

LICENSING COMMITTEE: 9 OCTOBER 2018

FOURTH REVIEW OF THE LICENSING POLICY UNDER THE LICENSING ACT 2003

Cabinet Member(s): Colin Slade

Responsible Officer: Simon Newcombe, Group Manager for Public Health and Regulatory Services

REASON FOR REPORT:

The Council, as the licensing authority, must adopt a licensing policy that sets out how it carries out its duties under the Licensing Act 2003. That policy must be reviewed every five years. This report brings forward the fourth review of that document.

RECOMMENDATION:

It is recommended that the revised Policy (attached as Annex 2) is adopted and the Licensing Committee is asked to make this recommendation to Full Council on 24 October 2018. It is proposed that the policy will have effect from 7 January 2019.

Relationship to Corporate Plan: This proposal links directly to the licensing function with the aim of ensuring the safety and wellbeing of our community.

Financial Implications: None that are not contained within existing resources.

Legal Implications: The Council is required to adopt a licensing policy.

Risk Assessment: If the licensing policy is not properly adopted it could be subject to legal challenge.

Equality Impact Assessment: No equality issues identified for this report.

Consultation carried out with:

The statutory consultees who are: the chief officer of police; the fire authority; public health body; persons / bodies representative of local premises licence-holders; persons / bodies representative of businesses and residents in the area (as part of this we also consulted local town and parish councils).

The consultation was also published on the Councils website and sent to responsible authorities not on the statutory consultation list.

1.0 Introduction

- 1.1 The Licensing Act 2003 requires this Council, as the licensing authority, to produce a statement of licensing principles (or licensing 'policy') that sets out how it will carry out its duties under the Act.
- 1.2 Mid Devon District Council's first policy was adopted by full Council on 13 December 2004 and came into effect on 7 January 2005. At that time, licensing policies had to be reviewed every 3 years but the Government have since changed this requirement to every 5 years.
- 1.3 The existing policy was adopted by the Council on 18 December 2013 and had effect from 7 January 2014. Accordingly, the Licensing Team have carried out a consultation on a new proposed fourth licensing policy, which, if adopted, will have effect from 7 January 2019.

2.0 Proposed Policy

- 2.1 The existing policy has been significantly updated both in content and appearance. As a result of the extent of the changes, the draft policy was not completed in a 'tracked changes' format and it is hoped that the new layout is easier to reference and also update in the future.
- 2.2 The proposed policy has to comply with S182 guidance, which sets out some specific matters to be considered and discussed. The proposed policy is in line with these requirements and in general terms, covers the following:
 - Scheme of delegation
 - The licensing process, including information on what is licensable, the types of licences required and the process of applying (or submitting notices)
 - The licensing objectives
 - The licensing authorities approach to regulation and decision making
 - Examples of best practice and a pool of conditions
- 2.3 The proposed policy includes the following three appendices:
 - Hearing procedures (Appendix B)
 - Pool of conditions (Appendix C)
 - Code of good practice (Appendix D)

These are considered important inclusions and will be discussed briefly below.

Hearing procedures (Appendix B)

- 2.4 Members will be familiar with the hearing procedures as they have previously been adopted by the committee. It is considered important to include them as an Appendix of the policy to ensure they are publically available and that all relevant information is kept in one place, insofar as is possible.
- 2.5 If representations are received against an application the Licensing Team will try to discuss issues with all relevant parties to see if an agreed position can be reached, potentially removing the requirement for a hearing. However, on some occasions, an agreement is not possible and the matter must go to a hearing. In such circumstances, it is important to ensure that all parties know what to expect and have the ability to present their case.
- 2.6 The hearing procedure allows for questions to be asked and for open discussion, in a constructive and organised manner. This includes discussion about conditions, which is really important because it may help to prevent the imposition of unenforceable (and challengeable) conditions.

Pool of conditions (Appendix C)

- 2.7 One of the most common problems with applications is the suggestion or imposition of conditions that are worded in such a way as to be unenforceable. The pool of conditions has therefore been created to assist with this.
- 2.8 The pool of conditions has had input from the Devon Licensing Officer Group and it should be noted that it is a 'live' document. Conditions are often matters for discussion and the Council must be aware that the enforceability of a condition may be affected by legal precedence. For this reason, this document may be updated from time to time without reference to the Licensing Committee.
- 2.9 All premises have mandatory conditions which are prescribed by regulation; however, other conditions must be tailored to specific premises and determined on a case by case basis. **The pool of conditions should never be interpreted or applied in a blanket fashion and to do so would be illegal.**

Code of good practice (Appendix D)

- 2.10 Similarly to the pool of conditions, the code of good practice document must not be considered as standard requirements for all premises and the actions suggested are not worded to be conditions placed on licences. It is designed as a user friendly guide, explaining the steps and measures applicants and licence holders can put in place to help ensure that they are operating in a way that promotes the licensing objectives.

- 2.11 It is hoped that its use will help to minimise or even prevent issues that occur at licensed premises that may undermine the licensing objectives. In addition to this, it provides a framework in which to try and work with premises where it is felt that the licensing objectives are being undermined. We will encourage its use not just by those we licence but also bodies like responsible authorities.
- 2.12 Additionally, the actions suggested could help businesses to ensure they are running premises in accordance with their licence, the licensing objectives and also provide them with the basis of a due diligence defence, should it be required.

3.0 Consultation

3.1 The following parties were consulted:

- The Chief Officer of Police
- Devon and Somerset Fire and Rescue Service
- Director of Public Health (Devon DAAT)
- Devon County Council - Local Safeguarding Children's Board
- Weights and Measures (Trading Standards)
- Public Health (Mid Devon)
- Community Safety Partnership (Mid Devon)
- Town and Parish Councils within Mid Devon
- Health and Safety Executive
- Mid Devon District Council - Environmental Health Services
- Mid Devon District Council - Planning Services
- Home Office
- Persons / bodies representative of local premises licence holders
- Persons / bodies representative of local club premises certificate holders
- Persons / bodies representative of local personal licence holders
- Persons / bodies representative of local businesses and residents in the area

3.2 The consultation was also published on the Councils website.

3.3 The consultation started on 15 June 2018 and ended on 31 August 2018.

3.4 Four responses were received and the relevant points from these can be seen within the table of responses, attached to this report as Annex 1. This Annex also contains an officer recommendation as to whether the Policy should be updated in light of the comment(s) received.

4.0 RECOMMENDATION

4.1 NOTE: The only suggested amendments to the original policy consulted on are updates to the CCTV conditions and the contact details for the HSE. For clarity, the policy has been updated to reflect these amendments in a tracked changes format and the final proposed policy is attached as Annex 2.

- 4.2 It is recommended that the updated policy (attached as Annex 2) is adopted as our new policy and the Licensing Committee is asked to make this recommendation to Full Council on 24 October 2018.

ANNEXES TO REPORT

ANNEX 1: Table of responses

ANNEX 2: Proposed final policy

Contact for any more information	Mr Tom Keating (01884) 244618 Mr Jeremy Pritchard
Background Papers	Licensing Act 2003 / S182 Guidance / MDDC Licensing Policy
File Reference	Licensing / Licensing Policy Review 2018
Circulation of the Report	Licensing Committee