

Meeting: Cabinet
Council

Date: 17 November 2020
3 December 2020

Wards Affected: All

Report Title: Licensing Act 2003 – Licensing Statement of Principles 2021 to 2026

Implementation Date: 7th January 2021

Cabinet Member Contact Details: Councillor Christine Carter, Cabinet Member for Corporate and Community Services, Christine.Carter@torbay.gov.uk

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1. Purpose of Report

- 1.1 In accordance with Section 5 of the Licensing Act 2003, the Council is required every 5 years, to review, consult and republish its Licensing Statement of Principles (The Statement). The current Statement was published on 7th January 2016 and therefore, it has been reviewed and consulted upon and must be re-published, on or before 7th January 2021.
- 1.2 In addition, the Council's Cumulative Impact Policy (CIP), following a change in legislation, no longer forms part of the Statement and must now be a standalone Policy. This has also been revised and consulted upon and is required to be republished on or before 7th January 2021.

2. Reason for Proposal and its benefits

- 2.1 This proposal is made in order to meet a statutory obligation as prescribed under Section 5 (1) Licensing Act 2003, which requires that the Licensing Authority publish a Statement and review and re-publish the same, at least every 5 years.
- 2.2 Whilst this is a statutory requirement and many aspects are required by law, there is a discretion within the Licensing Act for a Licensing Authority to design its Statement around the local area and emerging issues. The Statement therefore includes many of the recommendations of Evening and Night Time Economy Solutions Ltd Report, along with consideration to the views of consultees. This ensures that the Policy not only meets its statutory requirements but also considers and supports business aspirations to thrive and therefore helping to address poverty and inequality. It also supports a diverse Evening and Night Time Economy which supports arts and culture.
- 2.3 The Statement includes the statutory Licensing Objectives, which seek to Protect Children from Harm and the wider community from the Crime and Disorder, Public Nuisance and to ensure Public Safety.

3. Recommendation(s) / Proposed Decision

That Cabinet recommends to Council:

- 3.1 That the Licensing Statement of Principles 2021 to 2026, for publication with effect from 7th January 2021 be approved; and
- 3.2 That the Cumulative Impact Policy 2021 to 2024, for publication with effect from 7th January 2021 be approved.

Appendices

Appendix 1: Supporting Information and Impact Assessment

Appendix 2: Licensing Statement of Principles 2021 to 2026

Appendix 3: Cumulative Impact Policy 2021 to 2024

Appendix 4: Summary of consultation responses and outline of response

Background Documents

Licensing Act 2003

<http://www.legislation.gov.uk/ukpga/2003/17/contents>

Licensing Statement of Principles 2016 to 2021

<https://www.torbay.gov.uk/media/2993/licensing-statement-of-principles-2016-final.pdf>

Statutory Guidance issued under section 182 Licensing Act 2003

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/705588/Revised_guidance_issued_under_section_182_of_the_Licensing_Act_2003_April_2018_.pdf

Appendix 1: Supporting Information

1. Introduction

- 1.1 The Statement identifies how the Council will perform its role as Licensing Authority in relation to the licensing process for the sale and supply of alcohol, regulated entertainment and late night refreshments. It has been instrumental in directing applicants and licensing decisions over the last 5 years, and is now being reviewed following changes in legislation, statutory guidance and developments in best practice, in addition to a statutory obligation to review and re-publish.
- 1.2 The Council is not required to identify a Cumulative Impact Policy (CIP) area, however, it may do so in areas where there is increased crime and/or disorder that is caused by the cumulative effect of a number of licensed premises in the one area. The Council has therefore, adopted such a Policy for the area around the harbour side in Torquay and through Fleet Street and the Castle Circus areas. The size of this area has been reduced where no cumulative impact can any longer be identified.
- 1.3 The Act generally carries a rebuttable presumption to grant an application for a new or a variation to a Premises Licence. The effect of a CIP is that any such application received in the area of a CIP, will instead carry a rebuttable presumption to refuse. This places the onus upon the applicant to illustrate how they would adequately promote the licensing objectives as part of their operation were the application to be granted. The CIP, has been amended to only apply a rebuttable presumption to refuse for 'vertical drinking establishments', late Night Refreshment and 'Off Licences', in the revised CIP area.
- 1.4 A recent change in legislation requires that the CIP stands alone from the main Statement and must be kept under review a maximum of every 3 years.

2. Options under consideration

- 2.1 As the Statement is a statutory requirement, no other options have been considered.
- 2.2 Whilst there is an option in maintaining a CIP, it was not considered appropriate to withdraw it altogether based on current evidence. However, the current CIP has been amended to omit some areas where evidence suggests that there is no longer a requirement for it. This is the appropriate action in the absence of evidence of need in order to ensure that business is not unduly hindered and that the Council is safeguarded against legal challenge.

3. Financial Opportunities and Implications

- 3.1 There are no financial opportunities or implications arising from the change to the Statement or the CIP, save for minimal consultation costs, which were met from existing budgets.

4. Legal Implications

- 4.1 Any legal implications would arise only through a failure to fulfil the obligation to review and revise the Statement on time, as failure to do so could result in legal

challenge through Judicial Review, which could prove costly both in terms of financial impact and damage to reputation.

5. Engagement and Consultation

5.1 There is a statutory requirement to consult as laid out in Section 5 (3) of the Act, this extends to identification of those that must be consulted. The requirement is a broad one, which has been adhered to as part of the review process. The required consultees are:

- a) The Chief Officer of Devon and Cornwall Police
- b) The Chief Officer of Devon and Somerset Fire and Rescue Service
- c) The Director of Public Health
- d) Residents and businesses of Torbay
- e) Bodies representing businesses
- f) Holders of Premises Licences and Club Premises Certificates
- g) Bodies representing existing registered clubs
- h) Bodies representing holders of existing premises licences and personal licences
- i) Torbay and Southern Devon Health & Care NHS Trust
- j) Torbay Council: Children's Services
- k) Torbay Council: Planning, Environmental Health and Highways Authorities
- l) The Torbay Safer Communities Partnership
- m) The Maritime and Coastguard Agency
- n) Faith groups via Torbay Interfaith Forum and the Street Pastors
- o) Torbay Development Agency
- p) English Riviera BID Company
- q) Torbay Harbour Authority

5.2 In addition to the above, the Statement and the CIP were considered by Licensing Committee on 11th August 2020. Recommendations from Licensing Committee were considered in line with the consultation responses and incorporated into the amended document.

5.3 Two other responses were received in respect of the Statement and two with regard to the CIP. Where appropriate, these were considered and an amendment to the Statement has been made, the responses and the action taken are outlined in Appendix 4

6. Purchasing or Hiring of Goods and/or Services

6.1 This proposal does not require the purchase or hire of goods or services.

7. Tackling Climate Change

7.1 There is no aspect of this Statement that will impact negatively or positively on climate.

8. Associated Risks

8.1 The risks are more associated with any failure to review and re-publish the Statement in time as the effect would be that the Council would have no Statement in place, which effectively would prevent lawful discharge of functions under the

Licensing Act 2003, which may lead to legal challenge against the Council and financial penalties being incurred.

- 8.2 The risks associated with agreeing the Statement are minimal as it has been reviewed in line with regulatory requirements, which include full consultation and consideration of any comments that are received.

Equality Impacts

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| <p>9.</p> | <p>Identify the potential positive and negative impacts on specific groups</p> <p>The Policy is a review of an existing Policy and therefore there is no change to impact of specific groups. Where there exists any potential for impact, this would generally be through the application process where there is the safeguard that any responsible authority or 'other person' may make representation. The four licensing objectives are also designed to ensure consideration of any impacts.</p> | | |
| | <p>Positive Impact</p> | <p>Negative Impact & Mitigating Actions</p> | <p>Neutral Impact</p> |
| <p>Older or younger people</p> | <p>x</p> | | |
| <p>People with caring Responsibilities</p> | | | <p>X</p> |
| <p>People with a disability</p> | | | <p>X</p> |
| <p>Women or men</p> | | | <p>X</p> |
| <p>People who are black or from a minority ethnic background (BME) <i>(Please note Gypsies / Roma are within this community)</i></p> | | | <p>X</p> |
| <p>Religion or belief (including lack of belief)</p> | | | <p>X</p> |
| <p>People who are lesbian, gay or bisexual</p> | | | <p>X</p> |
| <p>People who are transgendered</p> | | | <p>x</p> |

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|-------------|---|------|--|---|
| | People who are in a marriage or civil partnership | | | X |
| | Women who are pregnant / on maternity leave | | | X |
| | Socio-economic impacts (Including impact on child poverty issues and deprivation) | | | X |
| | Public Health impacts (How will your proposal impact on the general health of the population of Torbay) | X | | |
| 10.. | Cumulative Council Impact (proposed changes elsewhere which might worsen the impacts identified above) | None | | |
| 11. | Cumulative Community Impacts (proposed changes within the wider community (inc the public sector) which might worsen the impacts identified above) | None | | |