

Report for: Regulatory Committee 29th October 2020

Title: Licensing Act 2003 Review of Licensing Policy 2021-2026

Report authorised by : Eubert Malcolm Assistant Director Stronger & Safer Communities

Lead Officer: Daliah Barrett – Licensing Team Leader

Ward(s) affected: All wards

**Report for Key/
Non Key Decision:** N/A

1. Describe the issue under consideration

- 1.1 The Licensing Act 2003 (the Act) came into effect on 25th November 2005. The Act introduced changes to the licensing of alcohol, regulated entertainment and late night refreshments, to be administered by the local Licensing Authority within the London Borough of Haringey, this Council.
- 1.2 Section 5 of the Act requires each Licensing Authority to prepare, consult and publish a Statement of Licensing Policy (SOLP) every five years. The SOLP is expected to set out, how the authority intends to approach its licensing responsibilities. Each Authority is also required to keep the SOLP under review throughout its term and make appropriate revisions as necessary.
- 1.3 On 4 July 2020 the Regulatory Committee agreed that amendments to the SOLP should be consulted on. The consultation took place for an eight week period, ending on 21 August 2020. Responses were received from a local resident, a Responsible Authority and the O&S Committee. This report is to consider the responses to the consultation and their effects on the draft SOLP.
- 1.4 Generally, all the proposed amendments have been agreed, however, some parties have asked for additional changes. None of the requests made have impacted on the drafted policy and are considered not to be appropriate so have not been applied to the policy. In addition, the consultation and resulting policy has not been impacted by the COVID-19 pandemic, which became a national emergency at the end of March 2020. Details of the responses for public consultation on this revision are set out in this report in Appendix B.

2 Recommendations

This report recommends that the Committee:

- 2.1 Consider whether to accept the changes or propose any further amendments following the public consultation.

2.2 The Committee is asked to consider the latest revision of the policy with a view of referring the matter to Full Council for ratification.

3 **Alternative Options Considered**

3.1 The SOLP is a statutory requirement and the Council has no discretion but to have a policy.

3.2 Consideration was given to extending the existing policy due to the COVID -19 pandemic situation making the ability to consult challenging. This was ruled out following legal advice as effective consultation could be carried out on line. The Local Government Association (LGA) have also advised Authorities to use online methods of engaging with residents and licence holders on licensing matters as an acceptable method on consultation. In addition the policy expires as set out on 4.1.

4 **Reasons for decision**

4.1 The Council's current Statement of Licenising Policy expires in January 2021 and the Council has to comply with its statutory duty to prepare, consult and publish a SOLP every five years.

5 **Background information**

5.1 Central to the Statement of Licensing Policy is the promotion of the four licensing objectives established under the Act. These are:

- **The prevention of crime and disorder**
- **Public Safety**
- **The prevention of public nuisance**
- **The protection of children from harm**

5.2 Members should note that the SOLP must not be inconsistent with the provisions of the 2003 Act and must not override the right/s of any individual as provided for in that Act. Nor must the statement of licensing policy be inconsistent with obligations placed on the council under any other legislation, including human rights legislation. Members should also note that the Council has a duty under Section 17 of the Crime and Disorder Act 1998, when carrying out its functions as a licensing authority under the 2003 Act; to do all it reasonably can to prevent crime and disorder within the borough.

5.3 Since the commencement of the current Statement of Licensing Policy, there have been a number of issues that have arisen at licensing sub-committee meetings where members, responsible authorities and applicants have requested clarification, such as on multiple licences held on Finsbury Park being permitted under the legislation. The amendments in this revision seek to clarify Haringey's position and are believed to be appropriate and necessary.

5.4 There have been a number of changes to the Licensing Act 2003 and also to the Section 182 Guidance issued for licensing authorities (the current version was issued by the Home Office in April 2018). In recognition of the various changes work has been undertaken to update the Haringey policy and make it consistent with the legislation and the latest guidance. The majority of changes have been automatically incorporated into the policy document. Some are highlighted for the committee's information, before going to public consultation. A summary of some of the changes are listed below. these changes are outlined in Appendix 1 and summarised in 5.5

below.

5.5 Summary of the main amendments – Table 1

Section of policy	Reason for change /update	Page ref
All about Haringey	Information updated to reflect most up to date data and policies. State of the Borough Borough Plan and Priorities. Licensed premises have an impact on the community the information sets the scene of the challenges facing Haringey as well as the aspirations.	4
Alcohol harm and Public Health	Updated wording. Police no longer gather in data on various crime that allows for alcohol markers to be flagged. Wording on the impact of alcohol on young people and borough expectations on preventing harm.	7
Borough Plan	Updated wording to Borough Plan and priorities.	10
Relationship with Planning	Wording updated to make clear close working but separate regimes	12
Modern Day Slavery	Reflect how licensing plays a role. Raise awareness of this issues in the licensed trade across the borough	12
Community Safety Strategy	Wording on the six point plan to deliver and how late night economy and protection of women and vulnerable will impact.	13
Sustainability wording	Links in with Haringey Climate change agenda and raise awareness	14
LA ability to revoke or suspend Personal Licences	New Powers that came into effect in 2017, opportunity to insert methodology and delegation info into policy.Change to legislation and Section 182 Guidance	18
Council position on the use of multiple TENs	Use of TENs for large warehouses to get around the 499 limit. New wording makes clear that as an Authority we will not agree to this practice	21
Large events Council position on transport capability	Wording updated on expectations of management of large events.	21

for simultaneous events	Wording inserted to say that matters of this nature will be done under a public safety concern by the Safety Advisory Group on a case by case basis	
Schedule of delegation	Table updated to make reference to Sec of State	24
Transferring licences to avoid review process	Council position on not permitting transfers to take effect when premises is under review.	25
Smuggled goods	Updated guidance on seriousness of the offence and strong approach-learning from matters arising from LSC hearings	31-32
Council position on strong management of premises	Expectations of responsible management from licence holders.	27
Multiple licences	Clarity that a review on one licence held on a specific premises does not automatically affect any other licences held by other organisations for the same premises.	28
Cessation of Form 696	Removal of wording of the need for Form 696 but still the need to risk assess an event	33

6 Consultation for 2021-2026 statement of licensing policy

The consultee responses for the 2021-26 policy were considered and as a result no amendments have been made to the Policy itself however a number of operational changes which are not Policy have been suggested and taken account of. These can be found in Appendix 2. The policy is available in Appendix 1.

- 6.1** The consultee responses and officer comments are available in Appendix 2. Overview and Scrutiny Committee have requested that specific work is undertaken to look at the possibility of bringing in a Cumulative Impact Policy relating to off licences across the borough.
- 6.2** Impact of Covid 19
- 6.3** The impact of the measures put in place to fight the virus nationally saw licensed premises such as pubs, clubs and restaurants having to close their doors to restrict entry by the public to prevent the spread of the virus. As the UK continues to deal with the pandemic we have encouraged operators and busisnees to think about possible changes to be made to teir licences stoensure they can operate and adapt in line with any changes made by Government. Matters that licence holders need to be aware of such as:
- The need for licensing additional space, most likely outdoors
 - The need to review licensing conditions that might restrict trading
 - flexibility
 - A review of their licensed hours to adapt to a new way of trading

- 6.4** It should be noted that primary and secondary legislation around alcohol sales has been amended, to support the industry and the government's response to the emergency, but this is for a limited period only. This Policy will surpass that period and a change of policy is not required as the governments response relates to restrictions and operating procedures that have been made in secondary legislation. It is only when the legislation conflicts with the SOLP that further changes to the SOLP is required.
- 6.5** Government guidance is evolving at such a pace and the situation so changable that at this time it is unlikely that anything of long term significance will result and therefore would not be suitable for the policy. We encourage all applicants to ensure that they are aware and follow all relevant and current guidance. Should evidence emerge and international and national approaches evolve and change, the authority can always update its policy to reflect the more permanent changes. Haringey will aim to support business wishing to make these changes by way of a variation application where possible.

7. Contribution to strategic outcomes

- 7.1 The Borough Plan 2019-23** sets out a four-year vision to make Haringey one of London's greatest boroughs where families can thrive and succeed. The Haringey Council Community Wealth Building approach will create an economy that is rooted in the community.
- 7.2 Priority-2 People** - Our vision is a Haringey where strong families, strong networks and strong communities nurture all residents to live well and achieve their potential. The protection of children and the vulnerable from harm within the licensing objective will contribute to this priority.
- 7.3 Policy 3 – Place** - Our vision is for a place with strong, resilient and connected communities where people can lead active and healthy lives in an environment that is safe, clean and green. As the borough continues to grow, becomes better connected and continues to be a destination for many Londoners, we will need to ensure Haringey remains a safe and pleasant environment for all. We want to work with partners and the local community to achieve this and to define and shape how the borough looks and feels, both now and in the future. Residents engaging in the licensing process will contribute to this priority and allow them to have a say in how premises operate. The expectations set out the Policy will inform applicants for liceces of the kind of best practice and responsible management expected for well run premises in the borough.
- 7.4 Policy 4 – Economy** - Our vision is for a growing economy that provides opportunities for all our residents and supports our businesses to thrive We want to build the strength, depth and wealth of our local economy and will create safe and attractive environments for both businesses and our residents to thrive. We will make sure that investment and development has the interests of our communities at its heart and is undertaken for the benefit of our local residents and businesses. Haringey offers a lot of opportunity for new businesses and attracts entrepreneurs who wish to start up their first business in the hospitality trade in the borough. The Regeneration Team have made use of 'Meanwhile Spaces' in the East of the borough that have provided welcome alternatives to regular pubs and clubs.

- 7.5** The above Priorities and objectives are underpinned by a number of cross – cutting principles namely:
- Prevention and early intervention – preventing poor outcomes for young people and intervening early when help and support is needed.
 - A fair and equal borough – tackling the barriers facing the most disadvantaged and enabling them to reach their potential;
 - Working together with our communities – building resilient communities where people are able to help themselves and support each other.
 - Value for Money – achieving the best outcome from the investment made;
 - Customer focus – placing our customers needs at the centre of what we do;
 - Working in partnership – delivering with and through others.

7.6 Licensing is about regulating the carrying on of licensable activities within the terms of the Act. The statement of licensing policy should make it clear that licensing law is not the primary mechanism for the general control of nuisance and anti-social behaviour by individuals once they are beyond the direct control of the individual, club or business carrying on licensable activities. However, the guidance also states that licensing law is a key aspect of such control and should always be part of a holistic approach to the management of the evening and night-time economy. It is therefore desirable that the statement of licensing policy is in line with the council’s wider objectives and consistent with other policies.

8 Statutory Officers comments (Chief Finance Officer (including procurement), Assistant Director of Corporate Governance, Equalities)

8.1 Finance

This report seeks approval for adoption of the revised Haringey Licensing Policy 2021-2026, following a consultation exercise which was a statutory requirement. The existing policy expires in January 2021.

The consultation exercise was conducted online and therefore at minimum cost. This cost, relates to materials and officers time which is already accounted for within the existing budgetary resources.

The results of this will be brought back to the Regulatory Committee, prior to Full Council.

The timescales laid out are reasonable and achievable to ensure an updated policy will be ready in time to ensure the Council have a continued policy in force.

Procurement

N/A

9 Legal - Principal Lawyer Litigation

9.1 The Assistant Director of Corporate Governance has been consulted in the preparation of this report and confirms that the legal implications are set out in the body of the report.

In the case of R (Moseley) v Haringey the Supreme Court endorsed the following principles of consultation:

- That consultation must be at a time when proposals are still at a formative stage;

- That the proposer must give sufficient reasons for any proposal to permit intelligent consideration and response;
- That adequate time must be given for consideration and response; and
- That the product of consultation must be conscientiously taken into account in finalising any proposals.

The consultation responses must therefore be carefully considered when recommending the draft policy to Full Council for adoption.

9.2 Under the Council's Constitution at Part Three, Section B, Section 7 – Regulatory Committee - Protocol para 2(b) the Regulatory Committee has the responsibility for formulating, reviewing and approving for consultation the Statement of Licensing Policy and (following consultation) recommending it and any revisions to it, to Full Council for adoption.

10. Equality

10.1 The Council has a Public Sector Equality Duty under the Equality Act (2010) to have due regard to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act
- Advance equality of opportunity between people who share those protected characteristics and people who do not
- Foster good relations between people who share those characteristics and people who do not.

The three parts of the duty applies to the following protected characteristics: age, disability, gender reassignment, pregnancy/maternity, race, religion/faith, sex and sexual orientation. Marriage and civil partnership status applies to the first part of the duty.

10.2 A draft equality impact assessment has been completed (Annex 3). The policy equally recognises that irresponsible business operators who fail to provide good management practices are likely to have negative impacts on the community. As such, the statement of policy sets out to achieve a necessary balance between providing a platform upon which responsible business operators may contribute toward a thriving business and late night economy while ensuring that the quality of life of those who live and work in the borough is protected and enhanced through the licensing system.

The consultation included an equalities questionnaire. However, no responses that affect the groups that share the protected characteristics have been made during the consultation period. Following the consultation period, the principal conclusion of the EQIA is that there is no negative impact on any protected characteristic.

11 Use of Appendices

Appendix 1 Draft Statement of Licensing Policy (SOLP)
Appendix 2 Consultation responses and impact on policy.
Appendix 3 EQiA

Local Government (Access to Information) Act 1985

The Licensing Act 2003 and secondary regulations

The Home Office Guidance to the Act published April 2018
Local Government (Miscellaneous Provisions) Act 1982