licensing Policy Statement

**Report By:** Mike Hepworth, Assistant Director, Environment and Place.

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### **Purpose of Report**

To inform cabinet of the results of the recently completed statutory consultation, and seek authority to update the Council's Licensing Policy, as required by the Licensing Act 2003.

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### **Recommendation(s)**

Cabinet agrees the updated licensing policy statement at appendix A and recommend it to Full Council for adoption.

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### **Reasons for Recommendations**

There is a statutory requirement for local authorities to fully review their licensing policy at least every 5 years. Failure to do so could result in judicial review proceedings against the authority and call in to doubt the decisions made by the Licensing Committee under the Act.

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## Introduction

1. The Licensing Act 2003 transferred all licensing responsibilities to local authorities for the licensing of premises, persons and temporary events in connection with the sale/supply of alcohol, regulated entertainment and late-night refreshment.
2. It was adopted by local authorities in February 2005, the responsibilities having been transferred from the Magistrates Courts and the Police. One of the first duties placed on local authorities by the Act was the need to formulate and consult upon and publish a Licensing Policy.
3. As the Licensing Authority, in accordance with Schedule 5 of the Act, Hastings Borough Council prepared, consulted upon and published 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. It then needs to be reviewed and updated as appropriate.
4. Initially the policy had to undergo a full review and consultation every 3 years, this was then changed to every 5-years. The next date for review was due in early 2021 but this was not possible due to resources being diverted to COVID response work. A revised policy has been drafted and is attached at **Appendix A**.
5. In accordance with the Statutory guidance, since 2005 each review has included a public consultation. There are also various statutory consultees. The latest consultation was carried out in Autumn 2021. A list of all consulted parties is attached at **Appendix B**.
6. The statutory consultation process resulted in five separate responses, these were from Sussex Police, The Council's Planning department, the ESCC Public Health Alcohol and Tobacco Lead, 1 Local resident, and the Council's community safety manager.

## Proposed Changes to the Policy Statement

7. In the absence of changes to licensing law and statutory guidance, the main policy has only needed to be amended to reflect changes in weblinks and phone numbers. However, data from statutory consultees (such as the Police and Public Health), has suggested the need to retain the saturation zones, and potentially to expand them. This is discussed in greater depth below.

## Cumulative Impact Policy (Saturation Zones)

8. The policy consultation process in 2008 identified a need for areas of cumulative impact to be formed to control the cumulative impact on certain parts of the borough, by the concentration of certain types of licensed premises. These areas are known as saturation zones. Three such areas were formed and have remained in force at each review since, with minor amendments being made to reflect changes to the areas. This was considered best practice at that time, and has served the council well, as the Licensing Policy has not be subject to any legal challenges.
9. Cumulative Impact is not mentioned specifically in the 2003 Act. However, it is discussed at length in the Section 182 guidance issued by the Home Office under the Act. The guidance states: "The cumulative impact of licensed premises on the promotion of the licensing objectives is a proper matter for a licensing authority to consider in developing its licensing policy statement. Cumulative impact policies may relate to premises licensed to carry on any licensable activity, including the sale of alcohol for consumption on and off the

premises, and the provision of late-night refreshment. This includes late-night fast-food outlets which are not licensed to sell alcohol."

10. The three saturation zones have also been subject to separate reviews at a mid-point between full policy reviews, on each occasion Sussex Police and other interested parties have indicated their support for the authority to keep them in place.
11. It is important to note that the adoption of the policy does not prohibit applications in the saturations zones. It is up to 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 4 licensing objectives set out in the Act. It could be construed that such a policy would frighten off potential applicants, but local experience does not support that hypothesis.
12. Since the last full review of the policy in 2016 and a further revision in 2018, we have received 36 applications for new premises of different types in the 3 saturation zones, 33 of which have been issued. In addition, 24 applications to vary premise licences for venues in the saturation zones have been received, and 21 were granted. There have also been 4 reviews of premises licences. A summary of the new applications within the saturation zones and the decisions is listed below.

|                                   |    |            |            |             |
|-----------------------------------|----|------------|------------|-------------|
| Applications for new premises     | 36 | Granted 33 | Refusals 2 | Withdrawn 1 |
| Applications for full variations  | 7  | Granted 7  | Refusals 0 | Withdrawn 0 |
| Applications for minor variations | 17 | Granted 14 | Refusals 3 | Withdrawn 0 |
| Applications for licence reviews  | 4  | Granted 4  | Refusals 0 | Withdrawn 0 |

13. Data has been sought from our partners to indicate the levels of crime and other matters in the existing saturation zone areas. Data has been supplied by the police, trading standards and environmental protection, and is summarised below.

#### **Trading standards**

- Hastings Town Centre. No prosecutions since 2016. 1 warning issued.
- St Leonards on Sea. No prosecutions since 2016. 1 warning issued.
- Hastings Old Town. No prosecutions. No warnings.

#### **Environmental protection**

- Hastings Town Centre. 3 premises with notice served. 0 premises on watch list.
- Central St Leonards on Sea. No current notices. 2 premises on watch list.
- Hastings Old Town. No current notices, 0 premises on watch list.

#### **Sussex Police Data Appendix C**

14. Sussex Police have produced a report attached at appendix C which validates the retention of the cumulative impact element of the Statement of Licensing Policy, and suggests an extension of the town centre saturation zone.
15. They suggest that our special cumulative impact policy should now also cover the following roads:
  - Queens Road
  - Wellington Place
  - Battle Road
  - Cambridge Road

16. Sussex Police have expressed particular concerns regarding the proliferation of off-licensed premises in Hastings town centre, and the practice of 'pre-loading' and public space drinking after the purchase of alcohol from such premises. They consider that by maintaining and extending the saturation zones into Queens Road, Wellington Place and by extending the part of Cambridge Road already within the saturation zone, it will continue to provide proportionate and effective measures to address these issues, and assist both the Police and the Community Safety Partnership in mitigating the threat around violent crime, whilst also supporting the local economy and social choice.

#### **Response from the Public Health Alcohol and Tobacco Lead (Appendix D)**

17. The alcohol and tobacco lead from ESCC Public health has produced a report which looks at the path to alcohol related harm and is attached at Appendix D. Within the report is a section relating to alcohol related hospital admissions and ambulance call outs.
18. The public health data also validates the retention of the cumulative impact element of the overall licensing policy statement, and the existing saturation zones.

#### **Response from HBC Community Safety Manager (Appendix E)**

19. As with the reports from the Police and ESCC Public Health, the consultation feedback from the Council's Community Safety Manager also endorses the Licensing Policy Statement as it is consistent with the aims of the Safer Hastings and Rother Community Safety Partnership and the Hastings Community Alcohol Partnership.

#### **Other Responses to the Consultation**

20. One response was also received from a resident of the town centre. They broadly endorsed the proposals, as they felt that more needed to be done to protect residents from nuisance and anti-social behaviour they associated with licensed premises.
21. The council's planning service also submitted a response, which didn't raise any concerns about the proposals, but stressed the need for effective liaison between the Licensing, Environmental Health and Planning Services.

#### **Conclusion**

22. The consultation responses do not raise any concerns about the proposed updated licensing policy statement. However, they do raise the question of extending the geographical scope of the special cumulative impact element relating to saturation zones.
23. Based primarily on the data provided by Sussex Police, it is suggested that the council should approve the updated Licensing Policy Statement, and as suggested by the Police, extend the existing town centre saturation zone to also cover Queens Road, Wellington Place, and to extend the Cambridge Road section through to the junction with White Rock Road.
24. These changes have been incorporated into the final draft of the updated Licensing Policy Statement attached at Appendix A.

#### **Policy Implications**

##### **Crime and Fear of Crime (Section 17)**

25. The Council's Licensing Policy Statement is clearly highly relevant to the Council's statutory duty to consider crime and the fear of crime. An effective Licensing Statement

Policy should contribute to reducing crime and fear of crime. Particularly that which is associated with the night time economy.

### **Risk Management**

26. Failure to review and update the Council's Licensing Statement Policy in accordance with the provisions set out in the Licensing Act 2003 and the associated statutory guidance, could result in successful challenges to licensing decisions made by the Council's Licensing Committee. Undermining confidence in the Council, and potentially resulting in claims against the Council.

### **Local People's Views**

27. The statutory consultation process is an opportunity for local people to comment on the revised updated policy document and this was completed 1 response from the public was received.

### **Equalities and Community Cohesiveness**

28. Equalities Impact Assessments carried out during previous reviews of this policy did not identify any scope for discrimination as a result of the policy. As no substantive changes are proposed to the policy, there will be no change from an equalities impact perspective. From a community cohesiveness perspective, the proposed continued inclusion of the 3 saturation zones and the use of the matrix approach developed in 2018, should help to continue to promote a diversity of licensed premises throughout the borough whilst safeguarding residents.

### **Environmental Issues**

29. The environmental impact of licensed premises is clearly a matter that is addressed by this policy, as one of the 4 licensing objectives is the prevention of public nuisance. The policy encourages applicants and licensees to seek guidance from the Environmental Health and Licensing Team in order that they can operate in ways that minimise the potential for nuisance.

### **Human Rights Act**

30. Human rights considerations must be taken into account fully in balancing licensing issues, in particular, article 1 of the first protocol. Article 1 relates to the protection of property and the peaceful enjoyment of possessions and property. Holding a premises licence would be considered a possession. These are qualified rights and can be deprived of "in the public interest". Interference is permissible if what is done, has its basis in law, and;
- Is necessary in a democratic society to fulfil a pressing need or pursue a legitimate aim;
  - Is proportionate to the aims being pursued; and,
  - Is related to the prevention of crime; or, the protection of public order or health.

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### **Wards Affected**

All.

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### **Policy Implications**

Please identify if this report contains any implications for the following:

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|                                       |     |
|---------------------------------------|-----|
| Equalities and Community Cohesiveness | Yes |
| Crime and Fear of Crime (Section 17)  | Yes |
| Risk Management                       | Yes |
| Environmental Issues                  | Yes |
| Economic/Financial Implications       | No  |
| Human Rights Act                      | Yes |
| Organisational Consequences           | No  |
| Local People's Views                  | Yes |
| Anti-Poverty                          | No  |

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### **Additional Information**

- Appendix A. Revised Draft Statement of Licencing Policy
- Appendix B. Statutory consultees.
- Appendix C. Sussex Police report
- Appendix D. East Sussex County Council Public Health report
- Appendix E. Letter from Community Safety Manager

### **Background information**

[East Sussex alcohol harm reduction strategy 2021-2026](#)

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