



Report to Council

Date: 24th November 2021

Title: New Statement of Licensing Policy, Licensing Act 2003

Relevant councillor(s): Cllr Nick Naylor, Cabinet Member for Housing, Homelessness and Regulatory Service.
Cllr Heather Wallace, Chairman of Licensing Committee

Author: Simon Gallacher, Principal Licensing Officer

Recommendations:

1. To consider and agree the draft Licensing Policy Statement for Buckinghamshire Council as required under the Licensing Act 2003 for publication, prior to a proposed implementation date of 1 February 2022.
2. To authorise the Head of Service for Licensing, in consultation with the Cabinet Member for Housing, Homelessness and Regulatory Services, to change the implementation date of the Policy if necessary to any date on or before 1 April 2022.

1. Introduction

- 1.1 In accordance with the Licensing Act 2003 (the 'Act'), Buckinghamshire Council, in its role as licensing authority, is responsible for authorising the sale and supply of alcohol and the provision of regulated entertainment and late night refreshment. Licensable activities are authorised by way of licences, certificates and notices.
- 1.2 The promotion of the four statutory licensing objectives are fundamental to any decision concerning licensing matters:
- preventing crime and disorder;
 - public safety;
 - preventing public nuisance;
 - protecting children from harm.
- 1.3 The Licensing Authority has a legal obligation to publish a licensing policy statement, 'Policy', which set out its approach to promoting the licensing objectives when

performing its licensing functions. The Policy is also an opportunity to promote and encourage adherence to other council policies, priorities and strategies.

- 1.4 A Policy must be published every five years under the Act, following a period of formal consultation and review. The Council's licensing service is currently operating under separate legacy policies reflecting the four former district council areas. Under the terms of the transitional legislation, Buckinghamshire Council has two years to prepare and publish a new single licensing policy under the Act and align service provision. The deadline for publication and implementation of the new Policy is no later than 1 April 2022.
- 1.5 Following a pre-consultation survey with key stakeholders and a public consultation exercise earlier this year, the Council's Licensing Committee unanimously agreed on 20th October 2021 the content of a new Policy. The Licensing Committee has recommended that the Council now determine this Policy, a copy of which is shown as Appendix 1. Links to the associated Licensing Committee hearings of 22nd July and 20th October 2021, which contain detailed reports on the outcome of the pre-consultation survey and public consultation, are provided in the key documents section.
- 1.6 The respective historic cumulative impact policy (CIP) and special hours policy for Aylesbury and Buckingham town centres are not included in the new Policy due to a lack of supporting evidence which is required in order to retain such policies.
- 1.7 It is recommended that the new Policy be implemented from 1 February 2022 to allow the necessary time to finalise arrangements for the alignment of service provision across the former District areas. It is also proposed that the Head of Service for Licensing, in consultation with the Cabinet Member for Regulatory Services, be authorised to change the implementation date, should it be necessary, to any date on or before 1 April 2022.

2. Key policy areas

- 2.1 Much of the content of Licensing Act policy is prescribed by legislation and statutory guidance published by the Secretary of State (Section 182 guidance) to which the Council must have regard. These matters have been incorporated into the new Policy. The Policy contains a number of additional policy areas which also link to the Council's corporate aims. The feedback from the consultations was overwhelmingly supportive of the proposed approach both in terms of new policy areas and the removal of the Aylesbury cumulative impact and Buckingham special hours policies. Summaries of these policy areas are provided below together with a brief summary of the consultation responses. More detailed analysis of the consultation responses is provided in the two Licensing Committee reports referenced in the key documents section of this report.

2.2 **Street drinking**

2.3 The street drinking of alcohol has been found to be associated with crime and disorder and anti-social behaviour in certain areas of Buckinghamshire. By way of response the Council has introduced Public Space Protection Orders (PSPOs) in some parks and town centres which prohibit drinking alcohol or possessing alcohol in open containers in these areas. The Policy proposes that premises licensed for the sale of alcohol for consumption off the premises, in areas where relevant PSPOs have been introduced, will be expected to adopt additional measures. These include not selling high strength beer and cider, not selling cans and bottles in single cans and discouraging businesses from selling alcohol to known street drinkers.

2.4 68% of respondents to the public consultation and 73% of respondents to the pre-consultation survey support this approach.

2.5 **Outside hospitality**

2.6 The new Policy sets out measures for the management of outside areas that all applicants will be expected to follow. These measures mirror the requirements of the conditions adopted by the Council in respect of the national pavement licensing scheme introduced in response to the Covid-19 pandemic. These include a recommendation that outside areas are not used later than 11pm on Fridays and Saturdays, 10pm on other days, and segregation areas for smokers and non-smokers.

2.7 80% of respondents to the public consultation and 86% of respondents to the pre-consultation survey support this approach.

2.8 **Application consultation policy**

2.9 The Policy states 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.

2.10 85% of respondents to the public consultation and 93% of respondents to the pre-consultation survey support this approach.

2.11 **Pubwatch and shopwatch policy**

2.12 Voluntary schemes such as Pubwatch and Shopwatch help promote safer environments for the sale and consumption of alcohol. These schemes provide a local network for licenced businesses to work together to tackle crime and disorder, share best practice and develop closer working relationships with the Police, the Council and other agencies. The Policy encourages all licence holders to take part in

local schemes where they exist; licensees will also be encouraged to introduce a scheme where one does not already exist.

2.13 96% of respondents to the public consultation and 92% of respondents to the pre-consultation survey support this approach.

2.14 Safeguarding children policy

2.15 Protecting children from harm is one of the core licensing objectives and protecting the vulnerable is a key priority of Buckinghamshire Council. Licensed premises can be a high-risk environment for children and young people. Risks can include underage consumption of alcohol, access and exposure to tobacco products and illegal drugs, exposure to violence and disorder and exposure to inappropriate entertainment. Although not common there is also the potential for exposure to sexual exploitation, modern slavery, human trafficking and illegal employment. The Policy encourages operators of licensed premises to put in place a safeguarding policy and operators of high-risk premises will be expected to have a documented safeguarding policy and procedures including records of staff training.

2.16 87% of respondents to the public consultation and 90% of respondents to the pre-consultation survey support this approach.

2.17 Public health policy

A key priority for Buckinghamshire Council is to strengthen local communities and support people to live healthy lifestyles. Licensed premises can help support this by providing opportunities for people to come together and socialise. The Policy encourages applicants for licences for the sale or supply of alcohol to consider the health impacts of their activities and adopt measures to mitigate risks to health. This could include staff training on the responsible sale of alcohol, avoiding promotions which encourage people to drink more and thinking about the type and alcohol content of drinks they sell.

2.18 74% of respondents to the public consultation and 71% of respondents to the pre-consultation survey support this approach.

2.19 Promoting environmental best practice

2.20 A key priority for Buckinghamshire Council is to improve the local environment. Licensed premises can contribute by helping to create a greener and cleaner environment. The Policy encourages operators of licensed premises to adopt best practice measures such as minimising waste, improving energy efficiency and reducing traffic on the road.

2.21 86% of respondents to the public consultation and 91% of respondents to the pre-consultation survey support this approach.

3. Removal of the cumulative impact policy – Aylesbury town centre.

- 3.1 This Aylesbury town centre legacy policy creates a presumption to refuse licences after 00:30 to premises that are considered to be high risk (i.e. where the sale of alcohol is the predominant activity or hot food takeaways), all other premises will be refused after 02:30. As a result of legislation changes in 2018, these types of policies must now be supported by a formal assessment of evidence and this assessment must be revisited at least every 3 years. The last time a formal assessment was carried out was in 2015. This evidence is now out of date and there is insufficient evidence to support a continuation of the policy at this time.
- 3.2 During consultation Thames Valley Police (TVP) presented a report in support of maintaining the policy, which was considered by the Licensing Committee at its meeting of 22nd July 2021. Whilst the police's view on this matter is clearly important and should be given appropriate weight, the report contained insufficient evidence to support maintaining the policy at this stage. However, in light of the police concerns the Licensing Service has committed to working with TVP to review the situation and will report back to the Licensing Committee after 12 months of implementation of the new Policy. Should an assessment of the evidence in the future indicate that the cumulative impact of licensed premises is problematic then the Council can consider the re-introduction of a cumulative impact policy in this, and other, locations.
- 3.3 It is important to note that any party, including the police, are able to make representation in respect of an application, or to apply for a licence review, if there are concerns relating to the promotion of the licensing objectives, such as crime and disorder. In addition, all applicants are under an obligation to consider the locality in which they wish to operate and propose measures to ensure the promotion of the licensing objectives.
- 3.4 The majority of respondents to the public consultation, 68%, supported the proposal to remove the legacy cumulative impact policy for Aylesbury town centre, (while keeping the area under review). This view is generally reflected across all response groups with 71% of Councillors, 74% of licensed businesses and 69% of residents supporting this approach. Notably 73% of respondents with a connection to the Aylesbury area supported the proposal, and only 12% respondents were against the proposal.

4. Remove of the special hours policy - Buckingham

- 4.1 The legacy special hours policy for Buckingham, states that applications to open after 00:00 will normally be refused unless exceptional circumstances apply and, in all

cases, applications after 01:30 will be refused. This policy had come about as a result of a precedence of licence application decisions and the evidence cited in the legacy policy reflects the position in 2015. The current position has changed significantly since that time and it is questionable whether this evidence remains relevant. In addition, from a legal perspective it is now questionable whether this policy, as previously drafted, can now be considered lawful because it fetters the Council's discretionary decision making powers and prevents the consideration of each application on its own merits. During consultation neither Thames Valley Police nor Environmental Health requested the retention of the special hours policy. The Licensing Committee considered these issues at its meeting of 22nd July 2021 prior to approving the draft policy for consultation purposes and again on 20th October when the Policy (which includes the removal of the special hours policy in Buckingham) was unanimously recommended for determination by Full Council. It is important to note that any party remains able to make representation in respect of an application, or to apply for a licence review if there are concerns relating to the promotion of the licensing objectives.

- 4.2 The majority of respondents to the consultation, 61%, support the proposal to remove the special hours policy for Buckingham. This view is generally shared across all respondent 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 was evenly split with a third agreeing, a third neutral and a third disagreeing to the proposal. Only 15% of respondents were against the proposal to remove the policy.

5. Next steps and review

- 5.1 The Policy, if determined by the Council, will be published on the Council's website for 4 weeks (as statutorily required) prior to the Policy taking effect on 1 February 2022 or such other date on or before 1 April 2022.
- 5.2 In accordance with Licensing Act 2003 the policy must be kept under review, which includes full consultation, at least every 5 years.

6. Other options considered

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

7. Legal and financial implications

- 7.1 Under Sections 4(1), (2) and (3) of the Licensing Act 2003 a licensing authority must carry out 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 and publish a new Policy, that is by 1 April 2022.

- 7.2 In accordance with Section 5A Licensing Act 2003, licensing authorities may publish a Cumulative Impact Assessment (CIAs) 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.
- 7.3 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 Section 5A came into effect:
- 7.4 "As Cumulative Impact Policies (CIPs) 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)."
- 7.5 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.

7.6 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.

8. Corporate implications

8.1 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 to when carrying out its licensing functions. The 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.

8.2 Property – N/A

8.3 HR – N/A

8.4 Climate change – The Policy contains measures to encourage operators to adopt measures to promote cleaner and greener practices.

8.5 Sustainability – A/A

8.6 Equality – an equalities impact assessment (EqIA) screening exercise has been completed, shown at Appendix 2. 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

8.7 Data – measures are in place to ensure relevant personal data is managed in accordance with the Data Protection Act 2018 and GDPR requirements.

8.8 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.

9. Consultation and communication

9.1 A pre-draft policy consultation exercise was carried out with key stakeholders who were invited to complete an online survey between 14 May and 8 June 2021. The Council received 107 responses to this survey.

9.2 A public consultation exercise 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 and press releases. Correspondence was also sent directly to statutory consultees and key stakeholders. The Licensing Service received 110 survey responses and 4 written responses to the consultation.

- 9.3 The Council's Business Intelligence team collated and analysed the survey results from both consultations and a summary of key findings is shown in the respective Licensing Committee reports of 22nd July and 20th October 2021.

Key documents:

Appendix 1: Buckinghamshire Council draft Licensing Policy Statement, Licensing Act 2003

Appendix 2: Equalities screening report

[Licensing Committee report 22nd July 2021](#)

[Licensing Committee report 20th October 2021](#)

[Home Office Guidance issued under section 182 of the Licensing Act 2003](#), April 2018