

## EXTRAORDINARY LICENSING COMMITTEE – 22 DECEMBER 2020

### PART I - DELEGATED

#### 4. THE LICENSING ACT 2003 - STATEMENT OF LICENSING POLICY 2021-2026 (DCES)

##### 1 Summary

- 1.1 The Licensing Act 2003 (as amended) (“the 2003 Act”)<sup>1</sup> requires that all licensing authorities should issue a Statement of Licensing Policy and keep it under review every 5 years, making revisions to it, at such times, as it considers appropriate.
- 1.2 The Licensing Authority’s Statement of Licensing Policy (“the Policy”) was initially agreed on 14 December 2010 and then reviewed and re-published in its updated form on 7 January 2016. The previous review in 2015/2016 took into account a number of changes to the Act and revised guidance from the Home Office issued under section 182 of the Act (highlighted later within the report). The current Policy is attached at **Appendix A**.
- 1.3 On 2 December 2020 a report informed Members of the Licensing Committee that due to limited department resources coupled with workload pressures and the Coronavirus pandemic, Officers had not been able to complete the review and undertake the necessary public consultation in time for its adoption before the current policy expires on 7 January 2021 (**Appendix B**).
- 1.4 At this December Committee Members agreed to continue to adopt the current Policy while following an agreed timetable (referred to as ‘timescale for implementation’) up until 18 May to co-inside with Annual Council, measures which sought to treat the identified risk of a legal challenge.
- 1.5 Following the December Committee, Officers agreed that a quicker timescale for implementation was possible and this was reflected in the amended recommendation at Full Council on 8 December (see **Appendix C**).
- 1.6 Officers have now completed a review in accordance with the 2003 Act taking into account latest guidance and other relevant considerations. **Appendix D** provides a draft of the proposed consultation document with all proposed changes incorporated, subject to approval.

##### 2 Details

- 2.1 The 2003 Act requires the Council, in its role as the Licensing Authority, to prepare a Statement of Licensing Policy.
- 2.2 Section 5 of the Licensing Act 2003 requires that each licensing authority must in respect of each 5 year period:
  - a) Determine its policy with respect to the exercise of its licensing functions, and
  - b) Publish a statement of that policy before the beginning of the period.
- 2.3 The 2003 Act also requires the Council to consult a variety of persons and organisations ([section 5\(3\) of the Licensing Act 2003 \(as amended\)](#)).

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<sup>1</sup> Section 5 of the Licensing Act 2003 (as amended)

- 2.4 The aim of the Policy is to promote the four licensing objectives; prevention of crime and disorder, public safety, prevention of public nuisance and protection of children from harm, and seeks to balance the interests of both businesses and residents to make sure Three Rivers continues to offer a wide choice of high quality and well managed premises within a safe and orderly environment.
- 2.5 The Policy also sets out the approach and principles that the Council will generally apply when carrying out its functions under the 2003 Act. It underpins policy and procedure by setting out the approach the Council will take when determining applications for new licences, variations and reviews and provides general guidance to applicants, operators and those affected by licensable activities. At the same time however, the Policy must not undermine the right of any individual to apply for any of the variety of permissions under the 2003 Act and for that application to be considered on its individual merit.

### **3 Key changes to the Policy**

- 3.1 The previous review in 2015/2016 included the following changes to the Policy:
- Removed the requirement to consult the nearest 30 residential premises
  - Live Music and Recorded Music held on premises licenced for the sale of alcohol for consumption on the premises are no longer considered to be regulated entertainment and therefore, require no authorisation if conducted between 8am and 11pm daily.
- 3.2 Under the current review the following changes are proposed:
- Reference has been made to changes to regulations & guidance following the outbreak of Covid-19 (Coronavirus) and the new temporary pavement licence process.
  - Update to the list of consultees which has changed since the last review of the policy.
  - Details of how to apply for licences has been updated as we no longer accept hard copies of applications unless there are exceptional circumstances.
  - More concise details on what is required when preparing conditions for an Operating Schedule
  - Removal of LP9.5 in relation to the refusal of an application for a garage/petrol station.
  - Inclusion of how licenced premises intend to use their outside space and the requirement for regular perimeter checks.
  - The specific reference to occupancy limits in line with Fire Safety (Regulations) Order 2004
  - Reference to Health & Safety at Work Act 1974
  - Important reference to Child Sexual Exploitation CSE requirements
  - The addition of 'Control Measures' and details on how these can be achieved.

- The reference to mandatory conditions on ALL licenses.
- The inclusion of having regard to the Equality Act 2010
- Details included on how we deal with complaints against a premises & Licence Reviews
- Confirmation of Cumulative Impact Assessment in accordance with Policing & crime Act 2017.
- Updates to contact details and addresses within Appendix B of the Policy

#### **4 Options and Reasons for Recommendations**

4.1 Following discussion at Committee, there are 3 options available for Members:

**Option 1:** That the Committee note the report and agree to consult on the revised Statement of Licensing Policy 2021-2026, which has been updated and amended, for a period of consultation lasting 6 weeks. The Policy will be returned to Licensing Committee for final comments and recommendation for adoption as soon as practicable to reduce risk (see 8.1 & 12.2).

**Option 2:** That Members agree to further amendments/consideration prior to the Policy going out to public consultation. This would require the report and revised Policy to come back to the Licensing Committee prior to public consultation.

**Option 3:** Do nothing.

#### **5 Policy/Budget Reference and Implications**

- 5.1 The recommendations in this report are within the Council's agreed budgets.
- 5.2 The revised Policy if adopted will need to be reviewed from April 2025, providing Officers more than ample time to undertake a review in time before the revised Policy expires.
- 5.3 It should also be noted that as part of the consultation process there will be fees associated with advertising, for example, by placing a statutory notice in the Watford Observer.
- 5.4 The Policy will remain valid for a period of 5 years but may be subject to further review and consultation at any time during that period.
- 5.5 There are no performance indicators impacted.

#### **6 Staffing, Environmental, Community Safety & Public Health Implications**

6.1 None specific.

#### **7 Financial Implications**

6.1 There are no financial implications.

#### **8 Legal Implications**

8.1 The continued adoption of the existing Policy (as agreed by Full Council on 8 December) and a timescale of implementation of the new Policy follows a Licensing

law specialist Counsel advice which was previously sought and circulated. It was noted that if the Policy was not reviewed and implemented, there would be a breach of its statutory duty under Section 5 of the Act. The expedited implementation of the reviewed and updated new Policy for 2021-2026 will limit the implications of such breach.

- 8.2 Officers have sought to further reduce the potential risk to the Council by reviewing the Policy sooner and if agreed, to commence a public consultation prior to the current policy's expiry in January. Subject to future Member agreement, it is possible to adopt the Policy by 23 February 2021. This would significantly reduce any legal risk that may arise.

## 9 Equal Opportunities Implications

### 9.1 Relevance Test

Has a relevance test been completed for Equality Impact?	No
Did the relevance test conclude a full impact assessment was required?	Not applicable

### 9.2 Impact Assessment

- 9.2.1 There is no detrimental impact likely towards any protected group from introducing the Policy.

## 10 Customer Services Centre (CSC) Implications

- 10.1 If agreed, all CSC staff will be made aware of the policy consultation.

## 11 Communications and Website Implications

- 11.1 As part of the review a consultation period will be required for 6 weeks. As a result it will be necessary to publish the document on the Three Rivers website including social media platforms.

## 12 Risk and Health & Safety Implications

- 12.1 The Council has agreed its risk management strategy which can be found on the website at <http://www.threerivers.gov.uk>. In addition, the risks of the proposals in the report have also been assessed against the Council's duties under Health and Safety legislation relating to employees, visitors and persons affected by our operations. The risk management implications of this report are detailed below.
- 12.2 The subject of this report is covered by the Regulatory Service Plan. Any risks resulting from this report will be included in the risk register and, if necessary, managed within this plan.

Nature of Risk	Consequence	Suggested Control Measures	Response <i>(tolerate, treat terminate, transfer)</i>	Risk Rating <i>(combination of likelihood and impact)</i>
<p><b>Option 1:</b></p> <p>That the Committee note the report and agree to adopt the revised Statement of Licensing Policy 2021-2026, which has been updated and amended, subject to a period of consultation lasting 6 weeks</p>	<p>This will ensure the Council is fulfilling its statutory duty under the Licensing Act 2003 in reviewing and adopting its Policy every 5 years. However, minor risk remains as the existing Policy expires on 7 January 2021.</p>	<p>Officers have already sought agreement from Council to continue to adopt the existing Policy and follow a strict timetable to implement the new revised Policy. These are mitigating measures in the event of any legal challenge to reduce the Council's risk.</p> <p>Officers to carefully consider the weight given to the expired Policy after the 7 January 2021.</p>	<p>Treat.</p>	<p><b>Low 2;</b> By commencing the consultation process prior to the expiry of the existing Policy the Council will be closer to adopting the amended policy.</p> <p>Any appeals which are likely to be heard after 7 January 2021 will take time to go through the Courts meaning it is highly likely that the amended Policy will be in force by the time the appeal is heard.</p>
<p><b>Option 2:</b></p> <p>That Members agree to further amendments/ consideration prior to the Policy going out to public consultation. This would require the report to come back to the</p>	<p>This will ensure the Council is fulfilling its statutory duty under the Licensing Act 2003 in reviewing and adopting its Policy every 5 years. However, the longer the Policy is not adopted the</p>	<p>Officers have already sought agreement from Council to continue to adopt the existing Policy and follow a strict timetable to implement the new revised Policy. These are mitigating measures in</p>	<p>Treat.</p>	<p><b>Low 3;</b> The risk would be greater the longer the Policy is not adopted.</p> <p>Mitigation measures to reduce risk already agreed following resolution to</p>

Licensing Committee at a later date and its adoption delayed.	greater the risk of a legal challenge.	the event of any legal challenge to reduce the Council's risk.  Officers to make the necessary changes and bring back to Licensing Committee at the earliest opportunity.  Review would be on-going.		continue to adopt existing Policy until new revised Policy is in place.
<b>Option 3:</b> Do nothing.	The Council would not be fulfilling its statutory duty under the Licensing Act 2003 in reviewing and adopting its Policy every 5 years.	Officers to advice against this approach to avoid legal challenges and failure of statutory duty.	Treat.	<b>High 8</b>

12.3 The above risks are scored using the matrix below. The Council has determined its aversion to risk and is prepared to tolerate risks where the combination of impact and likelihood scores 6 or less.

<b>Very Likely</b> <b>Remote</b> ----- <b>Likelihood</b>	<b>Low</b> 4	<b>High</b> 8	<b>Very High</b> 12	<b>Very High</b> 16
	<b>Low</b> 3	<b>Medium</b> 6	<b>High</b> 9	<b>Very High</b> 12
	<b>Low</b> 2	<b>Low</b> 4	<b>Medium</b> 6	<b>High</b> 8



Background Papers: None.

## **APPENDICES**

**Appendix A:** Current Statement of Licensing Policy 2016-2021

**Appendix B:** Licensing Committee report (2 December 2020).

**Appendix C:** Revised Schedule of Implementation of amended Policy agreed at Full Council on 8 December 2020.

**Appendix D:** Consultation document - Statement of Licensing Policy 2021-2026 ("the Policy")