

Full Council

7 July 2020



Report of: Strategic Director, Growth and Regeneration

Title: Council's Statement of Licensing Policy and Cumulative Impact Assessment Policy

Ward: Citywide

Member Presenting Report: Councillor Afzal Shah

Recommendation

That having consulted upon its proposed policy for the five year period from 2020-2025, and having had regard to the guidance issued by the Secretary of State under Section 182 of the Licensing Act 2003, the Licensing Authority for Bristol resolves to :-

- (i) determine its statement of licensing policy with respect to the exercise of its licensing functions in respect of a period of five years beginning with 1 August 2020 annexed as Appendix 1,
- (ii) direct that this policy be published on the Council's web pages before that date.
- (iii) determine that it is not appropriate to publish a Cumulative Impact Assessment Policy at this time.
- (iv) to approve a consultation on a draft Cumulative Impact Assessment Policy in respect of the city centre with a revised boundary which will exclude the Broadmead area, annexed as Appendix 2.

Summary

To consider the responses to the consultation on the Council's proposed Statement of Licensing Policy under Section 5 of the Licensing Act 2003 and to determine the policy for the five year period beginning with 1 August 2020. The Licensing Authority is under a duty to keep its policy under review and make such revisions as appropriate during each five year period.

To consider the response to the consultation on the Council's proposed Cumulative Impact Assessment Policy under section 5A of the Licensing Act 2003. In light of the evidence determine that it is not appropriate to adopt a policy at this time, but approve that officers carry out a public consultation in respect of a draft Cumulative Impact Assessment Policy for the city centre which would exclude Broadmead due to the lack of evidence in supporting its retention within the area of the CIA.

The significant issues in the report are:

- Licensing policy context and role of Full Council (paras.4-5)
- Cumulative Impact Assessment Policy evidence (paras.13-15)
- Consultation responses (para.12)

Policy

1. The report recommends adoption of the Council’s Statement of Licensing Policy for a five year period as required under statute. It is recommended that no Cumulative Impact Assessment Policy is published at this time. However in light of the information received from Avon and Somerset Constabulary the report seeks approval to carry out a consultation on a Cumulative Impact Assessment Policy for the city centre. The draft policy largely mirrors the one that is currently in place for the city centre with the exception of a revised boundary which excludes the Broadmead area. Evidence received in relation to the existing Cumulative Impact Areas located outside of the centre is insufficient to support their retention. In addition, in their response, Avon and Somerset Constabulary state that these Cumulative Impact Areas are no longer a necessary requirement.

Consultation

2. **Internal**
The licensing working group has consulted with officers from the Council’s legal services and licensing teams.
3. **External**
A list of all those individuals and organisations who have participated in the consultation process is contained in Appendix 3.

Context

4. The Licensing Authority must in respect of each five year period determine and publish a statement of Licensing Policy. Before determining such a policy section 5(3) of the Licensing Act 2003 places a statutory duty on the Authority to consult. The Licensing Authority is under a duty to keep its policy under review and make such revisions as it considers appropriate during each five-year period. Section 5(3) applies in relation to any review of an Authority’s policy as it applies in relation to the determination of that policy. Where revisions are made the authority must publish a statement of the revisions or the revised licensing statement. Only the Full Council can make these decisions, no delegation is permitted to committees or officers of these tasks. The Licensing Committee established an officer/member working group to provide practical assistance to the Full Council in meeting its obligation to keep its Statement of Licensing Policy under review.
5. The Council’s current policy includes reference to a number of Cumulative Impact Areas. When the policy was published in August 2015 cumulative impact was a concept introduced in the Government’s Section 182 Guidance issued under the Licensing Act 2003. The Policing and Crime Act 2017, with effect from 6 April 2018, introduced cumulative impact policies into law so that they now have a legal footing.

The Licensing Act 2003 now states a licensing authority may publish a document (a Cumulative Impact Assessment) stating that it considers that the number of premises licences or club premises certificates is at such a level that it would be inconsistent with the promotion of the licensing objectives to grant any further licences or certificates in that area and restrict changes to licensable activities of existing licences.

A Cumulative Impact Assessment must set out the evidence for the authority's opinion and before publishing the assessment the authority must consult with those affected, including the public, businesses and responsible authorities. The assessment must be reviewed every three years. A Cumulative Impact Assessment policy is a separate policy document to the Council’s Statement of Licensing Policy.

6. The officer/member working group undertook a call for evidence to seek the views of the responsible authorities under the Licensing Act 2003 and other interested parties with regard to the operation of the existing Cumulative Impact Areas prior to the full consultation. This helped inform the subsequent consultation survey.
7. The draft policy (attached at Appendix 1) is a new policy however it reproduces the majority of the previous policy with amendments including:
 - a. Introduction of Cumulative Impact Assessments into the Licensing Act 2003 (para 6.3.6).
 - b. The removal of the Model Operating Schedules from the Statement of Licensing Policy. Template Operating Schedules will be published separate from the policy to help inform applicants (para 2.14).
 - c. The importance of integration with other relevant local strategies (para 2.15).
 - d. The adoption of the Agent of Change principle into the policy (para 8.1).

A full list of all changes is available at Appendix 4.

8. At a meeting of Full Council on 16 July 2019 approval was given to consult on a new draft policy. The consultation initially ran from 1 August 2019 to 31 October 2019, and was then extended until 14 November 2019 for reasons detailed below. 156 responses were received to the survey with a further 43 written responses received separate to the survey.
9. With regard to the Statement of Licensing Policy and a Cumulative Impact Assessment Policy Section 5(3) of the Licensing Act 2003 requires the Council to consult with:

- (a) the chief officer of police for the licensing authority’s area,*
- (b) the fire and rescue authority for that area,*
- (ba) each Local Health Board for an area any part of which is in the licensing authority's area,]*
- (bb) each local authority in England whose public health functions within the meaning of the National Health Service Act 2006 are exercisable in respect of an area any part of which is in the licensing authority's area,]*
- (c) such persons as the licensing authority considers to be representative of holders of premises licences issued by that authority,*
- (d) such persons as the licensing authority considers to be representative of holders of club premises certificates issued by that authority,*
- (e) such persons as the licensing authority considers to be representative of holders of personal licences issued by that authority, and*
- (f) such other persons as the licensing authority considers to be representative of businesses and residents in its area.*

The Council is not required, for example, to consult with all premises licence holders or club premises certificate holders. Para 2.8 of the Council’s current Statement of Licensing Policy states:

The Council is able to go beyond the minimum statutory requirements. It has actively sought the views of all stakeholders on its proposals and not just those persons who are representative of them.

The same approach has been followed with this consultation. Letters advising of the consultation were sent to all premises licence holders at the premises licence holders address, as specified on their premises licence. Section 33 of the Licensing Act 2003 states:

33 Notification of change of name or address

(1) The holder of a premises licence must, as soon as is reasonably practicable, notify the relevant licensing authority of any change in—

(a) his name or address,

A number of letters were returned to the licensing authority as undelivered as the addressee had gone away. Where this occurred a further letter was sent to the licensed premises address to inform the occupier of the consultation. Officers attended a meeting of the Bristol @ Night Advisory Panel where they were advised that many premises licence holders had not received the letter. To ensure all parties had the opportunity to respond a further letter was then sent to the address of all licensed premises in Bristol, and the consultation was extended by a two week period to 14 November 2019 to allow adequate time to respond.

10. In addition to contact with premises licence holders (and Club Premises Certificate holders) contact was also made with local residents groups, a variety of charities, legal firms, and local Business Improvement Districts. All of the responsible authorities under the Licensing Act 2003 were also consulted. The consultation survey was also available on the Council’s Consultation & Engagement Hub.
11. Information submitted by Avon and Somerset Constabulary is attached at Appendix 5. Clarification was sought on a number of points which resulted in a further submission, attached at Appendix 6.
12. Copies of all survey responses to the consultation, the Secretary of States guidance, the draft policy that was consulted upon and the current policy are available in ModernGov Library. All members should consider the full responses as part of their consideration of this report.

Proposal

13. Following the consultation outlined at paragraphs 8-10 officers have produced a revised draft Statement of Licensing Policy attached as Appendix 1. The issues raised through the consultation process and officers comments where appropriate are included in Appendix 7.
14. The results from the consultation survey with regard to each of the existing Cumulative Impact

Areas are attached at Appendix 8. Information submitted by Avon and Somerset Constabulary is attached at Appendix 5 and Appendix 6. In relation to the existing Cumulative Impact Areas for Clifton, Gloucester Road, Whiteladies Road and Bedminster and Southville the working group considered that the submissions do not provide sufficient evidence to support the adoption of a Cumulative Impact Assessment Policy at this time. The working group also noted that Avon and Somerset Constabulary did not support their retention. It is important to recognise that a policy can only be introduced if there is evidence to show it is warranted, it cannot be aspirational. The authority must distinguish between statements of support and evidence. The changes in legislation as a result of the Policing and Crime Act 2017, referenced in paragraph 5, place a greater burden of responsibility on the Licensing Authority to justify implementing Cumulative Impact Areas. The council can review the requirement for any Cumulative Impact Area at any time should evidence suggest they are necessary to promote the licensing objectives.

15. In relation to the city centre Cumulative Impact Area the working group considered that there was sufficient evidence to justify its retention. The working group agreed with Avon and Somerset Constabulary’s recommendation to exclude the Broadmead area from the scope of the policy on the basis there is insufficient evidence to justify its inclusion. The working group considered that no changes were necessary to the existing scope (reasons) for the city centre Cumulative Impact Area. The area continues to have a significant concentration of alcohol led late night venues and the evidence presented by Avon and Somerset Constabulary shows the area continues to witness a high number of Police related incidents and other related crime and disorder including public nuisance and risk to public safety. It is proposed that the main focus of the policy will be on alcohol led establishments and premises that keep customers in the area at times when the promotion of the licensing objectives is most challenging.

The draft Cumulative Impact Assessment Policy is attached at Appendix 2. It is recommended that a public consultation is carried out in relation to this amended city centre Cumulative Impact Assessment Policy to ensure all relevant factors have been considered. This includes considering the impact of Covid-19 on the hospitality sector within the city centre area which has caused severe disruption. This does mean that no Cumulative Impact Area will be in place for the city centre from 1 August 2020. However the Council’s Statement of Licensing Policy makes it clear that the cumulative impact of licensed premises can still be taken into account irrespective of the absence of a policy. The consultation should run for a two month period with the results being brought back to the Licensing Committee for consideration. Should the Licensing Committee approve a Cumulative Impact Assessment Policy for the city centre a report will be brought back to Full Council in order to update the Statement of Licensing Policy with a summary of the Cumulative Impact Assessment Policy.

16. As mentioned at paragraph 7 it is proposed to remove the Model Operating Schedules from the policy. As detailed at Appendix 7 comments were received regarding the approach taken by the Authority in relation to the Model Operating Schedules. The working group considers that it would be appropriate to remove the Schedules in their entirety as minimum standards that are expected of all operators. Instead the amended Schedules, attached at Appendix 9 will be available as Template Operating Schedules to provide information to applicants on conditions that may be appropriate for certain types of licensed venues. As with the current Pools of Conditions this will not form part of the Statement of Licensing Policy but will be available for applicants and responsible authorities to draw upon as necessary. This approach will help ensure that each licence is tailored to the individual needs of the premises concerned.

17. A copy of all written responses to the consultation is attached at Appendix 10.

Other Options Considered

18. No other options considered.

Risk Assessment

The publication of the Statement of Licensing Policy is a statutory requirement and a new policy must be published by 1 August 2020. Failure to do so would leave the Council open to legal challenge. The adoption of a Cumulative Impact Assessment Policy is discretionary. However if published the policy must set out the evidence to support the authority’s opinion that it would be inconsistent with the promotion of the licensing objectives to grant any further relevant authorisations in respect of premises in any given area designated under the policy. Insufficient evidence to support such a policy is held by the Council at this time. Adoption of a policy without sufficient evidence would leave the Council open to legal challenge.

Public Sector Equality Duties

- 8a) Before making a decision, section 149 Equality Act 2010 requires that each decision-maker considers the need to promote equality for persons with the following “protected characteristics”: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation. Each decision-maker must, therefore, have due regard to the need to:
- i) Eliminate discrimination, harassment, victimisation and any other conduct prohibited under the Equality Act 2010.
 - ii) Advance equality of opportunity between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to --
 - remove or minimise disadvantage suffered by persons who share a relevant protected characteristic;
 - take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of people who do not share it (in relation to disabled people, this includes, in particular, steps to take account of disabled persons’ disabilities);
 - encourage persons who share a protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
 - iii) Foster good relations between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to –
 - tackle prejudice; and
 - promote understanding.

- 8b) Officers have completed an Equalities Impact Assessment for each policy attached as Appendix 11. The risks identified were minimal and the policy ensures that the Council is well placed to identify any adverse impact in respect of all protected groups when it is engaged in considering applications.

Legal and Resource Implications

Legal

Officer comments within this report reflect the collective views of relevant officers including representatives of the Head of Legal Services.

The Licensing Authority must, in respect of each five year period, consult upon, determine and publish its statement of Licensing Policy. This is a function that cannot be the responsibility of the Council’s Executive (i.e. The mayor and cabinet). It is a decision that only the full council may make; delegation to Committees or officers is not permitted.

The Licensing Act 2003 places a statutory duty on the Authority to consult with specified persons and bodies and the report reflects that this has been done in connection with the draft policy previously agreed by full council. The full council must now consider the responses that have been made.

Case law guides on what constitutes lawful consultation and from this some key principles have been established. In summary, those being consulted must:

- (i) be provided with material upon which a decision is likely to be made;
- (ii) be given enough time for intelligent consideration of that material and to respond to it;
- (iii) be given the opportunity to make considered representations; and
- (iv) have those representations conscientiously taken into account before a decision is made

The consideration of the responses and the decision whether to adopt this proposed policy are called “licensing functions” in The Act. The Council must carry out its licensing functions with a view to promoting the four licensing objectives, which are –

- the prevention of crime and disorder
- public safety
- the prevention of public nuisance
- the protection of children from harm

The statement of licensing policy must include a summary of any cumulative impact assessment which has been published.

In carrying out its licensing functions, a licensing authority must also have regard to—

- (a) its own published policy, and
- (b) any guidance issued by the Secretary of State under section 182.

The council’s current policy is [here](#)

The Secretary of State’s guidance is [here](#)

Members will appreciate that guidance, whether national or local, is not a set of rules such as would be found in legislation. The obligation is to “have regard to” the guidance contained in these documents. In making the decision for the Council’s next policy Members are entitled to depart from guidance with good reason, providing of course that in doing Members are genuinely acting with a view to promoting the licensing objectives and not for any other purpose. There should be a clear record of those reasons should members decide to depart from guidance. It is essential that all members read the consultation responses, the existing policy, the secretary of state’s guidance, this report and its appendices in full before making their decision.

Once the Council has determined its policy for the next five year period it must be published before it comes in to effect; for a decision in line with the recommendation this would require publication before 1 August 2020.

(Legal advice provided by Anne Nugent Team Leader after discussion with Ashley Clark (Regulatory lawyer) 11/6/2020)

Financial Revenue - There are no direct financial implications expected as a direct consequence of approving the New Licencing policy, other than any costs of publishing and communicating the details of the new policy, which will be met from existing Licensing Service budgets. Any increase in operational demand on enforcement will be managed from within existing resources in the normal way

(Financial advice provided by Kayode Olagundoye, Interim Finance Business Partner, Growth and Regeneration, 09/06/2020)

Land- Not applicable

Personnel - There are no HR implications evident.

(Personnel advice provided by Celia Williams HR Business Partner – Growth and Regeneration, 09/06/2020)

Appendices:

- Appendix 1: Draft Statement of Licensing Policy
- Appendix 2: Draft Cumulative Impact Assessment Policy
- Appendix 3: List of persons who responded to the consultation
- Appendix 4: List of all amendments to the Draft Statement of Licensing Policy
- Appendix 5: Avon and Somerset Constabulary consultation response
- Appendix 6: Avon and Somerset Constabulary clarification response
- Appendix 7: Comments received in respect of the draft Statement of Licensing Policy
- Appendix 8: CIA survey responses
- Appendix 9: Template Operating Schedules
- Appendix 10: Written consultation responses.

Appendix 11: Equality Impact Assessment for the removal of the Cumulative Impact Areas and the Draft Statement of Licensing Policy.

LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985

Background Papers:

None