



Report to Licensing Committee

Date: 20th October 2021

Title: New Statement of Licensing Policy, Licensing Act 2003

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Recommendations:

1. To agree the content of the draft new Licensing Policy Statement for Buckinghamshire Council as required under the Licensing Act 2003.
 - a. To recommend the draft new Licensing Policy Statement to Full Council for approval and adoption.

1. Introduction

- 1.1 Under the terms of the transitional legislation Buckinghamshire Council is obliged to prepare and publish a new single licensing policy under the Licensing Act 2003 and align the associated service provision of the former legacy district councils no later than 1 April 2022.
- 1.2 On 22nd July 2021 the Licensing Committee agreed the content of a new draft Licensing Policy Statement for Buckinghamshire Council and the commencement of a public consultation exercise. A link to the associated Licensing Committee report is provided in the key documents section of this report. The report of 22nd July 2021 sets out the statutory background to the formation and adoption of the Licensing Policy Statement. The report also contains an analysis of the results of the pre-consultation survey with key stakeholders.
- 1.3 The purpose of this report is to provide feedback from the public consultation following the meeting of 22nd July 2021. The public consultation feedback has been overwhelmingly supportive. The Licensing Service has prepared a revised draft version of the Licensing Policy Statement in response to the written comments received. These revisions are relatively minor and no significant changes to the overall content of the draft policy are proposed by the Licensing Service. A copy of the revised draft Policy is shown in Appendix 1.

- 1.4 The Licensing Committee are asked to consider the content of the revised draft Licensing Policy and agree its content for adoption by Full Council, subject to any further amendments considered appropriate by the Licensing Committee.
- 1.5 As reported on the 22 July 2021, it is proposed that respective historic cumulative impact and special hours policies for Aylesbury and Buckingham town centres are not included in the new draft Policy due to the lack of sufficient supporting evidence which is required in order to retain such policies.

2. Public consultation

2.1 Prior to publishing its Policy, the Act requires the Licensing Authority to consult with the police, fire authority, public health authority and representatives of local licence holders, businesses and residents. The public consultation was conducted principally by means of a survey publically available on the Council's website between the end of August and the end of September 2021. The survey was promoted via the Council's social media channels on Twitter and Facebook. In addition the following stakeholders were consulted directly:

- Thames Valley Police,
- Police and Crime Commissioner
- Fire and Rescue Authority
- Premises licence and club certificate holders.
- Ward Councillors
- Town Councils and Parish Councils
- Buckinghamshire's Safeguarding Children Partnership
- The Local Health and Safety Enforcing Authority
- The Local Planning Authority
- The Director of Public Health.
- The Local Environmental Health Authority
- The Local Trading Standards Authority
- Community Safety Partnership
- Buckinghamshire Council Highways
- South Central Ambulance Services
- Aylesbury Town Centre management
- Wycombe BID

- 2.2 Much of the content of Licensing Act policies is prescribed by legislation and statutory guidance published by the Secretary of State (Section 182 guidance) to which the council must have regard. As reported on 22 July 2021 these matters have been incorporated into the new draft policy. The survey consultation focused mainly on wider policy areas beyond the statutory matters and also included reference to the historic cumulative impact policy for Aylesbury town centre and the special hours policy for Buckingham. A copy of the survey questions is shown as Appendix 2.
- 2.3 The Licensing Service received 110 survey responses and 4 additional written responses to the consultation. This response rate is similar to the 107 responses received to the pre-consultation survey.
- 2.4 The Council's Business Intelligence team collated and analysed the survey results and a summary of key findings is shown at Appendix 3. The response to the consultation is considered in more detail below.

Respondent by role

- 2.5 Survey respondents were asked to describe their role: resident (or resident representative), licensed business, non-licensed business (or business representative), Councillor (Ward, Town or Parish) or other. The majority of responses were received from those with a residential interest, 51.3%. The next most popular respondent group were businesses, the majority of whom are licensed, 20%. The table below shows a summary of responses by role:

| Role type | Response rate |
|--|----------------|
| Residential interest | 51.3% |
| Business interest (Licensed business) | 22.6% (20%) |
| Councillor ward/parish/town | 15.7% |
| Responsible authority | 6.1% |
| Other | 4.3% |

Cumulative Impact – Aylesbury town centre.

- 2.6 This question focused on the proposal to effectively remove the cumulative impact policy for Aylesbury. The legacy area policy position creates a presumption that higher risk late night premises, such as late night bars and nightclubs that sell alcohol or takeaway food, will be refused licences to trade after 00.30. All other premises are not permitted to open after 02.30. It was explained that applications for licences would still go through consultation and applicants would have to demonstrate how they intend to meet the licensing objectives. The area would also be kept under

review. As a result of legislative changes in 2018 cumulative impact policies must be supported by an assessment of evidence supporting the policy at least every 3 years. In this case an assessment of the evidence was last carried out in 2015 and at the present time it is proposed that there is insufficient evidence to support continuation of the policy.

- 2.7 The majority of respondents, 68%, support the proposal to remove the historic cumulative impact policy for Aylesbury town centre while keeping the area under review. This view is generally reflected across all groups with 71% Councillors, 74% licensed businesses and 69% residents supporting this approach. Notably 73% of respondents with a connection to the Aylesbury area support the proposal.
- 2.8 Comments supporting respondents' view are similar to those expressed in the pre-consultation survey where 82% of respondents supported the proposal. Those in favour of the policy generally advocate considering each application on its merits and the importance of encouraging diversity in terms of licensed premises. Those opposed to the proposal raise concerns about the risk to residential areas.
- 2.9 It is important to note that the removal of a cumulative impact policy does not affect the right of any party to make representation based on the promotion of the licensing objectives, which can include cumulative impact effects. Cumulative impact policies can also be re-introduced if supported by an assessment of the available evidence. As reported at the meeting of 22 July 2021 and in light of the concerns raised by Thames Valley Police, whilst the evidence presented to date does not appear to support a cumulative impact policy, the Licensing Authority has committed to keeping the matter under review. Council officers intend to conduct a thorough review of the evidence related to cumulative impact and report back to the Licensing Committee for further assessment after 12 months following the adoption of the Policy.

Special Hours Policy - Buckingham

- 2.10 This question focused on the special hours policy for Buckingham. Unlike the Aylesbury cumulative impact policy, this legacy area policy did not come about as a consequence of the collective impact of a concentration of licensed premises in the town and the policy was based on precedence arising from decisions made by former licensing committees. The policy provides that applications to open beyond 12 midnight will normally be refused unless exceptional circumstances apply and in all cases applications to open after 1:30 will be refused. It is proposed that the evidence supporting this approach is lacking and the policy should no longer apply. Furthermore the wording of the policy is likely to be construed as unlawful in respect of its treatment of applications to open after 1:30am. The wording implies that these applications "will" be refused regardless of exceptional circumstances. Whilst it is lawful for licensing authorities to take a 'bright line' approach and set out clear

statements of intent, it is not lawful for the policy to fetter decision making discretion as appears to be the case with this policy.

- 2.11 The majority of respondents, 61%, support the proposal to effectively remove the special hours policy for Buckingham. This view is generally shared across all groups, with 64% of residents, 70% of businesses and 78% of Councillors supporting the approach. Of those respondents with a connection to Buckingham, albeit a relatively small number, opinion is evenly split with a third agreeing, a third neutral and a third disagreeing to the proposal.
- 2.12 Comments supporting respondents' view are again similar to those expressed in the pre-consultation survey where opinion was more evenly split with 46% in favour of the policy and 47% against. Those in favour of the policy believe the approach will help support the economy and those against raise concerns about the potential impact on local residents.
- 2.13 It is once again important to note that the absence of a special hours policy does not negate the right of any concerned party to make representation in respect of any future application. All potential applicants are required to carry out an assessment of the area in which they intend to provide licensable activities and prepare an operating schedule with appropriate safeguards in place to promote the licensing objectives. Applicants that fail to make adequate provision are likely to have their application refused or limited in scope.
- 2.14 Respondents were also asked to comment about special policies in general within Buckinghamshire Council's area. Respondent themes generally support the idea that special hours could be beneficial if the evidence supported their need and the importance of considering each case on its merits.

Street drinking policy

- 2.15 This question focused on the proposal to place expectations on off licences in areas which have Public Space Protection Orders (PSPOs) to adopt specific additional measures to help tackle problematic street drinking. Restrictions include not selling cans and bottles in single cans, not selling high strength products and discouraging the sale of alcohol to known street drinkers.
- 2.16 The clear majority are in support of the proposed policy, 68%, with 73% in support in the pre-consultation survey.

Outside hospitality

- 2.17 This question concerned the use of outside areas and an expectation that applicants seeking new licenses will follow the same measures introduced under the temporary pavement licence scheme when using outside areas not on the public highway.

2.18 The clear majority support this approach, 80%, with 86% in support in the pre-consultation survey. Respondents are clearly supportive of well managed outside spaces and recognise how well the licensed trade has adapted the use of outside space to accommodate customers. Some concerns have been raised about the potential negative effects in residential areas. It is worth noting that since the temporary pavement licence scheme was introduced complaints to the Council's licensing service have been minimal. It is envisaged by the service that the wider application of the same control measures to outside spaces beyond the public highway will afford greater protection for residents neighbouring licensed premises. It should also be emphasised that all applications are considered on a case by case basis and where appropriate more stringent measures than those proposed may be necessary to ensure promotion of the licensing objectives.

Application consultation policy

2.19 This question set out the policy proposal that all notifications of new and variation applications are sent to local Ward Councillors and to the local Town and Parish Councils. This is in addition to the existing legal requirements for notice of applications to be published in a local newspaper, displayed on the premises, served on the responsible authorities and published in the Council's online register.

2.20 The majority clearly support the proposed policy, with 84.5% of respondents supporting the proposal. 93% of respondents were in support in the pre-consultation exercise.

Pubwatch policy

2.21 This question focused on the proposal to encourage licence holders to take part in local pub watch and shop watch schemes, providing a network for licenced businesses to work together.

2.22 The overwhelming majority of respondents are in clear support of the proposed policy with 95.5% supporting the proposal. 92% were in support in the pre-consultation survey. It is worthy of note that none of the licensed businesses responding to the consultation disagree with the proposal.

Safeguarding children policy

2.23 This question focused on the proposal to encourage operators of licensed premises to put in place a safeguarding policy. Operators of high risk premises would be expected to have a written policy and procedures including records of staff training.

2.24 The majority clearly support the proposed policy, with 87.3% of respondents supporting the proposal. This compares with 90% support to the pre-consultation survey and similar issues or themes were raised. These themes are notably the importance of staff training, receiving guidance from the Council and sharing good policies and best practice. There are some concerns expressed about the additional

burden on business, although on balance this is considered reasonable given the importance of this issue and the level of support for the proposed approach.

Public health policy

- 2.25 This question focused on the proposal to encourage licence applicants to consider the health impacts of alcohol and adopt measures to mitigate the risk to health.
- 2.26 The clear majority support the proposed policy, with 73.6% of respondents supporting the proposal. This compares to 71% of respondents supporting the proposal in the pre-consultation survey. Respondents commenting on the proposal emphasise the importance of staff training and suggest that the focus should be on not serving those who are inebriated and under age drinkers rather than moderate drinkers. Some respondents have contrasting views, with one respondent suggesting the policy should be mandatory and another suggesting that policy is out of scope of the licensing authority.
- 2.27 It is important to note that while the Director of Public Health is a statutory consultee on licence applications, public health is not a licensing objective. This means that any public health representation must currently be linked to one or more of the existing four licensing objectives. The proposed policy is to encourage rather than mandate that applicants take into account health matters when preparing their applications. It is worth noting that the Local Government Association is advocating a change to the licensing laws to include a public health objective so the impact on health can be considered when making licence decisions. A link with further information on this is provided in the key documents section.

Promoting environmental best practice

- 2.28 This question focused on the proposal to encourage operators of licensed premises to contribute to creating a greener and cleaner environment, by adopting environmental best practice measures such as minimising waste, improving energy efficiency and reducing traffic on the road.
- 2.29 There is a clear majority of support for this proposed policy with 85.5% of all respondents supporting the policy approach, and 78.3% of licensed businesses supporting the approach. This compares to 91% support in the pre-consultation survey. While supportive, comments from respondents raise issues of the importance monitoring and enforcement and difficulties with the practical implementation of the policy.

Understanding the policy and survey

- 2.30 Respondents to the survey were asked to rate ease of understanding of the policy. The majority, 90%, rated the policy ok or easy to understand. Respondents suggest that the policy could be improved by highlighting key aspects, using case studies and best practice examples and more use of bullet points and diagrams. These

comments will be taken into account when the final version of the policy is published.

2.31 In terms of the survey, 96.4% of respondents found it ok or easy to understand.

2.32 **Written responses**

2.33 In addition to the survey submissions, four written responses were received in response to the consultation. The responses came from Punch Pubs & Co, the Fire and Rescue Service and the Council's Environmental Protection (Control of Pollution) and Environmental Health (Health and Safety) teams. The Licensing Service has provided a schedule of responses to the each of the comments raised, shown as Appendix 4. Where considered appropriate the draft Policy has been revised in response to these comments and an annotation appears in the draft version of the Policy attached at Appendix 1 to indicate where changes have been made.

2.34 **Next steps and review**

2.35 The new Policy must ultimately be approved and adopted by Full Council prior to publication. Subject to the agreement of the Licensing Committee with the content of the draft version of the Policy, it is proposed that the Policy then be referred to Council for adoption at the Full Council meeting of the 24 November 2021.

2.36 In accordance with Licensing Act 2003 the policy must be kept under review, which includes full consultation, at least every 5 years. As stated in the report, the Licensing Committee will also receive an assessment report on cumulative impact in Aylesbury town centre area after 12 months following implementation of the policy.

3. Other options considered

3.1 The Council has a statutory duty to publish a Licensing Policy Statement, which must be published by 1 April 2022.

4. Legal and financial implications

4.1 Under Sections 4(1), (2) and (3) of the Licensing Act 2003 a licensing authority must carryout its licensing functions with a view to promoting the four licensing objectives and with regard to its own licensing policy statement and the Secretary of State's guidance (issued under Section 182). Under Section 5 the licensing authority must prepare and publish a licensing policy statement at least every 5 years. The Act sets out the persons that must be consulted before the Licensing Authority can determine its policy. Furthermore the Act and Secretary of State's guidance provide directions as to the content of policy statements. In accordance with the Local Government (Structural changes)(Transition Arrangements)(No. 2) Regulations 2008 (as amended), Buckinghamshire Council has two years to prepare a publish a new Policy, that is by 1 April 2022.

- 4.2 In accordance with Section 5A, licensing authorities may publish a Cumulative Impact Assessment stating that the authority considers that the relevant number of authorisations (premises licences and club premises certificates, not TENs) in respect of premises in one or more parts of its area as described is such that it is likely to be inconsistent with its duty to promote the licensing objectives. The assessment must set out the evidence for the authority's opinion and may relate to all relevant authorisations or a particular kind. The authority must consult on the assessment before it is published. The consultation must include the reasons why it is considering publishing an assessment, a general indication of the part(s) of its area to be described in the assessment, whether it will relate to all relevant authorisations or only a particular kind. The assessment must be reviewed before the end of each three year period.
- 4.3 The current Aylesbury town centre cumulative impact policy was adopted prior to the provisions of Section 5A took effect in April 2018. Paragraph 14.38 of the Section 182 Guidance expressly deals with cumulative impact policies which were in place before S5A came into effect:
- 4.4 "As Cumulative Impact Policies were not part of the 2003 Act, there are no transitional provisions that apply to CIPs that were in place before 6 April 2018. However, any existing CIPs should be reviewed at the earliest practical opportunity to ensure they comply with the legislation. It is recommended that the review should take place within three years of the commencement of the legislation or when the licensing policy statement is next due for review, whichever is sooner. This will ensure that any CIPs in place before the commencement of the provisions on CIAs adhere to the principles in the legislation (in particular concerning relevant evidence and consultation)."
- 4.5 Whilst the S182 Guidance is not legislation, licensing authorities are obliged to have regard to it. The guidance indicates that the Aylesbury town centre cumulative impact assessment was due to for reconsideration by 1 April 2021, however the transitional arrangements regulations had the effect of extending the policy review requirements until April 2022.
- 4.6 The work involved in preparing and publishing the new Policy is a function of the licensing service with the work performed by officers as part of their duties. No significant additional costs to the Council are envisaged.

5. Corporate implications

- 5.1 Protecting the vulnerable – Protecting children from harm is one of the core statutory licensing objectives that the Council, in its role as Licensing Authority, must have regard when carrying out its licensing functions. The draft Policy contains reference to a number of specific policies designed to protect children: safeguarding

policies, restricted access, alcohol advertising, age verification, alcohol delivery services, cinemas, large events involving children and sexual entertainment venues.

- 5.2 Property – N/A
- 5.3 HR – N/A
- 5.4 Climate change – The draft Policy contains measures to encourage operators to adopt measures to promote cleaner and greener practices.
- 5.5 Sustainability – A/A
- 5.6 Equality – an equalities impact assessment (EqIA) screening exercise has been completed, shown at Appendix 5. There are no concerns that the Policy will impact negatively on any group. Conversely the Policy contains positive measures to promote the Equalities Act generally, with specific measures designed to promote child protection. On this basis it is deemed that a full EQIA is not necessary
- 5.7 Data – measures are in place to ensure relevant personal data is managed in accordance with the Data Protection Act and GDPR requirements. An information sharing protocol is in place to facilitate exchange of information with the Police and other partners, while ensuring data protection requirements are complied with.
- 5.8 Value for money – policy development work is performed by officers in-house. Licensing fee levels under the Act are set by central Government and the Licensing Authority has no discretion to amend these fee levels. Fees have not been reviewed nationally since the Act came into force in 2005 and do not cover the cost of delivering the service in this area.

6. Consultation and communication

- 6.1 A pre-draft policy consultation exercise was carried out with key stake holders who were invited to complete an online survey between 14 May and 8 June 2021.
- 6.2 Further public consultation was carried out on the draft version of the Policy between the end of August and end of September 2021 and consultees were invited to complete an online survey between 27 August and 26 September 2021. The consultation was advertised on the Council’s website and promoted through the Council’s social media channels. Correspondence was sent directly to the parties listed in 2.1 of the report.

Key documents:

Appendix 1: new draft Licensing Policy Statement, Licensing Act 2003 vs2

Appendix 2: consultation survey questionnaire.

Appendix 3: Summary report of survey responses.

Appendix 4: Licensing Service response to written consultation comments.

Appendix 5: Equalities screening report

Licensing Committee report 22nd July 2021:

<https://buckinghamshire.moderngov.co.uk/documents/s29319/LC%20Report%20-%20New%20Draft%20LA03%20Policy%20-%2030th%20June%202021%20FINAL.pdf>

“Licensing powers need to cover public health”, Local Government Association:

<https://www.local.gov.uk/about/news/lga-licensing-powers-need-cover-public-health>

