

PLYMOUTH CITY COUNCIL

Subject: Review of Licensing Act 2003 Statement of Licensing Policy, including Cumulative Impact Policy

Committee: Cabinet

Date: 25 March 2014

Cabinet Member: Councillor Vincent

CMT Member: Anthony Payne (Strategic Director for Place)

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Ref:

Key Decision: No

Part: I

Purpose of the report:

The Licensing Act 2003 places a duty on the Licensing Authority, every five years, to determine and publish a statement of licensing policy.

The current statement of licensing policy was published and became operative from the January 2010. Various changes to legislation and statutory guidance has necessitated an early review of the Licensing Policy which also supports the recently published Plymouth Strategic Alcohol Plan.

Before determining its policy the Licensing Authority must consult in accordance with s182 guidance issued under the Licensing Act 2003. Extensive consultation, compliant with s182, has taken place and ended on 5th October 2013. The consultation also included a review of the need for a Cumulative Impact Policy which was introduced in 2008.

As part of the consultation process the draft policy was placed onto the work plan for the Your Plymouth Scrutiny Panel.

This report contains details of the consultation responses, and a draft of the policy proposed to be adopted.

The Brilliant Co-operative Council Corporate Plan 2013/14 -2016/17:

Growing Plymouth

The draft policy aims to assist in the delivery of a safer, more vibrant Plymouth. This in turn should attract more visitors to the City and also support an increase in the numbers of citizens of Plymouth who will utilise the social, cultural and sporting offers available. Opportunities for increased levels of employment should follow.

Confident Plymouth

A safe and vibrant leisure economy will allow Plymouth to be positively marketed attractive destination both nationally and internationally.

Caring Plymouth

The policy will allow for effective control of alcohol supply, which will assist in reducing alcohol harm and thereby reduce inequality. Whilst alcohol misuse affects individuals from all sections of society, those from the most disadvantaged communities experience the highest burden of harm..

Implications for Medium Term Financial Plan and Resource Implications:

Including finance, human, IT and land:

Government has set fees at a level that they believe will achieve full recovery of the administrative, inspection and enforcement costs falling on the Licensing Authority associated with their licensing functions under the Licensing Act 2003. The review of the Licensing Policy is a core part of the licensing function and there are no future financial implications.

Other Implications: e.g. Child Poverty, Community Safety, Health and Safety and Risk Management:

Section 17 of the Crime and Disorder Act 1998 puts a statutory duty on every Local Authority to exercise its various functions with due regard to the need to do all that it reasonably can do to prevent crime and disorder in its area.

The Licensing Policy has a key role in reducing alcohol related crime and disorder, the fear of crime and the prevention of nuisance or anti-social behaviour. Risk taking behaviour, such as irresponsible alcohol usage can affect individual, their families, local communities and society as a whole. This policy aims to play it's part in minimising the negative aspects of alcohol supply and use.

Equality and Diversity:

Has an Equality Impact Assessment been undertaken? Yes

Recommendations and Reasons for recommended action:

It is recommended that Members consider this report and that:

1. The draft Licensing Statement of Policy be recommended to City Council for adoption (Appendix 2)
2. Members consider the evidence set out in Appendix I of this report and based on the concerns about crime and disorder and public nuisance:

Recommend to Council to retain the Special Policy on Cumulative Impact for each of the following areas:

- Union Street (including Derry's Cross)
 - Barbican
 - North Hill
 - Mutley Plain
 - Stoke
3. Cabinet authorise officers to undertake a further consultation regarding an extension to the Barbican cumulative impact area as recommended by Devon and Cornwall Police.

Reason

The draft proposed Licensing Policy has been amended to include the latest legislative changes. It also includes greater detail on the expectations the Licensing Authority has regarding applications and the management of licensed premises. The policy will be used where appropriate to promote the licensing objectives. The policy will provide greater assistance to applicants, licensees, responsible authorities and local communities when considering applications or reviews of licences.

There is sufficient evidence to support the continuation of the cumulative impact policy for the 5 established areas. Although Stoke Village has shown a reduction in violent crime the area has a relatively high density of licenced premises in a residential area. This leads to the potential for public nuisance and so any further expansion of licenced premises would be usefully managed through the cumulative impact policy.

Alternative options considered and rejected:

No change to the Licensing Policy or removal of the Cumulative Impact Policy -

The evidence submitted as part of the consultation has established a significant proportion of violent crime occurs within the night time economy. The cumulative impact areas still experience high levels of crime associated with the supply or use of alcohol and local communities are affected by late night anti-social behaviour. On balance the operation of the Licensing Statement of Policy appears to be proportionate and evidence exists for the retention of the Cumulative Impact Policy due to either crime and disorder or public nuisance.

Published work / information:

[SI82 Statutory Guidance, issued by the Home Office Regulators Code \(Better Regulation Delivery Office\)](#)

Background papers:

Title	Part I	Part II	Exemption Paragraph Number						
			1	2	3	4	5	6	7
Responses to consultation	X								
Equalities Impact Assessment	X								

Sign off:

Fin	CF/Pac eFESC1 314004 16.12.2 013	Leg	19090 /ag/16. 12.13	Mon Off	TH 0156	HR		Assets		IT		Strat Proc	
Originating SMT Member													
Has the Cabinet Member(s) agreed the content of the report? Yes													

1.0 Background

- 1.1 The Licensing Act 2003 places a duty on the Licensing Authority in respect of each five year period to determine its policy with respect to the exercise of its licensing functions and publish a statement of that policy. This policy establishes the licensing controls placed on the sale of alcohol, provision of entertainment and the operation of premises for late night refreshment.
- 1.2 Alcohol is an important component of Plymouth's economy, particularly within the city's Evening and Night Time Economy (ENTE). Analysis of the ENTE using 2011 data considered the scale and value of accommodation, restaurants (including unlicensed venues, take away food shops and mobile food outlets) and licensed clubs, pubs and bars. It estimated that Plymouth's overall ENTE supported approximately 6,400 employees and was worth around £93.2 million in terms of Gross Value Added (GVA). Licensed clubs, pubs and bars accounted for 2,000 of those employees and the largest share of the GVA at £28.6 million. Overall the ENTE accounted for 6% of the city's total employment; this compares to the UK average of 5.7%.
- 1.3 The use of alcohol, however, can have a negative impact on individuals, families, local communities and Plymouth as a whole. Whilst it is not possible to fully quantify the impact of alcohol misuse across the city a number of indicators provide evidence of harm. During 2011/12 there were 2,513 recorded crimes attributable to alcohol – and nearly 7,000 hospital admissions. Every year a significant number of children experience poor care and neglect due to parental alcohol misuse. In organisations across the city countless working days are lost due to alcohol affecting productivity and economic progress.
- 1.4 There is a strong association between deprivation and an increased burden of harm linked to alcohol misuse. People living in the most deprived areas of the city are nearly twice as likely to be admitted to hospital because of alcohol as those living in the least deprived areas. The cost of alcohol related harm within Plymouth is estimated at £80M per year.
- 1.5 In response to the levels of alcohol harm the Strategic Alcohol Plan for Plymouth (2013-2018) was adopted by Cabinet in August 2013. The plan identifies four impact areas, these being:
 - Prevent
 - Protect
 - Treat
 - Enforce and Control
- 1.6 The current statement of licensing policy was published and became operative from the 7th January 2010. Various changes to legislation and statutory guidance has enabled the early review of the Licensing Policy to support the enforce and control impact areas of the alcohol plan
- 1.7 The proposed draft Statement of Licensing Policy is contained in Appendix 2.

2.0 Consultation Process

- 2.1 The consultation exercise for the proposed draft licensing policy was made as wide as possible. For this review the consultation period commenced on the 5th August and ended on the 5th October 2013.

The Licensing Act 2003 states that before determining its policy a Licensing Authority must consult –

- The chief officer of police for the Licensing Authority's area
- The Fire Authority for that area

- Primary Care Trust (now the Office of the Director of Public Health)
- Such persons as the licensing authority considers to be representative of holders of premises licences issued by the authority
- Such persons as the licensing authority considers to be representative of holders of club premises certificates issued by the authority
- Such persons as the licensing authority considers to be representative of holders of personal licences issued by the authority
- Such other persons as the licensing authority considers to be representative of businesses and residents in its area.

2.2 Letters were sent to all premises holding either a 'premises licence' or club premises certificate' advising them of the consultation. A similar letter was sent to the Resident / Community groups and faith groups for which contact details were available. A press release was issued and local media coverage was obtained. A total of approximately 1000 people or groups were contacted directly by letter. In addition the responsible authorities were consulted (Police, Child Protection, Trading Standards, Environmental Health, Public Health, Transport & Planning Service, Maritime & Coastguard Agency). Consultation events for the trade and local communities were held across the night time economy areas.

2.3 All ward Councillors were sent copies of the consultation documentation.

2.4 The draft policy was considered by the Your Place scrutiny panel on the 30th September 2013.

2.5 A total of 70 responses were received either on line or in writing as a result of the consultation process; although most commented only on the late night levy. The Police submission and crime data is contained in Appendix I. The written responses are contained in the background paper.

2.6 Several of the trade responses were concerned at the apparent introduction of blanket conditions or requirements on applicants. This is not the intention of the changes as every application is considered on it's own merits. The addition of the changes are designed to reflect the Council's expectations of a licensee in the good management of a licenced premise. Conditions will only be added to a licence where it is appropriate to do so in the circumstances. It is right that applicants should be made aware of the Councils expectations for important issues that promote the licensing objectives.

2.7 There was support for the greater controls to be placed on alcohol sales from off licences, both to tackle issues of pre-loading and street drinking.

3.0 Changes incorporated into the draft Licensing Policy

A number of amendments formed part of the consultation. The draft policy has taken into consideration the responses received from the consultation. The significant proposed changes to the current policy are:

Operating Schedules

The policy now clarifies the expectation of Council regarding the quality of information supplied

Maximum occupancy

The policy now provides examples of where maximum occupancy should be considered part of the operating schedule

Free tap water

The policy specifies how free tap water should be supplied and is designed to supplement the existing legislation and guidance to support responsible drinking

Designated Premises Supervisors (DPS)

The policy provides detail on the Council's expectations of a DPS, their competency and capabilities

Glass injuries

Greater detail is provided on where alternatives to glass should be considered by licensees or may be added as a condition. The number of glass related injuries recorded in Plymouth is an area for improvement. The policy will be used where appropriate to seek the replacement of glass with safer alternatives, but work in conjunction with the trade will be taken forward to seek a co-operative approach to this issue.

Control of adult entertainment

Greater detail is provided on issues that are considered to be relevant when considering an application, for example, location, performer safety and the control of advertisements. The control on the type of advertising and imagery supports the recent Motion on Notice at the September 2013 City Council meeting regarding the sexualisation of children and young people.

Control of off licences

A significant level of detail is provided to specify the Council's expectations regarding responsible retailing. It also provides greater prescription on potential controls on off licences in areas affected by street drinking

Opening Hours

The policy establishes that licence times will be limited to ensure staggered closing times within an area and to minimise the impact on local communities. Further work on licensing hours will be undertaken as part of the development of the Plymouth Plan.

Changes to the cumulative impact policy

The wording has been amended to allow for greater flexibility to approve applications that will not have a significant impact on an area.

The policy will now use cumulative impact to control the introduction of new licences for off licences and late night refreshment.

4.0 Cumulative Impact Policy

- 4.1 The current policy includes a special policy in relation to Cumulative Impact. Guidance under s182 of the Licensing Act 2003 describes this as the potential impact, on the promotion of the licensing objectives, of a significant number of licensed premises concentrated in one area. The cumulative impact of licensed premises on the promotion of the licensing objectives is a proper matter for a Licensing Authority to consider in developing its licensing policy statement.
- 4.2 There must be an evidential basis for the decision to adopt a special policy within the statement of licensing policy regarding cumulative impact areas.
- 4.3 The steps to be followed in considering whether to adopt a policy within the statement of licensing policy are:

- I Identify concern about crime and disorder or public nuisance

- 2 Consider whether there is good evidence that crime and disorder or nuisance are happening and are caused by the customers of licensed premises, or that the risk of cumulative impact is imminent.
 - 3 Identify the boundaries of the area where problems are occurring
 - 4 Consult with those specified in the Licensing Act 2003 and subject to the outcome of the consultation
 - 5 Include and publish details of a special policy in the licensing policy statement.
- 4.4 The effect of adopting a special policy of this kind is to create a rebuttable presumption that applications for new premises licences or club premises certificates or variations that are likely to add to the existing cumulative impact will normally be refused, following relevant representations. This is unless the applicant can demonstrate in their operating schedule that there will be no negative cumulative impact on one or more of the licensing objectives.
- 4.5 The Police have responded to the draft policy and have also included a report which is an evidence based problem profile, identifying those areas affected by violent crime associated with the evening and night-time economy and seeking the continuation of the Cumulative Impact Policy within the Statement of Licensing Policy.

The existing areas have been requested to be retained, based on their existing boundaries:

- Union Street
- Mutley Plain
- North Hill

- 4.6 The Police have recommended that the Cumulative Impact Area covering the Barbican is extended to include the Vauxhall Street, and Bretonside corridors and areas around North Quay and Sutton Harbour.
- 4.7 The Police have recommended that the Cumulative Impact Area covering Stoke Village is removed.

5.0 Need for the Cumulative Impact Policy

5.1 Crime and disorder

Appendix I contains the detailed statistical evidence supplied by the Devon & Cornwall Constabulary. A summary of the information can be seen in Table I. Crime within the ENTE overall has reduced by 28% since 2010, although our ENTE areas still account for the majority of violent crimes across the City.

Table I: Comparisons of crime associated with the ENTE in each Cumulative Impact AreaNotes:

- 1 Other Crimes are Sexual offences, Robbery, Public Order, Failure to obey a direction to leave and drunkenness
- 2 Percentages show the proportion of the total offences linked to the night time economy

	Barbican	Mutley Plain	North Hill	Stoke Village	Union Street/Derrys Cross
2010					
Violent Crime	69	31	115	12	429
Other	58	54	89	9	540
Total	127 (90.1%)	85 (82.5%)	204 (97.1%)	21 (87.5%)	969 (94.4%)
2011					
Violent Crime	60	26	138	10	358
Other	30	30	89	3	496
Total	90 (85.7%)	56 (69.1%)	227 (95.8%)	13 (56.5%)	844 (93.3%)
2012					
Violent Crime	68	54	132	12	332
Other	34	30	97	4	275
Total	102 (79.7%)	84 (77.1%)	229 (93.5%)	16 (76.2%)	607 (88.1%)

5.2 The ENTE contributes a significant proportion of the incidents and identified by the Police as a priority. Alternative strategies and partnership working have already seen to have delivered good results and further options exist for other new strategies. The continuation of a Cumulative Impact Policy can be seen as one possible means of controlling an increase in crime related to new licences which may be granted in areas with high concentrations of existing licences.

5.3 Public Nuisance

In general the majority of public nuisance issues relate to noise from entertainment held on the premises or noise and anti-social behaviour in the vicinity of premises or transit routes between the evening and night time economy areas and places of residence.

5.4 Noise directly attributable to individual premises can be adequately controlled using existing legislation from within the Licensing Act or the Environmental Protection Act. Nuisance not attributable to individual premises is difficult to control using powers available to the Local Authority.

5.5 All of the cumulative impact areas are in very close proximity to residential areas giving rise to residents' concerns regarding public nuisance and anti-social behaviour. The majority of these incidents go unreported due to their transient nature and the inability of the agencies to have an impact on this problem.

5.6 The extension of licensing hours to beyond 2.00 am and increased capacity of venues will obviously impact on the likelihood of public nuisance occurring in residential areas and over a

prolonged period of time. Officer's discussions with residents and experience during night time visits over the years have highlighted this issue to be a major concern.

- 5.7 Environmental Health Officers believe that the cumulative impact policy provides a suitable mechanism to assess and control the impact that additional licences or amendments to licences may have on residents. The existing policy has successfully been applied to prevent the extension of licensing hours and capacity where cumulative impact has been an issue.
- 5.8 Submissions from both the Police and Environmental Health report the impact that the operation of premises has on highly residential areas. Background noise levels beyond 2.00am will be low in most areas, therefore the effect of noise and antisocial behaviour at these time are more noticeable and less able to be tolerated by residents.

6.0 Operation of the Cumulative Impact Policy

- 6.1 Over the last 2 years there have been a total of 32 applications for new premises or major variations in CIP areas, with approximately 10% being refused.

Type	Applied	Refused
New App	13	2
Variation	19	1

No objective evidence has been found to identify any impact on the evening and night time economy.

- 6.2 A Cumulative Impact Policy requires applicants to deliver an increased standard of application and operating schedule in order to establish that the Policy should not be applied on that case. It does not prohibit future approval of new applications or variations to existing licenses. In every case the Licensing Committee must still prove the need for conditions or for the refusal of a licence following a representation from either a responsible authority or interested party.

7.0 Alternatives to a Cumulative Impact Policy

- 7.1 The Police and other agencies have worked closely with the trade to successfully introduce measures to reduce crime and disorder and public nuisance associated with the Evening and Night Time Economy (ENTE). An annual action plan is produced.
- 7.2 Examples of this work includes;
- Support for Pubwatch, Plymouth Licensing Forum and the Best Bar None award scheme
 - Provision of high visibility clothing and control and restraint training for door supervisors.
 - Investment in CCTV coverage
 - Environmental improvements
 - Under age sales campaigns
 - Alcohol education campaigns
 - Introduction of Alcohol Designated Public Places Orders for Union St, Barbican and Mutley Plain and the City Centre
 - Activities to identify, assist and control persistently violent offenders
 - Continuation of the City Night Treatment Point

This work has contributed to reducing crime linked to the Evening and Night Time Economy (ENTE). A range of alternative strategies will continue to be used and developed through the Violent Crime Delivery Group.

8.0 Regulatory Impact

- 8.1 Regulators must have regard to the principles contained in the Regulators Code when undertaking regulatory activities, including the establishment of policies. A draft new Regulators Code has been published, which is due to be adopted by Parliament and implemented from Spring 2014. The specific obligations of the existing and proposed code relevant to the Licensing and Cumulative Impact Policies are;
- 8.2 Economic Progress
Regulators should consider the impact that their regulatory interventions may have on economic progress. They should only adopt a particular approach if the benefits justify the costs and it entails the minimum burden compatible with achieving their objectives. Regulators should consider the impact that their regulatory interventions may have on small businesses, ensuring that the regulatory interventions fall fairly and proportionately considering the size of the business and the nature of their activities.
- 8.3 Assessment of Risk
Regulators should ensure that the allocation of their regulatory efforts is targeted where they would be most effective by maximising their target outcomes. In general policies and activities must target those businesses where greater controls will lead to the increased promotion of the licensing objectives.
- 8.4 No evidence has been submitted that confirms a disproportionate detrimental economic effect of the policy. Local experience appears to demonstrate that there is not a disproportionate effect.
- 8.5 A Cumulative Impact Policy will only affect businesses in areas where evidence exists of crime and disorder or public nuisance, thereby targeting further regulatory controls to areas of need. The policy is applied equally to all business sizes and would not have a disproportionate effect on small business. It is possible that small businesses may have greater scope to convince the Licensing Committee or the responsible authorities that their operations would not add further negative impact.
- 8.6 In order to allow for greater flexibility in decision making the wording of the policy has been amended. The Licensing Committee will now consider whether an application will have significant negative impact on the area, rather than no negative impact.
- 8.7 The application of controls through the Licensing Policy are all subject to a legal test of being appropriate.
- ## **9.0 Conclusion**
- 9.1 The responses received in relation to the Statement of Licensing Policy are welcomed. Where possible and appropriate they have been incorporated into the proposed new policy.
- 9.2 The operation of the Cumulative Impact Policy to date has been undertaken in a proportionate way to balance the need to promote the licensing objectives and the needs of the evening and night time economy.
- 9.3 The level of crime and disorder has reduced since the introduction of the policy in 2008, but our ENTE areas still account for the majority of violent crimes.

- 9.3 The evidence submitted by the Police in Appendix I shows elevated levels of crime and disorder due to the concentration of licensed premises within the current 5 identified separate Cumulative Impact Areas.