

Birmingham City Council

City Council

1 December 2020



Subject: Interim Statement of Licensing Policy 2020
Report of: Acting Director of Neighbourhoods
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Does the report contain confidential or exempt information? Yes No

1 Executive 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 In order to take effect, the policy and scheme of delegation must be approved by City Council.

2 Motion

- 2.1 That City Council approves the Interim Statement of Licensing Policy 2020 and authorises:
 - (i) the City Solicitor to update the list of Policy Framework Plans to include the same; and
 - (ii) the Assistant Director of Regulation and Enforcement to do what is necessary to publish and comply with the same.

3 Background

- 3.1 Section 5 of the Licensing Act 2003 requires the licensing authority to determine and publish its Statement of Licensing Policy every five years.
- 3.2 The current Statement of Licensing Policy has been in effect since 2015. The next full review being due in 2020.
- 3.3 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, it was not possible to start the work as planned.

- 3.4 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.

- 3.5 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 B. No official response has been forthcoming, but officers have been advised informally that this will not be permitted.
- 3.6 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.

Cumulative Impact

- 3.7 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)

- 3.8 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)

- 3.9 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.

- 3.10 Such policies are only relevant in cases of new applications or variations to licences. They DO NOT affect existing licences.
- 3.11 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.
- 3.12 The 2015 Statement of Licensing Policy (as amended 2017) included several Cumulative Impact Policy (CIP) areas. Cumulative Impact Policies can only be referred to in the Interim Policy if a CIA has been carried out and this indicates the need for a CIP. It has not been possible to carry out any CIAs in the preceding year due to the Coronavirus pandemic. Extensive timely data is required from several partners to establish the required evidence for the introduction or maintenance of a CIP. As much of that evidence is not available (as many licenced premises have not been operating or operating on restricted hours) it is not possible to carry out CIAs. Any suggestion to maintain the Cumulative Impact Policies in the 2015 policy document would present a risk of judicial review.
- 3.13 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”.

4 Options considered and Recommended Proposal

- 4.1 When considering the requirement to determine and publish a Statement of Licensing Policy the following options were considered:
 - Retain the current Statement of Licensing Policy 2015
 - Carry out a full review of the Statement of Licensing Policy 2015
 - Carry out an interim review of the Statement of Licensing Policy to produce an interim policy
- 4.2 For the reasons outlined in section 3 above the option the first two options were not considered appropriate. As such an Interim Statement of Licensing Policy 2020 (appendix A) has been produced and consulted on.

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 2015 policy (except in terms of the removal of reference to cumulative impact policies), 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.
- 5.4 The public consultation was for four weeks, from 16th October to 13th November. One response was received proposing the inclusion of reference to the Public Sector Equality Duty (appendix C). These proposed changes have been discussed with legal advisers and have been included within the draft document and shown in section 6 of this report.

6 Redaction, addition or amendment following consultation

- 6.1 The main amendments made to the final policy following consultation are set out below.
- 6.1.1 New paragraph 6.7.1 expanding on the Equality Act including Public Sector Equality Duty.
- 6.1.2 New paragraph 14.4 clarifying that, as per the Section 182, Licensing Act 2003 guidance issued by the Home Office, a responsible authority or any other person can make representations on the variation or grant of a licence on the grounds that this will give rise to a negative cumulative impact, but it is incumbent on them to provide evidence of this.

7 Risk Management

- 7.1 The Licensing Service has sought legal advice to ensure it is compliant with the consultation process and the contents of the final policy. Advice has been received confirming that compliance.

8 Compliance Issues

- 8.1 How are the recommended decisions consistent with the City Council's priorities, plans and strategies?

8.2 The proposals within the policy support the delivery of the Council Priority “Birmingham is an entrepreneurial city to learn, work and invest in” as set out in the Birmingham City Council Plan 2018 – 2022.

8.3 Legal Implications

8.3.1 The Council’s primary statutory rights in relation to licensed premises are set out in the Licensing Act 2003.

8.3.2 In addition to activities authorised expressly under the above legislation, the Council may also do whatever is reasonably incidental to that power. This is given statutory effect in Section 111 (1) Local Government Act 1972 which states:

“Without prejudice to any powers exercisable apart from this section but subject to the provisions of this Act and any other enactment passed before or after this Act, a local authority shall have power to do anything (whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions.”

8.4 Financial Implications

8.4.1 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.

8.4.2 Any proposal to maintain the Cumulative Impact Policies stated 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.

8.5 Public Sector Equality Duty

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

8.5.2 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.

8.5.3 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.

8.5.4 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.

8.5.5 An initial equality assessment relating to the Interim Statement of Licensing Policy 2020 has been prepared (appendix D).

No specific issues have been identified that would adversely impact on our commitment to our duties under the Equality Act 2010.any specific protected character

8 Appendices

- A Interim Statement of Licensing Policy 2020
- B Joint Authority Letter
- C Consultation Responses
- D Equality Assessment
 - EQUA589 Interim Statement of Licensing Policy 2020

9 Background Documents

- 9.1 Licensing Act 2003
- 9.2 Revised guidance issued under section 182 of Licensing Act 2003