

BIRMINGHAM CITY COUNCIL

**REPORT OF THE INTERIM ASSISTANT DIRECTOR OF
REGULATION AND ENFORCEMENT
TO THE LICENSING AND PUBLIC PROTECTION COMMITTEE**

NOVEMBER 2020
ALL WARDS

INTERIM STATEMENT OF LICENSING POLICY 2020
CONSULTATION REPORT

1. Summary

- 1.1 The City Council as the Licensing Authority is required to determine and publish its Statement of Licensing Policy at least every five years, and keep it under review and make such revisions to it at such times, as it considers appropriate.
- 1.2 This is a requirement of the Licensing Act 2003 ('The Act').
- 1.3 The purpose of this report is to introduce the review process and inform the Licensing and Public Protection Committee of the current situation. A verbal update will be provided with any significant comments received as part of the consultation.
- 1.4 In order to take effect, the policy and scheme of delegation must be approved by City Council. The deadline for reports to City Council is 19th November 2020.

2. Recommendation

- 2.1 That having undertaken a statutory consultation on the City Council's Statement of Licensing Policy for a 4 week period commencing on Friday 16th October 2020 and having regard to the responses received, that Committee consider the draft Policy attached at Appendix 1 to this report and, subject to the matters detailed within the report commends the draft Interim Policy to City Council for approval in December 2020.

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3. Background

- 3.1 The current Statement of Licensing Policy has been in effect since 2015. The next full review being due in 2020.
- 3.2 The full review, including Cumulative Impact Assessment was due to be commenced in the spring of 2020. Unfortunately, owing to the pressing need to respond to urgent operational matters resulting from the Coronavirus Pandemic, the work was not able to be started as planned.
- 3.3 In April 2020 the Local Government Association published a document entitled: *Approaches to managing licensing and related issues during the COVID-19 pandemic Advice for licensing authorities.*
<https://www.local.gov.uk/approaches-managing-licensing-and-related-issues-during-covid-19-pandemic>
In which they stated:
Councils may want to consider with members whether it would be pragmatic to delay their consultations given the current challenges in effectively engaging with the local trade and residents. The LGA has flagged to the Home Office that this should be acceptable, assuming work is progressed once some level of normality has returned.
- 3.4 In August 2020, the Leader of Birmingham City Council, in company with the leaders of Leeds, Manchester and Westminster wrote to the Home Office Minister requesting confirmation of such a delay. A Copy of this letter is attached at Appendix 2. No official response has been forthcoming, but officers have been advised informally that this will not be permitted.
- 3.5 It is proposed to introduce an interim policy in order to secure legal compliance to allow sufficient time for the more in-depth work to be carried out.

4. Cumulative Impact

- 4.1 Prior to the amendments made by the Policing and Crime Act 2017, the Licensing Act 2003 did not contain any reference to 'Cumulative Impact Policies'. The only reference was included in the s182 Statutory Guidance published by the Home Office. The guidance defines Cumulative Impact as:
"the potential impact on the promotion of the licensing objectives of a number of licensed premises concentrated in one area" (para 14.20)
- 4.2 The revised s182 Guidance states:
"A cumulative impact assessment (CIA) may be published by a licensing authority to help it to limit the number or types of licence applications granted in areas where there is evidence to show that the number or density of licensed premises in the area is having a cumulative impact and leading to problems which are undermining the licensing objectives. CIAs relate to applications for new premises licences and club premises certificates and applications to vary existing

premises licences and club premises certificates in a specified area.”
(para 14.24)

- 4.3 The effect of a cumulative impact policy is to reverse the ‘presumption to grant’. In ordinary circumstances, the Licensing Act operates on a presumption that a licence will be granted unless it can be demonstrated that it should not be i.e. through objections etc. Cumulative Impact policies reverse the presumption to make it so the licence application (subject to receipt of relevant objection) would be refused, unless it can be demonstrated (by the applicant) that they will not add to the impact on the licensing objectives.
- 4.3 Such policies are only relevant in cases of new applications or variations to licences. They DO NOT affect existing licences.
- 4.4 The codification of cumulative impact in 2017 brought in evidential requirements which must be proven before such a policy can be adopted. It introduced the Cumulative Impact Assessment. This is an assessment separate to the Statement of Licensing Policy which must be revised every three years, as opposed to the five year requirement for the Statement.
- 4.5 The 2015 Statement of Licensing Policy (as amended) included a number of Cumulative Impact Policy areas. For the reasons given above, these policy areas cannot continue into the Interim Policy. Any suggestion to maintain the Cumulative Impact Policies in the 2015 policy document would present a risk of judicial review.
- 4.6 However, as is clearly stated in the s182 Guidance: *“The absence of a CIA does not prevent any responsible authority or other person making representations on an application for the grant or variation of a licence on the grounds that the premises will give rise to a negative cumulative impact on one or more of the licensing objectives, However, in each case it would be incumbent on the person making the representation to provide relevant evidence of cumulative impact”.*

5. Consultation

- 5.1 The original Policy was subject to consultation with stakeholders before being implemented in 2005. The latest revised version was approved with effect from 2015.
- 5.2 As this proposed policy does not differ from the previous policy, a brief consultation was carried out, with a view to a much more comprehensive consultation package as part of the subsequent review. This subsequent review to be carried out in 2021.
- 5.3 Consultation commenced with stakeholders, including (but not limited to) the list of statutory Consultees, being:

- The chief officer of police for the licensing authority's area,
- The fire and rescue authority for that area,
- Such persons as the licensing authority considers to be representative of holders of premises licences issued by that authority,
- Such persons as the licensing authority considers to be representative of holders of club premises certificates issued by that authority,
- Such persons as the licensing authority considers to be representative of holders of personal licences issued by that authority, and
- Such other persons as the licensing authority considers to be representative of businesses and residents in its area.

3.7 The public consultation was for four weeks, from 16th October to 13th November. Should there be any relevant consultation responses which would require revision to the document, these will need to be considered. In the absence of any material issues being raised, the draft document will be presented to City Council on 1st December for approval.

6. Implications for Resources

6.1 The cost of devising and maintaining a Statement of Licensing Policy is included within the existing Licence fee structure. Carrying out a full review will be labour intensive in terms of officer hours and may require external expert support.

6.2 Any proposal to maintain the Cumulative Impact Policies in the 2015 policy document would present a risk of judicial review. Any decisions made by the sub-committee citing the CIP would also be susceptible to a judicial review.

7. Implications for Policy Priorities

7.1 The issues addressed in this report relate to the City Council priorities associated with creating a cleaner, greener and safer city and providing excellent services, as well as laying the foundations for a prosperous city, built on an inclusive economy; Involving local people and communities in the future of their local area and their public services – a city with local services for local people.

9. Public Sector Equality Duty

9.1 The benefit of an agreed Policy is to ensure a consistent approach.

9.2 The Government carried out an equality impact assessment of the legislation which found that no unintended or disproportionate impact is likely. It is not

anticipated any amendments to be made as a result of this review would require an Equality Impact Assessment.

9.3 Section 5 of the Licensing Act 2003 requires the Licensing Authority to publish a Statement of Licensing Policy. Section 5(3) of the Act specifies those who must be consulted on the Policy and subsequent Policy reviews.

9.4 Under the Duty we must have regard to the need to:

- Eliminate unlawful discrimination, harassment, and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

9.5 The recommendations contained in this report will not have any effect on any of our duties under the Equality Act 2010. Any future changes to policy will be subject to separate consideration of this duty.

9.6 For the reasons set out above it is considered an initial Equality Analysis is not deemed appropriate or necessary.

INTERIM ASSISTANT DIRECTOR OF REGULATION AND ENFORCEMENT

Background Papers: Nil

APPENDIX 2



Kit Malthouse MP
Minister of State (Minister for Crime and
Policing)

19th August 2020

Via e-mail

Dear Minister,

Request for the extension of the 5-year statutory requirement for Licensing Authorities to revise their Statements of Licensing Policy under the Licensing Act 2003.

As you understand, the Covid-19 pandemic has put immense pressure and challenges on Local Government to deal with not only the public health emergency but also to support businesses in the recovery. The Hospitality Sector has been particularly hit by the pandemic with businesses struggling to operate under the current social distancing restrictions and a drop of more than 60% in footfall compared to the same period last year. These are unprecedented times and we are pleased that the Government has committed to support the Hospitality Sector amongst other struggling sectors.

Our Authorities have over 12,000 licensed businesses under the Licensing Act 2003 (the 2003 Act). We have done a huge amount to support our local hospitality sectors to reopen. As well as providing additional outside seating, we are encouraging residents and workers to make use of the diverse hospitality offer.

Like most Local Authorities across the Country we are required to revise and publish our Statement of Licensing Policy (Policy) under section 5 of the 2003 Act before the end of this year. In revising our Policy, we must have regard to any cumulative impact assessment that the Council has published. The problem that our authorities now face is that our night-time economy statistical data, which we would have relied upon for this process prior to March 2020, does not represent the reality which we are now in. As businesses have been forced to close, residents have remained at home and the emergency services have worked hard to deal with the pandemic it has been difficult to consult with key stakeholders on policy revision.

We find ourselves in an extremely difficult position where we are required by law to produce a revised policy on how we are to administer the Licensing regime and promote the Licensing Objectives without the ability to fully understand what the future looks like.

In Westminster's case they have undertaken research on the cumulative impact within the West End prior to the lock down. However, that research was based on the operation of the Hospitality Sector and the local impact prior to the pandemic. If Westminster were to progress with the production of a

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Cumulative Impact Assessment, it would be required under the 2003 Act to consult on implementing a more restrictive licensing policy which would be totally counterproductive to the aims to support business to recover. Manchester and Birmingham City Councils are also in a similar position.

We would, therefore, request that you consider using your powers under section 5(7) of the 2003 Act to provide a temporary extension to the current 5-year policy deadline for a period of 2 years. This would enable Local Authorities to liaise with key stakeholders to develop a policy approach to support the recovery of businesses in the post Covid-19 economy. This change will not adversely affect local authorities, businesses or residents. The government has already taken similar steps to amend legislation to provide relaxations of regulatory deadlines and control to support businesses in the recovery. If you were to agree to use your powers under the 2003 Act to implement this proposal, we would be able to continue with our current Licensing Policies whilst we work with key partners and businesses to understand what the new normal is. These are truly unique circumstances and our proposal would support the wider aims of the government to assist businesses, and particularly the Hospitality Sector to recover.

In addition to Birmingham, Leeds, Manchester and Westminster, who are requesting this amendment to the 2003 Act, this proposal is also supported by the LGA's Safer and Stronger Communities Board, Basingstoke and Deane Borough Council & Hart District Council, Fareham Borough Council, Gosport Borough Council, London Borough of Bromley, London Borough of Haringey, London Borough of Tower Hamlets, Maidstone Borough Council, New Forest District Council, Royal Borough of Windsor & Maidenhead, Runnymede Borough Council, Slough Borough Council, Spelthorne Borough Council and York City Council.

We would be happy to brief you with more detail if this would help you to understand the issues and why we feel strongly that this change in law would be beneficial for business and local authorities.

Councillor Rachael Robathan
Leader of the Council
Westminster City Council

Councillor Ian Ward
Leader of the Council
Birmingham City Council

Councillor Judith Blake
Leader of the Council
Leeds City Council

Sir Richard Leese
Leader of the Council
Manchester City Council

- c.c. - *Rt Hon Robert Jenrick MP, Secretary of State for Housing, Communities and Local Government*
- *Nickie Aiken MP, Cities of London and Westminster*
 - *Karen Buck MP, Westminster North*
 - *Mike Kane MP, Wythenshawe and Sale East, Manchester*
 - *Afzal Khan MP, Gorton, Manchester*
 - *Lucy Powell MP, Manchester Central*
 - *Jeff Smith MP, Withington, Manchester*
 - *Graham Stringer MP, Blackley and Broughton, Manchester*
 - *Shabana Mahmood MP, Ladywood, Birmingham*
 - *Gary Sambrook MP, Northfield, Birmingham*
 - *Khalid Mahmood MP, Perry Barr, Birmingham*
 - *Steve McCabe, Selly Oak, Birmingham*
 - *Andrew Mitchell MP, Sutton Coldfield, Birmingham*
 - *Jess Phillips MP, Yardley, Birmingham*
 - *Stuart Andrew MP, Pudsey, Leeds*
 - *Hilary Benn MP, Leeds Central*
 - *Richard Burgon MP, Leeds East*
 - *Fabian Hamilton MP, Leeds North East*

- *Preet Gill MP, Edgbaston, Birmingham*
- *Jack Dromey MP, Erdington, Birmingham*
- *Tahir Ali MP, Hall Green, Birmingham*
- *Liam Byrne MP, Lodge Hill, Birmingham*
- *Andrea Jenkyns MP, Morley and Outwood, Leeds*
- *Rachel Reeves MP, Leeds West*
- *Alec Shelbrooke MP, Elmet and Rothwell, Leeds*
- *Alex Sobel MP, Leeds North West*