

LICENSING COMMITTEE – 10 FEBRUARY 2021

PART I – NOT DELEGATED

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

1 Summary

- 1.1 The Licensing Act 2003 (as amended) (“the 2003 Act”)¹ 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 (for 2011-2016) and then reviewed and re-published in its updated form on 7 January 2016 (for 2016-2021). 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 2020 (see **Appendix C**).
- 1.6 Officers completed a review in accordance with the 2003 Act taking into account latest guidance and other relevant considerations. At the Extraordinary Licensing Committee on 22 December 2020, Members agreed to minor amendments to the draft Policy and a public consultation. **Appendix D** provides a draft of the proposed consultation document with all proposed changes incorporated, subject to approval.
- 1.7 From 23 December 2020 Officers commenced a 6 week public consultation which expires on 3 February 2021.

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

¹ Section 5 of the Licensing Act 2003 (as amended)

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 \(as amended\)](#)).

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 included:

- 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

3.2.1 At the Extraordinary Licensing Committee on 22 December 2020 a number of minor changes were incorporated into the Policy. Additionally Officers advised that there were no issues currently across the District which would warrant a Cumulative Impact Policy (CIP). However, it was recognised that in the future if there was to be an increase in anti-social behaviour or crime and disorder surrounding licensed premises this could be re-visited, in accordance with required procedure to implement a Cumulative Impact Policy, during the period when the new Policy is in force.

4 Consultation exercise

4.1 On 23 December 2020 Officers commenced a 6 week public consultation which was in line with Section 5(3) of the 2003 Act. The following were informed:

- 205 holders of premises licences
- 32 holders of club premises certificates
- 877 holders of personal licences
- The Police
- Fire and Rescue Authority
- The relevant enforcing authority under Health & Safety at Work etc Act 1974
- TRDC Local Planning Authority
- TRDC Environmental Health department for the prevention of public nuisance
- Responsible body for the safeguarding of Children - Child Protection Authority
- Hertfordshire Trading Standards
- Hertfordshire Public Health
- Home Office Immigration Enforcement
- All Parish Councils
- All Councillors

4.2 The Policy was made available on the Licensing webpage and a Public Notice was placed in the Watford Observer.

4.3 At the time of writing this report no comments had been received. Any comments received after the publication of this report will be verbally updated.

5 Options and Reasons for Recommendations

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

Option 1: Authorise Officers to adopt the Policy (as consulted upon).

Option 2: Authorise Officers to make further changes on the Policy following any responses received and adopt the Policy.

Option 3: Decide not to adopt the amended Policy (whereby the Council will be in breach of its statutory duty).

6 Policy/Budget Reference and Implications

6.1 The recommendations in this report are within the Council's agreed budgets.

6.2 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.

6.3 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.

6.4 There are no performance indicators impacted.

7 Staffing, Environmental, Community Safety & Public Health Implications

7.1 None specific.

8 Financial Implications

8.1 There are no financial implications.

9 Legal Implications

9.1 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's 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 remove the implications of such breach.

9.2 If agreed by Members, the Policy can be fully ratified at Full Council on 23 February 2021.

10 Equal Opportunities Implications

10.1 Relevance Test

Has a relevance test been completed for Equality Impact?	No
Did the relevance test conclude a full impact assessment was required?	N/A

11. Impact Assessment

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

12. Customer Services Centre Implications

12.1 None.

13. Communications and Website Implications

13.1 If agreed and adopted the Policy will be displayed on the TRDC website and can be published via TRDC social media platforms.

14. Risk and Health & Safety Implications

14.1 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.

14.2 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/these plan(s).

Nature of Risk	Consequence	Suggested Control Measures	Response <i>(tolerate, treat, terminate, transfer)</i>	Risk Rating <i>(combination of likelihood and impact)</i>
Option 1: Authorise Officers to adopt the Policy	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, very minor risk remains as the existing Policy expired on 7 th January 2021;	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	Treat.	Low 2.

	however, the Policy may be ratified on 27 February via Full Council.	challenge to reduce the Council's risk. Officers have followed this timetable. Officers to carefully consider the weight given to the expired Policy after the 7 th January 2021.		
Option 2: Authorise Officers to make further changes on the Policy following any responses received	Further delays will inevitably add more risk to the Council given the existing Policy has expired.	Officers to make the necessary changes and bring back to Licensing Committee at the earliest opportunity. Mitigation measures to reduce risk already agreed following resolution to continue to adopt existing Policy until new revised Policy is in place.	Treat.	Low 3.
Option 3: Decide not to adopt the amended Policy.	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.	High 8

14.3 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.

Very Likely ----- Likelihood ----- ▼ Remote	Low 4	High 8	Very High 12	Very High 16
	Low 3	Medium 6	High 9	Very High 12
	Low 2	Low 4	Medium 6	High 8
	Low 1	Low 2	Low 3	Low 4
Impact ----- Low -----> Unacceptable				

Impact Score

4 (Catastrophic)

3 (Critical)

2 (Significant)

1 (Marginal)

Likelihood Score

4 (Very Likely (≥80%))

3 (Likely (21-79%))

2 (Unlikely (6-20%))

1 (Remote (≤5%))

14.4 In the officers' opinion none of the new risks above, were they to come about, would seriously prejudice the achievement of the Strategic Plan and are therefore operational risks. The effectiveness of the management of operational risks is reviewed by the Audit Committee annually.

15. Recommendation

15.1 It is recommended:

- i) On expiry of the consultation period any further responses are presented and considered by the Committee and it is recommended the amended Policy 'The Licensing Act 2003 - Statement of Licensing Policy 2021-2026' is adopted

That public access to the report be immediate.

Report prepared by: (Lorna Fryer, Lead Licensing Officer)

Data Quality

Data sources:

- Licensing Act 2003 (as amended)

- The Police Reform & Social Responsibility Act 2011
- The Statutory Guidance issued in accordance with section 182 Licensing Act 2003, published in October 2012
- Revised guidance issued under section 182 of the Licensing Act 2003 (April 2018)

Data checked by: Matthew Roberts, Team Leader, Development Management

Data rating:

1	Poor	
2	Sufficient	
3	High	X

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")