



Full Council
26th November 2007

**Report from the Director of
Environment & Culture**

For Action

Wards Affected:
None

Report Title: Review of Statement of Licensing Policy

1.0 Summary

- 1.1 This report outlines the proposed changes to the Council's Statement of Licensing Policy under the Licensing Act 2003 following on from review and consultation.
- 1.2 The Alcohol and Entertainment Licensing Committee have recommended that the action at number 19 in the table of responses be amended to read "expect and encourage" rather than "expect".

2.0 Recommendations

- 2.1 Members are asked to agree this report and recommend the Council adopts the proposed changes to the Statement of Licensing Policy.

3.0 Detail

- 3.1 The Licensing Act 2003 requires the Council to prepare, consult and publish a statement of licensing policy before it can carry out its duties under the Act. 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.

- 3.2 The policy published in January 2005 has to be reviewed every three years and the first policy review has now been carried out.
- 3.3 A copy of the policy and officer's suggested amendments were sent to the Heads of Responsible Authorities, trade representatives and all the consultees involved in the original policy, in all over 150 consultation letters were sent out. In addition the same consultation documents were displayed on our website.
- 3.4 Replies were received from the Police, Trading Standards, Community Safety and the British Bar and Pub Association.
- 3.5 The comments received as part of the consultation have been added to those of officers from HSL and listed on pages 4-12 of this report. Comments by the police that are lengthy and not suitable for including in the table of replies have been attached as appendix A. Where new paragraphs duplicate existing numbers then subsequent paragraphs will be renumbered.

4.0 Financial Implications

- 4.1 There are none arising from this report.
- 4.2 The Council is required to publish copies of it's policy and the cost of this will come from Health Safety & Licensing's existing budget.

5.0 Legal Implications

- 5.1 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 issued an order appointing the 7th January 2005 as the day by which each licensing authority must have determined and published it's policy. There was also a requirement that policies must be reviewed every three years or sooner.
- 5.2 Alongside the Act, the Government has issued Statutory Guidance in June 2004 (and revised this year) under s182 of the Act which sets out a framework of contents for the Statement of Licensing Policy. 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 suitably review it's statement of policy.

6.0 Diversity Implications

- 6.1 Paragraphs 10.0 to 10.4 of the policy deal with diversity matters.
- 6.2 An equality impact assessment is being undertaken in respect of the policy and will be available early in the new year (2008) and accordance with paragraph 10.4 of the policy any revision requires the Council to consider the

impact on diversity and equality grounds.

- 6.3 Since the report was submitted to Alcohol and Entertainment Committee the equality impact assessment has been undertaken with regard to the implementation and operation of the original policy, and has not identified any adverse impact towards the various groups within the community. Further monitoring and consultation will take place during the life of the revised policy and another equalities impact assessment will be carried out at the time of future policy review.

7.0 Staffing/Accommodation Implications (if appropriate)

- 7.1 None specific to this report

(Table of replies and comments follow on pages 4-12.)

Licensing Policy Review – Consultation Responses

No.	Date	Respondent	Para No.	Comments	Action	Reason
1	15/8/2007	HSL Officers	N/A	When our original policy was written we were unsure whether to introduce a special policy to address possible areas of concern regarding cumulative impact. At the time we did not introduce a saturation policy, but decided to keep any areas likely to be subject to such a policy under review. Officers looked at several areas including Kilburn, Willesden and Harlesden town centres. In particular we looked at Neasden Precinct and it's immediate surrounds. This area attracted numerous complaints and was a focus for police enforcement activity in the early hours of the morning particularly at weekends.	<p>New paragraph to read “3.10 The area known as Neasden Precinct was considered as an area that may benefit from a special policy. However, evidence gathered by officers proved inconclusive. Problems being experienced in the area seemed to be exacerbated by premises closing at the same time with large numbers of party goers being discharged on to the street at one time. Staggered closing appears to have lessened the problems and recent police reports for the area show a decline in disorder.”</p> <p>“3.11 Officers will continue to monitor all areas of the borough and all venues and events and where appropriate refer any areas likely to benefit from a special policy to the Committee.”</p>	For clarification

				<p>The main problem appeared to be two popular venues both finishing at the same time resulting in large numbers of party goers being discharged on to the street simultaneously. Staggering opening/closing hours seems to have largely resolved this conflict with subsequently lower numbers of complaints to licensing officers and fewer calls for assistance to the police.</p>		
2	15/8/2007	HSL Officers		<p>To reflect the Government's revised Guidance regarding opening hours, which has pulled away from the principle of allowing longer opening hours regardless, we propose to insert the following paragraph. This is taken from the new guidance and could in some circumstances, where there is a representation and a</p>	<p>New paragraph to read "5.4 The aim of the Council through the promotion of the licensing objectives shall be to reduce the potential for concentrations and achieve a slower dispersal of people from licensed premises through flexible opening times. The Council recognises that arbitrary restrictions that would undermine the principle of flexibility should be avoided."</p>	Revised Government Guidance

				sub-committee uses it's discretion, result in a restriction of hours.		
3	15/8/2007	HSL Officers	7.2	Because applicants do not always appreciate the sometimes subtle differences between planning and licensing, we propose to add the following sentences to paragraph 7.2	"Any licence issued either directly by Licensing Officers or following a hearing of the Council's Licensing Sub-Committee does not absolve the applicant of their responsibilities under other legislation. In particular where the times and conditions imposed on a licence are at variance with any planning consent the applicant or licensee should ensure he complies with conditions imposed under any other legislation."	For clarification.
4	15/8/2007	HSL Officers	8.4	To assist applicants when applying for a premises licence we will make our Model Pool of Conditions available. To enable this we propose adding this sentence to paragraph 8.4	<i>"The Model pool of conditions used by Brent Council can be obtained from the Licensing Unit or from our website (Address for website to be inserted)"</i>	To assist applicants
5	15/8/2007	HSL Officers	N/A	To assist applicants and persons making representations and to clarify the Council's policy regarding the vicinity of premises we propose to add the following paragraph.	"14.6 The Council does not have a fixed definition of "vicinity" but instead looks at each representation on it's merit, having regard to all the facts pertaining to that application. Factors which may be considered include, for example, whether the individuals residence or business is	Guidance for applicants.

					likely to be directly affected by disorder and disturbance occurring or potentially occurring on those premises or immediately outside those premises. This means that a person living close to a small shop or restaurant may not be considered to be in the vicinity of the shop or restaurant but somebody living several hundred yards from Wembley Stadium may be considered to be in the vicinity of the Stadium.	
6	15/8/2007	HSL Officers	N/A	From time to time persons making a representation have expressed concern over their personal details being made available to applicants. Usually this fear is unfounded but may on rare occasions prove real. To address this problem we intend to add the following paragraph.	“14.7 Where there is sufficient reason to believe the publishing of personal details such as names and addresses will result in intimidation, the Council will withhold such information to protect the individual. However, we will make available such information as is necessary, without identifying individuals, for the applicant to respond to the objections raised by the representations.”	For guidance.
7	15/8/2007	HSL Officers	N/A	To avoid unnecessary hearings we propose to insert the following paragraphs.	“14.8 Where only positive representations are received, the Council will invite those making the representation to withdraw and so avoid the need for a hearing.” “14.9 Where there is a likelihood of an agreement being reached between an	For guidance.

					applicant and a person making a representation, then where appropriate the Council will, with the agreement of both parties, extend the limit for holding a hearing.”	
8	15/8/2007	HSL Officers	N/A	To help persons attending Committee hearings we will publish advice to applicants and persons making representations. So that people are aware of this advice we will insert the following paragraph in our policy.	“14.10 Information on the procedure to be adopted at hearings will be sent to applicants and persons making a representation at the time the agendas for such hearings are dispatched. Anybody wanting a copy of this information may obtain it from the Council’s Licensing Unit.”	
9	30/10/2007	HSL Officers	12.2 12.3 12.4	The Government’s Enforcement Concordat is to be superseded by the results of the Hampton Review into promoting more efficient approaches to regulatory inspection and enforcement, particularly through the standards that are set out in the ‘Regulators’ Code of Compliance’.	Replace paragraphs 12.2 to 12.4 with following paragraphs 12.2 and 12.3:- 12.2 Brent Council’s Licensing Officers will develop constructive and effective working relationships and strategies with the Police and Fire Authority and other enforcement agencies as appropriate, for the management of licensed premises and the night-time economy. Joint working with the Police and other agencies together with targeted enforcement will ensure a more effective	Clarification on update and revision of government guidance into best practice.

					<p>and efficient deployment of officers and will avoid any duplication of duties.</p> <p>12.3 The Council in its enforcement activity will have regard to the proposed 'Hampton' principles and in particular the 'Regulators' Compliance Code', which includes:</p> <ul style="list-style-type: none"> - use of risk assessment to concentrate resources; - to be accountable for efficient and effective activity; - must be a reason for inspections; - no requirement on business for unnecessary information or its duplication; - persistent law breakers are identified quickly; - provision of good and easily accessible, cheap advice; and - not to intervene into economic progress unless there is a clear case for protection. 	
10	5/10/2007	Planning	3.7	Can we remove the reference to ..Planning Committee and the market.	Paragraph to be amended to omit the final phrase.....as this is a matter for the Planning Committee and the market.	For clarification.

11	5/10/2007	EHO's	4.2.2	Can we add EHO's to the list of officers giving advice.	Environmental Health Officers to be included in the list of persons giving advice.	To assist applicants.
12		Police		See Appendix A	See Appendix A	See Appendix A
13	5/10/2007	Hashith Shah Brent Trading Standards	4.4.7	Wording should be changed to include reference to Brent Council's Age Restricted Goods Responsible Trader Scheme.	Wording to be amended to read "Brent Council Supports the Challenge 21 Scheme, Brent's Age Restricted Goods Responsible Trader Scheme and similar schemes and will expect applicants to address this within their risk assessment in respect of determining access to premises or sale of alcohol to young persons."	To remove reference to the Portman Scheme and to give more prominence to the prevention of the sale of alcohol to young persons.
14	8/10/2007	Martin Gormille Brent Community Safety Team	3.8	The current policy allows for cumulative impact to be considered but the emphasis is on "on-licensed" premises can we include "off-licences"?	New paragraph to be inserted to read "3.10 Whilst we recognise the guidance discourages off-licences from being included in cumulative impact policies it does not preclude them and the Council may consider off-licences if there is a strong case in favour of their inclusion.	Govern't Guidance discourages "off-licences" being included in cumulative impact policies.
15	8/10/2007	Martin Gormille Brent Community Safety Team	N/A	Can we limit the sale of high strength alcohol where street trading is a problem?	New paragraph to be inserted to read "Where there is relevant representation and the Council considers that the sale of high strength alcohol in an area is a contributing factor to crime and disorder or public nuisance we will consider applying a condition that prevents the sale of beer larger and cider above 5% AVB."	To assist in reducing crime and disorder and public nuisance.
16		Martin Gormille Brent	N/A	Can "Best Bar None" be mentioned?	New Chapter to read " <u>15 Responsible Retailing. 15.1</u> The Council is anxious to	To explain the Council's intent with

		Community Safety Team			<p>encourage retailers to improve and raise standards within Brent. To this aim we are keen to work with the Police and other agencies to establish and maintain an award scheme for responsible retailers. Best Bar None is a nationally recognised scheme that promotes safety awareness and crime reduction practices in pubs, bars and clubs, and we are committed to establishing such a scheme.</p> <p>15.2 If the Best Bar None scheme proves successful and the Council considers it appropriate we shall look to introducing a similar scheme for restaurants and /or off-licences.</p> <p>15.3 The Council recognises the importance of pubwatch and similar schemes and will support them where they have been established.”</p>	regard to promoting responsible retailing.
17	11/10/2007	Dr. Martin Rawlings British Beer & Pub Association	4.2.3	Can we remove the reference to capacity limits as they are over-prescriptive and subjective.	None	This was considered when the original policy was drafted. There are particular problems in Brent with capacities and this is there to draw applicant's attention to these and to offer

						some limited guidance on how to calculate capacities.
18	11/10/2007	Dr. Martin Rawlings British Beer & Pub Association	4.4.7	Portman Group age scheme has been discontinued.	Amended	See No.13
19	11/10/2007	Dr. Martin Rawlings British Beer & Pub Association	10.2	This is a duplication of existing disability legislation.	The wording of the paragraph be changed to “encourage and expect” applicants to address disability rather than “expect” them to do so.	For clarification.
20	11/10/2007	Dr. Martin Rawlings British Beer & Pub Association	N/A	The Council should recognise the Hampton principles as part of their risk based enforcement policy.	Add new paragraph “12.6 In line with the Hampton principles no inspection shall take place without a reason” and “intervention shall only take place where there is a need for protection.”	For clarification.
21	11/10/2007	Dr. Martin Rawlings British Beer & Pub Association	N/A	There are concerns over the police proposal that certain premises should provide risk assessments and debrief papers to the police within 14 days of an event.	Wording will make it clear that a new risk assessment is only required where there is a substantial change in the event.	For clarification

Background Papers

Details of Documents

Details

The Licensing Act 2003
Government Guidance
Consultation Documents

File

Legal File
HSL Library
Consultation File

Contact Officers

Any person wishing to inspect the above papers should contact Alan Howarth, Health, Safety and Licensing Division, Brent House, 349-357 High Road, Wembley, Middlesex HA9 6BZ, Telephone: 0208 937 5369.

Richard Saunders
Director of Environment and Culture

Geoff Galilee
Service Director
Health Safety & Licensing

(i) The Metropolitan Police are keen to see premises that hold significant events address the possible risks to crime and disorder that may be attracted by the event. In conjunction with London Councils they have proposed recommended wording for inclusion in our policy:

“4.1.4 “It is recommended that for significant events, a comprehensive risk assessment is undertaken by premises licence holders to ensure that crime and disorder and public safety matters are identified and addressed. Accordingly, for premises that wish to stage promotions, or events the Licensing Authority recommends that applicants address the Risk Assessment and debrief processes in their operating schedule.

The Licensing Authority further recommends the Metropolitan Police Promotion/Events Risk Assessment Form 696 and the After Promotion\Event Debrief Risk Assessment Form 696A as useful and effective tools for this purpose. Where the risk assessment forms are used to assess the likely risk from any promotion or event, the Licensing Authority anticipates that these will be completed in consultation with the Metropolitan Police. Risk assessments should be submitted to the Metropolitan Police and the Licensing Authority within 14 days of any proposed event and within 14 days of the conclusion.

Forms 696 and 696A are available on the Metropolitan Police website. It is recommended that electronic completion and transmission of the forms is undertaken by licensees. E-mail addresses for submission are ClubsFocusDesk-CO14 @met.police.uk and hsl@brent.gov.uk and (insert Wembley Police Licensing Unit).”

The proposal states that where venues have regular repeat artistes and DJs only one risk assessment and subsequent debrief would be required. Where venues have promotions with different artistes or DJs on each occasion, it is anticipated that the risk assessment forms will be completed for each of these occasions.

The definition of a significant event is any occasion in a premises licensed under the provisions of the Licensing Act 2003, where there will be live musicians, DJs, MCs or other artistes; that is promoted in some form by either the venue or an outside promoter; where entry is either free, by invitation, pay on the door or by ticket.

Where the applicant offers this as part of their operating schedule or where there is a relevant representation and the Licensing Sub-Committee at a hearing use their discretion to impose a condition the following recommended conditions will be taken from our pool of model conditions and applied:

“The licensee shall undertake a risk assessment of any significant promotion or event, using the MPS Promotion/Event Risk Assessment

(Form 696) or an equivalent and provide a copy to the Metropolitan Police and Brent Council's Licensing Unit not less than 14 days before the event is due to take Place"

And

"Where an event has taken place, the licensee shall complete a Debrief Risk Assessment (Form 696A) and submit this to the Metropolitan Police and Brent Council's Licensing Unit within 14 days of the conclusion of the event."

These conditions shall not apply unless they have formed part of the applicant's operating schedule or they have been imposed by the Licensing Sub-Committee following a hearing to determine a relevant representation.