

This report will be made public on 27 August 2021



Report Number **OS/21/05**

To: Overview and Scrutiny Committee
Date: 7 September 2021
Status: Non-Executive Decision
Responsible Officer: Ewan Green - Director of Place
Cabinet Member: Councillor David Monk, Leader of the Council

SUBJECT: DRAFT LICENSING POLICY STATEMENT 2021 TO 2026

SUMMARY: In accordance with the requirements of the Licensing Act 2003 the Licensing Authority is required to publish a statement of policy every successive five year period. The new draft Licensing Policy Statement is now out to public consultation. The purpose of this report is to provide an opportunity for the Overview and Scrutiny Committee to review and feedback on the new policy statement and that this be included in the consultation responses.

RECOMMENDATIONS:

1. To receive and note report OS/21/05.
2. To provide feedback to the Licensing Team to be incorporated into the consultation responses to the draft policy statement.

1 BACKGROUND

- 1.1 The Licensing Act 2003 requires that the Council, in its role as a Licensing Authority, to determine its Licensing Policy Statement with respect to the exercise of its licensing functions every five years.
- 1.2 The current Policy has been in force since 2016. A new draft Licensing Policy Statement has now been prepared for public consultation. The new policy statement would run for a five year period from 2021 to 2026.
- 1.3 The pending review of the Licensing Policy Statement was reported to Overview and Scrutiny Committee on 30 March 2021 and the initial feedback from the committee was considered within the preparation of the new policy statement. It was also agreed that the draft policy statement would return to this committee as part of the consultation process.
- 1.4. In undertaking the review of the Licensing Policy Statement the Council had two broad aims; firstly to consider good practice which could be reflected in the revised draft; and secondly to consider the policy in relation to the emerging Folkestone Town Centre Place Plan.
- 1.5. The consultant team developing the Place Plan included the Night Time Industries Association (NTIA) who undertook the initial review of the policy. Two workshops were held in May 2021, to which stakeholders were invited, and a meeting was held with the Folkestone Town Centre Working Group. Many of the issues raised in the sessions mirrored those raised by Overview and Scrutiny in March. An overview of feedback from these sessions is provided below:
 - Concerns about lack of communication with key stakeholders
 - Concerns with regard to the quality of operators coming to FHDC
 - The need for operating standards, transport and dispersal considerations from new operators
 - Perceived lack of Policing and Licensing Enforcement.
 - Requests for a Cumulative Impact Assessment.
 - Lack of confidence in Licensing Sub Committee decisions against Licensing Objectives
 - Consideration for Zoning or Matrix System to identify key areas.
- 1.6. In response to this feedback the draft Policy Statement includes the following:-
 - The proposal for FHDC to establish a Licensing Forum which would meet twice a year to discuss key issues in order to improve stakeholder engagement. Forum to licensed operators from a range of businesses, Licensing Team, Police, Resident Associations, Events, Heritage, and festival operators.
 - Requirements for robust Operating Plans and considerations around community impact to include the requirement for a Transport and Dispersal Policy in new applications.

- The new policy statement to have recommended operating hours for different types of premises (see 3.3. Licensing Policy Statement). Whilst legally each application needs to be considered on its merits, these standard hours provide a framework for the Licensing Sub Committee and gives guidance to applicants where requested hours extend outside of those recommended that additional actions may be required in relation to Operating Plans.
- 1.7. The draft policy also includes general updates to the previous versions e.g. updating references to the latest legislation and bringing in line with best practice.
 - 1.8. In terms of the request by some stakeholders for a Cumulative Impact Assessment (CIA) it would be sensible to delay any assessment until businesses are able to retain some level of normal trading pattern. Any assessment carried out would be distorted by the lack of night time trading during the pandemic lockdowns. Additional information about the CIA process is set out in Appendix 2.
 - 1.9. The introduction of a zoning and matrix systems was thoroughly investigated in the preparation of the new policy statement and ultimately not recommended following legal advice and reference to statutory guidance issued under section 182 of the Licensing Act 2003 (April 2018).

The issues around zoning were fully considered in the round i.e. how would geographical areas designated, what is the impact on existing licensed premises, would zoning act to disincentive to new businesses and investment and would zoning have an adverse or beneficial impact on reducing ASB. The statutory guidance issued under s182 is clear that licenses should be considered under their own merits and hours must not be predetermined.

However, the new policy will include recommended operating hours for different types of businesses (see 3.3. Licensing Policy Statement). These hours will be advisory but will provide guidelines showing the hours we would expect various businesses to apply for. Should a business wish to apply for later hours the policy statement emphasises that they will need to provide a more robust operating plan to show how they will mitigate public nuisance and crime and disorder. The position remains unchanged that the Licensing Authority may not restrict opening hours unless it receives valid representations by Responsible Authorities and/or other persons

- 1.10 In general, the feedback from stakeholders was in support of the overall approach to the Place Plan. The main concerns were how engagement with all stakeholders on licensing issues could be improved and how the new policy statement would encourage a high standard of business to come into the area, which will in turn start to lift the quality of offering for residents and visitors.

2 CONSULTATION

- 2.1 The public consultation on the draft policy is taking place over a 9-week period following Planning & Licensing Committee approval. The Licensing Team is consulting with Responsible Authorities, Parish and Town Councils, Resident Groups and local businesses.
- 2.2 The draft Licensing Policy Statement is also displayed on the council's website throughout the consultation period. This is accompanied by an invitation to submit relevant comments. The opportunity to provide comment will be promoted widely.
- 2.3 The Corporate Director (Place) has been authorised by the Planning and Licensing Committee to approve any minor amendments to the Policy as a result of the consultation, before being presented back to Planning & Licensing Committee and finally Full Council for approval. (See Appendix 1 for the draft Licensing Policy Statement).
- 2.4 Committee is invited to review and feedback on the new policy statement for inclusion in the consultation responses.

3 NEXT STEPS

- 3.1 The dates for final approval are as follows in order to publish the Licensing Policy Statement in 2021:

25 August to 27 October	Public Consultation (9 Weeks)
7 September 2021	Overview and Scrutiny Committee
11 November 2021	Planning & Licensing Committee
24 November 2021	Full Council

4. IMPLICATIONS

4.1 Legal Officer's Comments (NM)

The Licensing Act 2003 ('the Act') established a single integrated system for licensing premises that are used for alcohol, entertainment and late night refreshment. Under this legislation, each local authority is known as the 'Licensing Authority' and is responsible for licensing alcohol, entertainment and late night refreshment in its geographical area.

Section 5(1) of the Act requires the Council, as the Licensing Authority, to determine and publish a statement of its policy with respect to the exercise of its licensing functions under the Act, at least once every five years.

Section 5(4) of the Act requires an authority to keep the statement under review and to make such revisions to it, at such times, as it considers appropriate, again subject to the same consultation requirements. The authority must publish a statement of the revisions (to the policy) or the revised statement if revisions are made and approved.

When preparing its licensing policy, the Council is required to have regard to the promotion of the four licensing objectives specified at Section 4 of the Act, namely:

- the prevention of crime and disorder;
- public safety;

- the prevention of public nuisance; and,
- the protection of children from harm

4.2 **Finance Officer's Comments (TM)**

There is no finance implications relating to this report.

4.3 **Diversities and Equalities Implications (GE)**

There are no equality and diversity implications arising from this report. The approved policy will be subjected to a 9 week public consultation that will be publicised on the council's website providing the opportunity for a variety of views from both individuals and groups to be fed back to the Council.

4.4 **Communications Implications (KA)**

If approved the communications team will support the promotion of the consultation and carefully communicate the amendments proposed.

4.5 **Crime and Disorder Implications**

Under s17 of the Crime and Disorder Act 1998 the Council has a duty to exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it can to prevent crime and disorder in its area.

5. **APPENDICES**

- Appendix 1 – Folkestone & Hythe District Council – Draft Licensing Policy Statement 2016-2021
- Appendix 2 – Additional Information - Cumulative Impact Assessment

6. **CONTACT OFFICERS AND BACKGROUND DOCUMENTS**

Councillors with any questions arising out of this report should contact the following officer prior to the meeting:

Briony Williamson, Licensing Specialist

Telephone: 01303 853475

Email: briony.williamson@folkestone-hythe.gov.uk

Background documents:

The following published documents have been relied upon in the preparation of the report:

Licensing Act 2003

Deregulation Act 2015 – March 2015

Revised Guidance issued under section 182 of the Licensing Act 2003 – April 2018