

## ASSEMBLY

28 MARCH 2012

<b>Title:</b> Statement of Licensing Policy 2012 - 2015	
<b>Report of the Cabinet Member for Crime, Justice and Communities</b>	
<b>Open Report</b>	<b>For Decision</b>
<b>Wards Affected:</b> All	<b>Key Decision:</b> Yes
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<b>Summary:</b> <p>The Licensing Act 2003 requires local authorities as licensing authorities to produce and then to regularly review and revise a statement of licensing policy detailing how local issues are to be addressed by the Council in deciding contested licence applications.</p> <p>This report presents the latest revision of the licensing policy statement (<b>Appendix 1</b>) and incorporates amendments and additions following extensive consultation with the responsible authorities, the licensed trade and other stakeholders.</p> <p>The Statement of Licensing Policy must be approved by the Assembly. The draft Policy was considered and endorsed by the Cabinet at its meeting on 20 March 2012.</p>	
<b>Recommendation(s)</b> <p>The Assembly is recommended to adopt the Statement of Licensing Policy 2012 - 2015 as attached at Appendix 1 to the report.</p>	
<b>Reason(s)</b> <p>To assist the Council in achieving its Community Priority of Safe, Healthy and Prosperous and as an important element of aspects of the Health and Wellbeing Strategy.</p>	

### 1. Introduction and Background

- 1.1 The Licensing Act 2003 changed the way in which a range of licences were administered. This change brought licensing of alcohol, entertainment, indoor sports and late night refreshment together under one comprehensive process and for the first time introduced a measure of democratic accountability. One of the key steps in implementing the Act was the adoption of a Statement of Licensing Policy by the local authority. The policy localises the provisions of the act and makes

public those issues that the council consider as important and guides local decision making. It is one of a suite of documents that guide decisions including statutory guidance issued by the Secretary of State and the Act and associated regulations. The original policy was adopted in January 2005. A review and consultation exercise in 2008 indicated no changes to the existing policy. This latest review has made a number of changes to the statement, otherwise normally known as the Licensing Policy, and these are detailed in the report.

- 1.2 The draft policy recognises that the issues facing Barking and Dagenham are different to many other areas. Whilst the government and media have concentrated on the perceived problems of binge drinking and the club culture, Barking and Dagenham has seen a proliferation of licences allowing sales of alcohol for consumption off the premises. The revised policy seeks to address some of the issues that have arisen. The draft revised policy is attached at Appendix 1 of this report.

## **2. Proposal and Issues**

- 2.1 Since the implementation of the Licensing Act 2003 there has been a dramatic change in the landscape of premises from which it is possible to purchase alcohol. Whilst the media predicted widespread 24 hour availability of alcohol, this has not proved to be the case. Pubs and clubs have closed at an alarming rate and those that remain open are mostly struggling, whilst off sales have exploded with alcohol freely available from most small shops. This has occurred because there is a presumption in the legislation that licences will be granted rather than refused.
- 2.2 The increase in the number of off-licences has been a local cause for concern. The wider range of outlets gives rise to the possibility that it is easier for young people to get access to alcohol. Wide availability encourages and enables drinking within the home and it is known that this is where many of the alcohol related problems within the borough occur. Increasing retail space devoted to alcohol reduces the amount of and range of other goods available to local residents.
- 2.3 The revised policy directly addresses a number of these issues. The following changes have been made in the policy following consultation and listening to the desires of the community.
- Restrictions are proposed for the hours of sale of alcohol, both late at night and in the morning. This will address the concerns about alcohol fuelled crime and disorder late at night and also the nuisance caused by the wide availability of alcohol in the morning and the resulting problems with street drinkers.
  - Recognition is made that there is a loss of local amenity when shops increase alcohol sales to the detriment of other goods and that this may mean a variation in the licence has taken place with the subsequent possibility of enforcement action.
  - Concern about the availability of alcohol to children is addressed by a proposal that licences would generally be refused in the vicinity of schools.
  - There have been instances of children stealing alcohol, particularly high strength drinks, from off-licences and this is dealt with by placing drinks behind the counter or in locked cabinets.
  - The existing Responsible Retailer scheme is explicitly mentioned and will be re-launched following the adoption of the policy to give our retailers an opportunity

to take part in this process. This scheme will emphasise the importance of responsible and proportionate presentation of alcohol, particularly in food shops and grocers.

- The impact that the Olympic Games will have on the availability of police and other emergency services is acknowledged and the potential impact that this may have on proposals for large scale licensable activities.
- Introduce a yellow card / red card system of dealing with licensees who fail to operate their business properly allowing a more formal warning process prior to carrying out a review of the licence.

2.4 Members should be aware that the policy guides the decision making of the Licensing and Regulatory Board. It does not affect licences that are already in existence, unless they are subject to a review, and it will not affect applications for new licences or variations where there are no valid objections. Each application must be dealt with on its own merits and therefore the policy is not a blanket statement rather an indication of the Council's expectations regarding the way that the licensing process should be carried out.

2.5 Parliament has recently passed the Police Reform and Social Responsibility Act 2011 that among other matters seeks to address what are perceived to be some of the weaknesses in the 2003 Act. Changes include:

- The removal of the proximity requirement from the definition of an interested party. This means that anyone living or involved in a business in the borough can make representation or apply for the review of a licence. All representations will still have to be based on one or more of the four licensing objectives.
- Making Primary Care Trusts and health boards and the licensing authority Responsible Authorities. It should be noted that health does not become a licensing objective and therefore objections cannot be made on health grounds to an individual application.
- Reducing the evidential burden for taking action and setting conditions
- Giving powers to the Secretary of State to make regulations allowing local authorities some autonomy in setting the level of fees.
- Allowing a licence to be suspended for non-payment of fees.
- Proposing a late-night levy where there are problems with alcohol fuelled crime and disorder arising from the night-time economy. The proposals are complex and unlikely to be relevant to Barking and Dagenham. They also place considerable burdens on licence holders and result in relatively little money coming to the local authority.

Where possible these changes have been recognised in the policy therefore reducing the potential need to revise it in the near future.

2.6 Elected Members have a very important part to play in the Licensing process, as members of the Licensing and Regulatory Board, as interested parties to applications and as community leaders supporting and advising constituents. To enable them to fulfil this role the current programme of training and support will be enhanced to ensure that all Members can fulfil their role within the community.

### **3. Options Appraisal**

- 3.1 It is a statutory requirement for the licensing authority to adopt a statement of licensing policy. To fail to adopt a policy or to review it could lead to judicial review of the decisions of the Licensing and Regulatory Board if they cannot be locally justified by a policy statement.

Options available to the Council are:

1. Do nothing
2. Confirm the current policy as being appropriate
3. Review and revise the current policy to include matters which are identified as being of local concern.

- 3.2 As indicated above option number 1 is not practicable. Option 2 fails to address local concerns. Option 3 will allow the compliance with the Act and will enable the issues which have been raised locally to be taken account of in any decision of the Licensing and Regulatory Board.

- 3.3 Within option 3 there are a number of proposals which may be regarded as controversial but which nevertheless reflect the wishes of Members and the residents. These are:

- A statement that the Council has an expectation on limiting the opening hours of premises for the sale of alcohol. This is to reduce availability and prevent crime and disorder as well as issues around street drinking.
- A statement that the council is concerned about the reduction in the available retail space because of the creeping change of shops from being general stores to alcohol stores.
- A statement regarding the proximity of off-licensed premises to schools and the concerns about the availability of alcohol to those under 18s.

### **4. Consultation**

- 4.1 The Licensing Act requires that all the responsible authorities shall be consulted, along with any other bodies or individuals that are appropriate. The submissions by consultees and the response to those submissions is detailed in Appendix 3. The response has in general been positive and detailed. Many of the comments have led to amendments to wording in the policy. The Police have raised comment about the proposal to restrict the hours of sale of alcohol and this has been addressed and amended following legal advice.

### **5. Financial Implications**

Implications completed by: Jo Moore, Finance Group Manager

- 5.1 There are no direct financial implications from the revision of the Licensing Policy. However, as the proposed policy seeks to restrict the current licensing regulations this may result in an increased number of appeals against decisions of the Licensing Board.
- 5.2 This could in turn result in additional legal fees for the Council although in the past six years there has only been 1 appeal in which costs of £1500 were awarded

against the Council in 10 cases. Any legal fees awarded against the Council would be expected to be met from existing legal budgets of £27k.

## 6. Legal Implications

Implications completed by: Paul Field, Senior Lawyer

- 6.1 The Council is a Licensing Authority for the purposes of the Licensing Act 2003 (the Act)
- 6.2 Section 5 of the Act requires a licensing authority to prepare and publish a statement of its licensing policy every three years. Last year saw changes brought about by the Police Reform and Social Responsibility Act to improve regulation and widening of those who can object to licences, including health authorities.
- 6.3 The policy must be published before the authority carries out any licensing function in relation to applications made under the Act. However, making a statement is a licensing function and as such the authority must have regard to the Secretary of State's Guidance when making and publishing its policy. The proposed Policy takes into account the recent change in legislation and Ministerial Guidance and is therefore up to date with current requirements.

## 7. Other Implications

- 7.1 **Customer Impact** - An equalities impact assessment has been carried out on this policy. The main impact will be on those applying for or operating licences and persons who wish to purchase alcohol. The majority of licence holders are single traders or small to medium enterprises most of whom are from minority ethnic backgrounds. Restrictions on trade by limiting hours for the sale of alcohol or the location of licensed premise in relation to schools could therefore impact on that group to a disproportionate extent. There are a wide range of outlets for alcohol and as noted above the licences of existing premises will not be affected by this policy. Therefore the opportunity to purchase alcohol will not be significantly reduced. It is felt overall that the community benefits arising from the implementation of the policy outweigh the small potential disbenefit.
- 7.2 **Safeguarding Children** - The protection of children from harm is one of the four licensing objectives and must be taken into account in any licensing decision. The policy explicitly deals with this issue through restrictions on alcohol sales near to schools.
- 7.3 **Health Issues** - The Licensing Act does not specifically address health issues. However alcohol is a known determinant of health and placing controls on sale and availability will have a positive impact on health.
- 7.4 **Crime and Disorder Issues** - The prevention of crime and disorder is a specific licensing objective in the Licensing Act. Issues of crime and disorder are addressed in the policy and the licensing service works closely with the police to deal with alcohol related crime and disorder issues.

**Background Papers Used in the Preparation of the Report:**

- Statement of Licensing Policy January 2005.
- Licensing Act 2003
- Secretary of State's Guidance issued under Section 182 of the Licensing Act 2003.
- "Statement of Licensing Policy 2012 - 2015" report and minute, 20 March 2012

**List of appendices:**

Appendix 1 – Revised Statement of Licensing Policy  
Appendix 2 – Changes from the current policy  
Appendix 3 – analysis of responses to consultation.