

LONDON BOROUGH OF BRENT

EXECUTIVE

DATE: 11th October 2004

FROM THE DIRECTOR OF ENVIRONMENT

FOR INFORMATION / ACTION

NAME OF WARD ALL

REF NO. ES-04/05-262

REPORT TITLE : Statement of Licensing Policy

1.0 SUMMARY

- 1.1 This report introduces the Council's draft statement of licensing policy for consideration and details matters such as consultation and time scales for publishing the final agreed policy.
- 1.2 Full Council will need to approve the final policy after consideration by the Overview Committee and the Executive on 27th October and 15th November respectively. It is anticipated that the Policy will be put to the Full Council on 29th November 2004.

2.0 RECOMMENDATION

- 2.1 It is recommended that the Executive:
- (a) approve the Council's Statement of Licensing Policy in its draft form;
 - (b) forward the draft Statement of Licensing Policy to the Overview Committee for consideration;
 - (c) note that a further report setting out the feedback received from the Overview Committee and an updated draft of Licensing Policy will be brought before the Executive at its next meeting for further consideration and for onward submission to Full Council.

3.0 FINANCIAL IMPLICATIONS

- 3.1 The Government have advised that costs for consultation with statutory consultees will be recoverable but any additional consultation costs must be borne by the Council.
- 3.2 The only additional consultation carried out has been by post and the cost has been just the cost of sending half a dozen standard letters.
- 3.3 The guidance to the Act does not make any other reference to costs and matters such as licence fees will be part of a separate Government consultation on fees.

4.0 STAFFING IMPLICATIONS

4.1 None Specific

5.0 ENVIRONMENTAL IMPLICATIONS

5.1 Parts of the policy address matters such as public nuisance and crime and disorder and so will contain elements that have a possible environmental impact. In particular paragraphs 4.1 to 4.1.4, 4.3 to 4.3.3, 5.1, 5.3 and 6.2 of the draft policy address environmental matters.

6.0 LEGAL IMPLICATIONS

6.1 The Licensing Act 2003 received Royal Assent in July 2003. In July 2004 the Government announced 7th February 2005 ('the first appointed day') as the date for the commencement of transitional arrangements under the Act. This date is the beginning of a nine month transitional period to allow existing licensees to transfer or vary their justices licences under the new legislation.

6.2 Before Brent can carry out any of its functions under the Act, it is required to prepare and publish a Statement of Licensing Policy. The Government has now issued an order appointing the 7th January 2005 as the day by which each licensing authority must have determined and published its policy. This is the first Licensing Policy this authority has prepared as it has never been a requirement in previous legislation. Alongside the Act, the Government has issued Statutory Guidance under s182 of the Act which sets out a framework of contents for the Statement of Licensing Policy. This Guidance only received final Parliamentary approval in mid June this year.

6.3 Members should note that policies could be challenged by way of judicial review where they do not comply with the Act or their contents do not accord with the Government's Guidance without good reason. The Policy could also be challenged if the administrative processes for consultation are found to be flawed. This could include circumstances where the Licensing Authority has failed to approve the statement in sufficient time before the first appointed day (7th February 2005).

6.4 Full Council agreed on 17th May 2004 that the Statement of Licensing Policy would be included in the Policy Framework. As the statement is now part of the framework, Full Council will need to approve the statement after consideration by the Overview Committee and Executive.

7.0 DIVERSITY IMPLICATIONS

7.1 Paragraphs 10.0 to 10.4 of the licensing policy deal with diversity matters.

7.2 An Equality Impact Assessment will be carried out after completion of the consultation.

8.0 DETAIL

- 8.1 The Licensing Act 2003 (“the Act”) received Royal Assent in July of that year and from the 7th February 2005 Brent Council will start to issue licences under the transitional arrangements of the Act.
- 8.2 From a date to be announced but expected to be 7th November 2005 (‘the second appointed day’) magistrates licences will cease to exist and licences issued by local authorities will become live. Between the first and second appointed dates, Brent will start to transfer or vary existing licences issued by the magistrate to local authority licences. Once the second appointed day has passed, Brent will issue personal licenses to individuals to allow them to authorise the sale of alcohol or to become a designated supervisor and be named on a premises licence as well as issuing premises licenses and temporary event notices.
- 8.3 The Statement of Licensing Policy is a statement of how Brent as the licensing authority intends to exercise the licensing functions imposed upon it by the Act. It may state the Council’s general approach to the making of licensing decisions and the regulation of licensing activities. It should provide transparency for all those affected by the licensing regime which means not only applicants for licences but also local residents who are able to make representations to Brent in opposition to certain applications for a licence. Brent’s Draft Statement of Licensing Policy is attached as appendix A.
- 8.4 Members will be familiar with the general provisions of the Act from briefing sessions both last year and again in February this year as well as updates periodically sent to them by officers. Alongside the Act, the Government has issued Statutory Guidance under s182 of the Act. This Guidance only received final Parliamentary approval in mid June this year (hence the delay in drafting statements of policies by all local authorities).
- 8.5 Licensing Authorities must have regard to Chapter 3 of the Guidance which sets out the general principles that the Secretary of State recommends should underpin statements of licensing policy and their core contents. Licensing policies may depart from the Government Guidance where there is an evidential base for supporting such departure. Brent’s draft policy has been written having regard to the Statutory Guidance as a whole, as well as the Act. It has nevertheless been written specifically for this authority and attempts to take account of local circumstances and characteristics of the Borough.
- 8.6 There are a few London Boroughs that have departed from the Government’s Guidance (for example, some boroughs have implemented a “zoning” policy). Officers drafting the policy at Brent have found no such need for departure from the Guidance. Should responses to the policy consultation indicate differently, this will be revisited and amended if necessary.

- 8.7 The Act requires a Statement of Licensing Policy must be prepared and published every three years. During the three year period the policy must be kept under review and revised as appropriate. Licensing officers at Brent will monitor the need for any revision throughout the next three years. Should the policy be revised, there is a need to open up any material changes for public consultation as set out in the Act.
- 8.8 The general emphasis of the Policy is that consideration will be given to the individual merits of an application, and recognition that longer licensing hours in respect of the sale of alcohol can be important in ensuring that concentrations of customers leaving premises simultaneously are avoided. This will assist in reducing friction at late night fast food outlets, mini cab offices and other forms of transport which can lead to disorder and nuisance.
- 8.9 Providing for flexibility of hours also allows for the development, where appropriate, of safe evening and night-time local economies which are important for investment and employment locally.
- 8.10 The number of applications for licence variations in respect of longer opening hours that we may receive next year from existing premises transferring over to the new licensing scheme is not known. However, speculation in some areas suggest that up to 60% of all applicants will want some degree of extended openings hours granted. Whatever the number is the Council will be obliged to grant the requests in the absence of representations from either responsible authorities or an interested party.
- 8.11 To counter this light touch in bureaucracy introduced by the legislation in respect of the grant and variation of licences, and to balance the move towards greater flexibility in choice of operating hours, the Act brings in a key mechanism for the protection of the community if problems are occurring. This protection, amongst other powers, is in the form of a **Review** process which allows at any stage following the grant of a premises licence for a responsible authority or interested party to ask the licensing authority to review a licence because of matters arising at the premises.
- 8.12 The Act contains a list of mandatory consultees that the local authority must consult with prior to publishing a statement of licensing policy.
- 8.13 The consultation process at Brent is broader than that prescribed in the legislation. In addition to those listed in the Act we have consulted with other organisations, statutory bodies and individuals that we feel may have an interest in our policy. A list of those persons and organisations that we have consulted is attached as appendix B.
- 8.14 In addition to the consultees listed in the appendix we have placed public notices in the Wembley Observer and Willesden and Brent Chronicle Newspapers, a full page advertisement in the Brent Magazine and information posters in One Stop Shops, libraries and supermarkets across Brent. The posters are similar to the Brent Magazine advertisement and copy of this is attached as appendix C.

- 8.15 The consultation process at Brent commenced on 6th August 2004 and runs to 1st October 2004 (8 weeks).
- 8.16 There is a limited timescale to consult, consider all responses, amend the draft and submit it to the Overview and on to Full Council for approval on 29th November 2004 before the first appointed day. For this reason 8 weeks is regarded as sufficient to meet the requirements of the legislation. This is in line with other London Boroughs, the majority of which have allowed 6-8 weeks.
- 8.17 The Government have now issued an order (*The Licensing Act 2003 (Licensing Statement Period) Order 2004*) which appoints 7th January 2004 as the day the first period of three years begins in respect of which each licensing authority must determine its policy with respect to its licensing functions and publish a statement of that policy. This means that following Full Council on 29th November we will have until 7th January 2005 to finalise, publish and distribute our completed policy before transitional arrangements commence on the first appointed day (7th February 2005).
- 8.18 Although it is too late to include the results of our consultation as part of the main body of this report we will present the Executive with a resume of comments and observations received together with action we intend to take on those comments. This will be presented as an annex to this report.

9.0 BACKGROUND INFORMATION

Details of Documents:

- | 9.1 File | Location |
|--|----------------|
| The Licensing Act 2003 | HSL Library |
| Guidance issued under Section 182 of the Licensing Act 2003. | HSL Library |
| DCMS Advice | Licensing File |
- 9.2 Any person wishing to inspect the above papers should contact Alan Howarth, Health Safety & Licensing Unit, Brent House, 349 High Road, Wembley, Middlesex HA9 6BZ - Telephone: 0208 937 5369

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