

LONDON BOROUGH OF BRENT

EXECUTIVE - 15 November 2004

FROM THE DIRECTOR OF ENVIRONMENT

FOR INFORMATION / ACTION

NAME OF WARD ALL

REPORT TITLE : Amended Statement of Licensing Policy

Forward Plan Ref: ES-04/05-262

1.0 SUMMARY

1.1 This report submits the Council's amended Statement of Licensing Policy to the Committee for approval and for onward submission to the Full Council meeting on 29th November for adoption.

2.0 RECOMMENDATION

2.1 It is recommended that the Executive Committee:

- a) consider the comments of the Overview Committee (attached at Appendix B);
- b) approve the Council's Statement of Licensing Policy as amended (attached as Appendix A); and
- c) recommend that full Council adopt the Statement of Licensing Policy as amended, at its meeting on 29th November 2004.

3.0 FINANCIAL IMPLICATIONS

3.1 None specific. There are no financial implications specific to this report. However, failure to adopt the finalised statement of Licensing Policy at the Full Council meeting on 29th November could have a substantial financial impact.

4.0 STAFFING IMPLICATIONS

4.1 None specific. There are no staffing implications specific to this report. However, failure to adopt the finalised statement of Licensing Policy at the Full Council meeting on 29th November could have a substantial staffing impact.

5.0 ENVIRONMENTAL IMPLICATIONS

- 5.1 The Statement of Licensing Policy deals with environmental implications as part of its overall advice and guidance. In particular parts 4 (Licensing Objectives), 5 (Licensing Hours) and 6 (Alfresco) address environmental matters.

6.0 LEGAL IMPLICATIONS

- 6.1 Before Brent can carry out any of its functions under the Licensing Act 2003 ('the Act'), it is required to prepare and publish a Statement of Licensing Policy. It is also required to undertake public consultation on the Statement before it can be adopted. A recent order issued by the Secretary of State appointed the 7th January 2005 as the day by which each licensing authority must have determined and published its policy. The intention is that the Policy will be in force for at least a month before the 7th February 2005 (the date announced by the Secretary of State as the date for the commencement of the transitional period). This date is the beginning of a nine month transitional period to allow existing licensees to transfer and vary their licenses under the new legislation.
- 6.2 Alongside the Act, the Government approved Statutory Guidance in June 2004 under s182 of the Act which sets out a framework for the Statement of Licensing Policy.
- 6.3 This is the first Statement of Licensing Policy this authority has prepared as it has never been a requirement in previous legislation.
- 6.4 At the last meeting of the Executive (11th October 2004), it was recommended that the draft statement of licensing policy (as amended at that meeting) be forwarded to the Overview Committee for their consideration. The responses to comments of the Overview Committee are set out in paragraph 9 below.
- 6.5 It was also recommended at that meeting (by a motion on the day) that officers gather evidence on the need for a special policy in respect of the Neasden area and report back to the Committee. The effect of adopting a special policy of this kind would be to create a rebuttable presumption that applications for new premises licences or club premises certificates or material variations would normally be refused if relevant representations to that effect are received. This would usually be the case unless it could be demonstrated by the applicant that the operation of the premises involved would not add to the cumulative impact already being experienced. Special policies do not allow the Council to automatically refuse an application in an area where a special policy operates (there would still be a need for relevant representations). The inclusion of a special policy into the main Policy also does not allow the Council to set a terminal hour for a particular area or for the application of quotas.

- 6.6 No mention was made in the initial 8 week public consultation period (8th August 2004 – 1st October 2004) of the Council's intention to include a special policy of this nature for any area in the borough. In addition, no responses requesting a special policy were received as a result of that consultation. The Statement that went out for public consultation stated explicitly that the Council has not adopted a special policy.
- 6.7 In light of the above, the adoption of a special policy in respect of Neasden will need to be the subject of a further public consultation before the Council can adopt the policy. This is allowed by section 5 of the Act which requires the authority to keep its policy under review and revise it as appropriate (and in any event at least every three years). However, before doing so, the Council must consult in the same way as when the policy was originally promulgated.
- 6.8 The need for proper consultation was recently highlighted in a decision against Leicester City Council where 6 decision letters (regarding the withdrawal of funding) were quashed. It was held that the consultation process was inadequate because the consultees were not properly informed about the new criteria to be applied and so were not in a position to participate properly and intelligently in the consultation process.
- 6.9 The same principles would apply equally to any public consultation undertaken by a local authority in respect of their Statement of Licensing Policy and especially in respect of any intention to include a special policy where specific criteria apply. It should be noted that, as reported in an earlier report, the Council has an obligation to adopt the Statement by 7th January 2005. Furthermore, it should be noted that a disappointed consultee to the Statement of Licensing Policy retains the theoretical remedy on conventional grounds of irrationality or error in law. It is thus imperative that the Council complies with the Act, the Guidance (unless for good reason) and any need for further public consultation.

7.0 DIVERSITY IMPLICATIONS

- 7.1 Part 10 of the Statement of Licensing Policy addresses diversity and equality matters
- 7.2 An equality impact assessment has been prepared and is being submitted to the Corporate Diversity Team.

8.0 CRIME AND DISORDER

- 8.1 Section 17 of the Crime and Disorder Act 1998 imposes a duty on every authority to do all it reasonably can to prevent crime and disorder in its area when exercising its functions.
- 8.2 Crime and Disorder is named under the Licensing Act 2003 as one of the four licensing objectives and as such, large parts of the policy address crime and disorder. In particular, paragraphs 4.1 to 4.1.4 and 6.2 of the Statement of Licensing Policy deal with crime and disorder. These parts of our policy will be kept under review as part of the review process.

8.3 As part of the public consultation exercise, Health, Safety and Licensing invited comments and observations from the Police and Brent's Community Safety Team.

8.4 In addition, officers have formed a working group that includes police officers and this group will discuss crime and disorder in general as well as specific problems.

9.0 DETAIL

9.1 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.

9.2 Health Safety & Licensing published and consulted on Brent's draft Statement of Licensing Policy on 6th August 2004. Consultation was for 8 weeks and ended on 1st October 2004.

9.3 A copy of the draft Statement and a table showing the responses to the Council's consultation and actions to be taken by officers as a result of those responses was presented to the Executive Committee on 11th October 2004. The Committee recommended then that the draft statement be amended to reflect officers' recommendations in response to the public consultation. It was also recommended that the Statement (as amended) should be submitted to the Overview Committee at their meeting on 27th October 2004 for their consideration. A copy of the Statement of Licensing Policy with latest amendments is attached at appendix A. This draft reflects the amendments made as a result of comments made by:

- public consultees as confirmed by the Executive Committee on 11 October 2004; and
- comments by the Overview Committee.

9.4 These amendments to the Statement of Policy (set out as tracked changes in the Statement of Licensing policy) will be dealt with under two separate headings in this report, namely: 'Comments by the Overview Committee' and 'Cumulative Impact Policy'

Comments by the Overview Committee

9.5 The comments of the Overview Committee are set out as tracked changes in Appendix B. Amendments made to the Statement of Policy as a result of these comments relate to:

- Clarification of the requirement that the Authority must keep its policy under review, and revise it as appropriate, and in any event at least every 3 years (paragraph 2.6 and 3.9 of the Statement);

- An additional paragraph to deal with the Council's policy on dealing with reviews of premises licences (paragraph 13 of the Statement);
- Amendment to paragraph 6.2 dealing with alfresco refreshment has been clarified and stronger wording inserted;
- Amendment to paragraph 4.4.6 dealing with checks on adult supervisors has been clarified and a paragraph inserted in the section dealing with "avoiding duplication" as further clarification;
- The reference to the assistant Director of Children's Services has been corrected (paragraph 2.3); and
- A paragraph has been included in the Statement of Licensing Policy to give the public a clear definition of what a licence is (Foreword).

9.6 The comments made by the Overview Committee in relation to a possible special policy in Neasden dealing with cumulative impact are addressed in more detail below.

Cumulative Impact Policy

- 9.7 The last report to the Executive Committee on 11th October 2004 sets out the Government's requirement that all Statements of Licensing Policy need to be published by 7th January 2005. Brent's Statement of Licensing Policy will need to be adopted by Full Council on 29th November 2004 to meet this date as the next full Council meeting takes place at the end of January 2005. Because of the difficulty in gathering evidence and the tight time scales imposed by Government (publication by 7th January 2005), any special cumulative impact policy will have to be incorporated into the Statement of Licensing Policy after the start of the transition period if effective evidence gathering and public consultation is to be undertaken.
- 9.8 Further to a recommendation by the Executive Committee at its last meeting, officers are currently gathering evidence to gauge whether the levels and nature of crime, nuisance and anti-social behaviour in the Neasden area support the need for a special policy.

- 9.9 This course of action follows the guidance to the Act issued by the government which directs that before a cumulative impact policy can be considered, there must be a need for such a policy and evidence to support the need. Evidence should be in respect of crime and disorder, public nuisance and late night transport problems which are directly related to the licensed premises in the area. Once evidence is collated and a report produced to the Executive on the Neasden area, members will then need to decide whether the evidence is sufficient to warrant a special policy. Public consultation will then need to be undertaken before any decision by the Council to include a special policy can be taken. Once a draft policy has been prepared and public consultation has been held, full Council will need to approve any amendment to the Council's Statement of Licensing Policy including any special policy.
- 9.10 When determining whether there is a need, only premises such as public houses, entertainment venues and similar premises should be considered. Other outlets such as shops and small restaurants do not, in the main, have the type or numbers of clientele that would exacerbate crime and disorder problems.
- 9.11 Despite the absence of a special policy in the current proposed Statement of Licensing Policy, the Statement does allow the Council to consider cumulative impact on a case by case basis in respect of applications for licences and reviews of those licences if cumulative impact is shown as directly related to the licensing objectives and if a relevant representation has been received on that basis.

10.0 BACKGROUND INFORMATION

Details of Documents:

- | 10.1 File | Location |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------|
| The Licensing Act 2003 | HSL Library |
| Guidance issued under Section 182 of the Licensing Act 2003 | HSL Library |
| DCMS Advice | Licensing File |
| <u>R (on the application of (1) JENNIFER CAPENHURST (2) TERENCE KIRBY (3) IAN KING (4) TEJAL MISTRAL (5) LOUISE JOACHIM) v LEICESTER CITY COUNCIL (2004)</u> | |
| Legal Services | |
- 10.2 Any person wishing to inspect the above papers should contact Alan Howarth, Health Safety & Licensing, Brent House, 349 High Road, Wembley, Middlesex HA9 6BZ,
Telephone: 0208 937 5369

Richard Saunders
Director of Environment

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EXTRACT FROM MINUTES OF THE OVERVIEW COMMITTEE

Tuesday, 27th October 2004 at 7.30 pm

PRESENT: Councillor Thompson (Chair), Councillor Nerva, (Vice-Chair) and Councillors Arnold (part), Freeson, Gladbaum (alternate), Moloney, Sattar-Butt (part), Steel (part), Van Colle and Wharton together with co-opted member Dr Levison.

Apologies for absence were submitted on behalf of Councillors R Blackman, Cribbin, Farrell, Kabir and Sengupta and in addition, co-opted members Reverend Stone and Dr Kumar.

6. Statement of Licensing Policy

The Committee received a report explaining the new requirement that a licensing policy must be adapted by every licensing authority, and then considered the amended draft statement of licensing policy.

Councillor Moloney referred to a section of the report regarding the Licensing Policy, which identified a possible need for a special cumulative impact policy for Neasden (p20, paragraph 8.7). Councillor Moloney expressed concern that this would result in one area of the borough receiving different treatment to the other areas. The legal advisor, Helen Keep, explained that this suggestion had been put forward due to concern about the possibility of the saturation of licenced premises in this area of the borough. Members argued however that similar problems could well apply to some other areas of Brent. Members also heard that similar potential problems had been identified by some other local authorities, but that at this stage the possibility of including a special cumulative impact policy within the Licensing Policy had to be subject to further collation of evidence, public consultation and approval by the Council.

Members of the Committee raised the issue of review periods for the Statement of Licensing Policy; namely whether these were scheduled to occur and with what frequency. Geoff Galilee, Director of Health, Safety and Licensing, advised that the Licensing Act 2003 required all licensing authorities to review their policy every three years. In addition, licensing authorities were permitted to amend their policy at any time, provided that this was preceded by a period of public consultation and approval by that authority. Members noted this, but expressed the view that the Licensing Policy would benefit from a paragraph clarifying the information regarding review periods on the Statement of Licensing Policy.

Members also requested that a further section be added to the policy regarding the Council's power to review licences, and to clarify what powers were available to the Council to protect the public if nuisance areas should arise. Ms Keep, in response, advised members that it was envisaged that separate guidance would be issued which would address the issue of the right of interested parties to request review of an existing licence, or the initial application for a licence. The Committee noted this advice but was of the opinion that the policy would nonetheless benefit from the inclusion of a section concerning the above suggestions.

Councillor Van Colle noted that there was potential for conflict between the Council's planning policy and the licensing policy and raised the question of which of these areas would be paramount. Mr Galilee responded that these two areas dealt with different, although related, concerns in that planning was required to consider the need and the number of licenced premises, whereas licensing legislation regulated the sale and supply of alcohol.

In response to some members' concerns that policy restrictions regarding which premises would be approved for new licences did not provide for strict enforcement, Mr Galilee explained that the opportunity existed for local residents to make a relevant representation when considering a new licence. Interested parties could also request a review of an existing licence. In addition, the Act gave greater powers to the police to close a premises down if required.

Councillor Nerva asked that there be further clarification of the policy with regard to the implications of the Used Classes Order. In addition, members of the Committee also outlined a need for a Proof of Age scheme, either as a standard condition in the provision of a licence, if allowed, or to be included as a recommendation if relevant representation was received.

The Committee commented on the list of consultees and requested that this list be revised and reordered for the purposes of clarity. Councillor Gladbaum, among other members, also noted that it was unclear from the list whether the Primary Care Trust had been consulted, at which point Mr Galilee confirmed that the accident and emergency services and ambulance services had been consulted. The Chair expressed the view that, although head teachers had been consulted, school governing bodies should also have been invited to participate in the consultation process.

Councillor Nerva noted a need for clarification and stronger wording in the section of the Statement of Licensing Policy (p10, paragraph 6.2) which concerned Al Fresco refreshment. Councillor Van Colle also voiced concerns regarding the section entitled 'Protection of Children from Harm' (p9, paragraph 4.4.6) and stated that the wording needed to be made more robust. Other members of the Committee were in agreement. Ms Keep noted members' concerns and advised that officers would look at the drafting of the paragraph again. She advised however that this requirement was governed by other legislation and as such the Council did not have the general power to impose a condition that required an applicant to conduct Criminal Records Bureau checks on their adult supervisors.

In response to questions as to whether the special provision of arrangements was anticipated for the Wembley area, Mr Galilee advised that there had been no specific arrangements made to date and that it was planned to revise the policy if it became necessary.

Councillor Gladbaum noted that there was an Assistant Director of Children's Services, not an Assistant Head of Children's Services and asked that the reference in the report to an Assistant Head of Children's Services be corrected.

Councillor Wharton enquired whether an adequate tracking system was in place in order that local residents could remain informed regarding which premises were applying for licences and at what times. Members were advised that all licensing applications would be included on the planning applications list. In addition, an email alert service would be made available, and residents would also be given the opportunity to make objections to applications online.

Dr Levison requested that the Statement of Licensing Policy include a clear definition of what a licence was, to be included at the start of the policy. The Chair noted that this would aid the policy in making the information more accessible.

The Chair thanked Mr Galilee and Ms Keep for their work and input into the discussion and members suggested that a list of comments arising from the Committee's discussion be compiled by the Chair and put forward to the Executive for consideration. Members also requested that the list of discussion points be circulated by the Chair outside of the meeting for comment prior to submission to the Executive, and the Chair noted this request. Ms Keep advised the Committee of the limited timescale involved, as the Executive was due to meet on Monday 15th November 2004 and suggested that the list of comments be circulated at the earliest opportunity.

RESOLVED:-

- (i) that the Chair compile a summary list of points arising from members' discussion;
- (ii) that the Chair circulate this list to members for comment prior to submission to the Executive.