

## **REPORT OF THE EXECUTIVE DIRECTOR OF NEIGHBOURHOODS**

### **LICENSING AND REGULATORY COMMITTEE – 26 OCTOBER 2020**

#### **REVIEW OF STATEMENT OF LICENSING POLICY**

##### **1.0 PURPOSE OF THE REPORT**

- 1.1 To advise the Committee of the requirement on the Council, in its capacity of a Licensing Authority, to undertake a review of the Council's Statement of Licensing Policy, ("the Licensing Policy"), under the Licensing Act 2003, ("the Act"), and to carry out a consultation exercise as prescribed under Section 5 of the Act; and
- 1.2 To seek the Committee's approval of proposed arrangements for dealing with this review process as set out in this Report.

##### **2.0 DESCRIPTION OF DECISION**

- 2.1 The Committee is recommended to endorse and approve the following, :-
  - (a) A period of consultation is commenced with the relevant stakeholders as set out in Paragraph 3.3 of this Report to obtain comments on the proposal that the existing Statement of Licensing Policy be rolled forward as from and including from the 7<sup>th</sup> January, 2021 to the 6<sup>th</sup> January, 2026, with a review of the Licensing Policy being undertaken as and when deemed appropriate to do so within the stated five year period;
  - (b) The period of consultation commences on the 19<sup>th</sup> October, 2020 until 5pm on the 2<sup>nd</sup> November, 2020; and
  - (c) Recommend to Council that the existing Statement of Licensing Policy be rolled forward as from and including the 7<sup>th</sup> January, 2021 to the 6<sup>th</sup> January, 2026, with a review of the Licensing Policy being undertaken as and when deemed appropriate to do so within the stated five year period.

##### **3.0 INTRODUCTION / BACKGROUND**

- 3.1 Section 5 of the Act requires all Licensing Authorities to prepare and publish a Statement of Licensing Policy that they propose to apply in exercising their functions under the Act. Such Statements are to apply across a stated five year period. Pursuant to the Act, the Council's Licensing Policy is required to be approved by Council. The Licensing Policy is considered when the Council exercises its functions under the Licensing Act 2003.
- 3.2 The Council's current Licensing Policy was agreed by Council at its Meeting of the 25<sup>th</sup> November, 2015 and was subsequently published. It took effect on the 7<sup>th</sup> January, 2016 and was to have application up to and including the 6<sup>th</sup> January, 2021. A copy of this document is attached at Appendix 1. During each five year period the Council is required to keep its Licensing Policy in respect of the relevant five year period under review and to make such revisions as it considers

to be appropriate.

- 3.3 The Council's current Licensing Policy should have been subject to review during 2020, with a revised document potentially having application as from and including the 7<sup>th</sup> January, 2021. The review process requires a consultation process to be followed. Section 5(3) of the Act sets out the required consultees. As to the Council, these translate as to the following, :-

- (i) Northumbria Police;
- (ii) Tyne and Wear Fire and Rescue Service;
- (iii) Local Authority Director of Public Health;
- (iv) Representatives of the licensing trade and members' clubs;
- (v) Local businesses and their representatives; and
- (vi) Local residents and their representatives.

- 3.3 Under Section 5A of the Act the Council may publish a Cumulative Impact Assessment, ("CIA"), 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.

- 3.4 On the 19<sup>th</sup> September, 2018, following a consultation exercise, the Council approved proposals for the implementation of a CIA in respect of the following areas, :-

- The City Centre and East End, ie. parts of the Hendon, Millfield and St Michael's Wards;
- Millfield and Pallion, ie. parts of these Ward;
- Hendon, ie. parts of the Hendon and St Michael's Wards;
- Southwick;
- Shiney Row;
- Washington North; and
- Hetton, ie. parts of the Copt Hill and Hetton Wards.

- 3.5 Also, under Section 5A of the Act, after publishing a CIA the Council must, within three years, consider whether it remains of the opinion set out in the assessment. As the Council's CIA was published in September, 2018, this document is required to be reviewed no later than September, 2021. It is intended that Officers will commence the preparatory work to review the CIA in early 2021.

#### **4.0 Current Position**

- 4.1 According to the statutory procedure set out in Section 5 of the Act, the Council is required to undertake a review of its Licensing Policy, publish its revised Licensing Policy and for it to be in force from the 7<sup>th</sup> January, 2021.

- 4.2 As to the current Licensing Policy, which was reviewed in 2015, in the first instance Officers presented a Report to the Licensing Committee in July, 2015 inviting Members to approve arrangements for consultation on a revised draft Policy Statement. Following the consultation exercise the final draft was approved by Council on the 25<sup>th</sup> November, 2015. As stated above, the current

Licensing Policy was subsequently published and had effect from the 7<sup>th</sup> January, 2016 in line with the statutory procedure.

- 4.3 In preparation of a review of the current Licensing Policy, Officers had planned to administer the process following a procedure similar to that applied in 2015. Officers had intended to prepare a revised draft in readiness to present it to the Licensing and Regulatory Committee by around June, 2020. Unfortunately, for the reasons explained below, the Council is not in a position to undertake a full review of its Licensing Policy.
- 4.4 The intended review work has not been possible due to the extreme difficulties that have been caused by the existing Coronavirus Pandemic. This has included the closure of all 'On' licensed premises for an extensive period across late March, 2020 to the 3<sup>rd</sup> July, 2020. Such licensed premises have had to deal with the Covid-secure requirements that have impacted on how they trade and operate. As will be known from media reports, how licensed premises can operate in terms of restrictions and requirements is frequently changing due to the introduction of guidance and laws aimed at mitigating the public health risks posed by Coronavirus, including the reduced hours of trading. This has culminated in an unprecedented impact on the hospitality trade, including licensed premises, which is still ongoing. Compared to prior to March, 2020, the Coronavirus Pandemic has had a significant impact on the dynamics of licensable activities. Licensed premises will have seen a reduction in their income and significant changes in how they are required to operate. The impact of the Coronavirus Pandemic will take licensed premises a significant period of time to recover, if indeed they do. In the event of further lockdown measures being implemented, the position could worsen. Given the prevailing circumstances, it has not been, nor is it at present, considered to be an appropriate and satisfactory time to consult with the industry regarding the Council's Licensing Policy to any meaningful degree. It is also noted the activities of the Licensing Section have also been impacted upon during the Coronavirus Pandemic, with urgent and new areas of work having had to be prioritised, with areas of routine work being suspended or delayed.
- 4.5 There has also been some uncertainty on the part of councils, who are Licensing Authorities, about whether the Government would issue some form of dispensation to allow councils to delay their policy reviews until an appropriate time, perhaps in early 2021, ie. once the difficulties posed by the current Coronavirus Pandemic have reduced. In recent months, the Local Government Association has also been actively pursuing with the Home Office the issue of postponing reviews because of the difficulties faced by both councils and licensed businesses as a result of the Coronavirus Pandemic.
- 4.6 On the 9<sup>th</sup> October, 2020 the Council was made aware of a letter dated the 1<sup>st</sup> October, 2020 sent by the Right Honourable Kit Malthouse MP, Minister of State for Crime and Policing, to the Leaders of Westminster, Birmingham, Leeds and Manchester City Councils. A copy of this letter is attached at Appendix 2. The Minister's letter is in response to requests made by the said councils for a two year pause of the statutory requirements to review Statements of Licensing Policy and CIAs.

- 4.7 As Members will note, in his letter the Minister has stated that there are currently no provisions to alter the statutory timeframe for undertaking five-yearly reviews of Statements of Licensing Policy. As to how councils can look to meet their statutory obligations in this regard the Minister suggested the following, :-

*“In particular, when consulting on your statement of licensing policy, you could consider if it would be appropriate to undertake the statutory consultation on the basis that you propose to roll forward your existing statement of licensing policy in its current form and consider any representations that you receive in response. As you know, statements of licensing policy last for a maximum of five years but you are required to keep your statement under review during that period, and to make revisions if appropriate before that period has expired. You may, therefore, want to consider committing to a further review when it is feasible to do so after the pandemic has passed”.*

- 4.8 Following consultation with the Chair of the Licensing and Regulatory Committee, Councillor Fletcher, and subject to being endorsed and approved by the Committee, a consultation process was commenced on the 19<sup>th</sup> October, 2020. This was done in view of the prevailing timescales and to enable matters to be considered by Council in a timely manner prior to the existing Licensing Policy no longer having application. The approach that has been applied, and which the Committee is being asked to endorse, seeks to achieve that situation.
- 4.9 Consultation with the relevant stakeholders, as set out in Paragraph 3.3 of this Report, would run from the 19<sup>th</sup> October, 2020 until 5pm on the 2<sup>nd</sup> November, 2020. The Revised Guidance issued under Section 182 of the Licensing Act 2003 provides as follows : *“Subject to the statutory requirements, it is for each licensing authority to determine the extent of the consultation it should undertake”*. The consultation would consider the following : that the existing Statement of Licensing Policy be rolled forward as from and including the 7<sup>th</sup> January, 2021 to the 6<sup>th</sup> January, 2026, with a review of the Licensing Policy being undertaken as and when deemed appropriate to do within the stated five year period. Consultees will be advised why the Council wishes to adopt this approach. This would refer to the matters set out at Paragraphs 4.3 to 4.7 above. Responses to the consultation are required to be received in writing, or by e-mail by the Council’s Licensing Section. The specifics of this will be set out in the information that is issued to consultees, in information published on the Council’s website across a wide range of communication channels.
- 4.10 If the intended approach is approved, when the review is undertaken and the new Licensing Policy is determined following the required consultation and subsequent approval by Council, once published it could have application for five years from when it is determined to have effect. The intention is that it would have effect well before the 7<sup>th</sup> January, 2026. However, when a review is actually undertaken would depend upon the prevailing circumstances, including the position regarding the Coronavirus Pandemic. For the avoidance of any doubt, the review will be undertaken as soon as reasonably possible.
- 4.11 Accordingly, the Committee is recommended to endorse and approve the following, :-

- (a) A period of consultation is commenced with the relevant stakeholders as set out in Paragraph 3.3 of this Report to obtain comments on the proposal that the existing Statement of Licensing Policy be rolled forward as from and including from the 7<sup>th</sup> January, 2021 to the 6<sup>th</sup> January, 2026, with a review of the Licensing Policy being undertaken as and when deemed appropriate to do so within the stated five year period;
- (b) The period of consultation commences on the 19<sup>th</sup> October, 2020 until 5pm on the 2<sup>nd</sup> November, 2020; and
- (c) Recommend to Council that the existing Statement of Licensing Policy be rolled forward as from and including the 7<sup>th</sup> January, 2021 to the 6<sup>th</sup> January, 2026, with a review of the Licensing Policy being undertaken as and when deemed appropriate to do so within the stated five year period.

## **5.0 REASONS FOR DECISION**

- 5. To facilitate compliance with the requirements of the Licensing Act 2003 and to ensure that the Council continues to have a Licensing Policy in place as from and including the 7<sup>th</sup> January, 2021. The review will be undertaken as soon as reasonably possible.

## **6.0 ALTERNATIVE OPTIONS**

- 6.1 There are no alternative options available to the Council which are considered to be appropriate. The rolling forward of the Council's existing Statement of Licensing Policy as set out in the Report is the only appropriate option available.

## **7.0 RELEVANT CONSIDERATIONS**

- 7.1 It is important to ensure that the Council does not have a period of time, however short, when it does not have a Licensing Policy in force.

## **8.0 GLOSSARY**

- 8.1 No acronyms or abbreviations have been used in this Report.

## **9.0 LIST OF APPENDICES**

- 9.1 Appendix 1 : The Council's Licensing Act 2003 Statement of Licensing Policy; and
- 9.2 Appendix 2 : Copy of letter from the Right Honourable Kit Malthouse, MP, Minister of State for Crime and Policing.

## **10.0 Background Papers**

- 10.1 None.