

Agenda Item No: 4

Report To: LICENSING AND HEALTH AND SAFETY COMMITTEE



Date: 26TH NOVEMBER 2007

Report Title: LICENSING ACT 2003: REVISION TO THE LICENSING POLICY

Report Author: Environmental Services Manager

Summary:	The purpose of this report is to present to the Licensing and Health and Safety Committee a revision to Ashford Borough Council's Licensing Policy, prepared in accordance with the Licensing Act 2003.
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Key Decision: YES

Affected Wards: ALL

Recommendations : **The Licensing and Health and Safety Committee recommends the revised licensing policy as prepared in accordance with the Licensing Act 2003, be approved.**

Policy Overview: The Council is under a statutory duty to publish a Licensing Policy every three years and to ensure that there is adequate consultation with stakeholders as part of the policy development process. The preparation of a licensing policy is an important objective as outlined within Environmental Service Plan. The Licensing Policy links to and supports other strategies of the Council such as the Local Plan, Cultural Strategy, Transport Policy and Community Strategy, especially in terms of Crime and Disorder. The Licensing Policy also contributes to the objectives of a wider group of related organisations.

Financial Implications: The costs associated with the revision to the Licensing Policy are met through the centrally set licensing fees under the 2003 Act.

Risk Assessment Yes

Exemption Clauses: None

Background Papers: Consultation Matrix to be provided at the meeting

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**Report Title: LICENSING ACT 2003: THE REVISION TO
ASHFORD BOROUGH COUNCIL'S
LICENSING POLICY**

Purpose of the Report

1. The purpose of this report is to present to the Licensing and Health and Safety Committee a revised Licensing Policy that has been prepared in accordance with the Licensing Act 2003. The revised Licensing Policy was provided to members by post and is available from the Licensing Manager.

Issue to be Decided

2. The Licensing and Health and Safety Committee is asked to recommend approval of the licensing policy as prepared in accordance with the Licensing Act 2003.

Policy Development

3. The Ashford licensing policy as appended to this report has been developed in accordance with the Secretary of States Guidance under s182 of the Licensing Act 2003.
4. A draft licensing policy was approved by the Executive for consultation purposes in October 2007.
5. The policy has been amended as a result of consultation, although the only responses that have been received are from Officers who have been reviewing the policy. As the consultation period has yet to close a list of the responses will be provided at the meeting.

The licensing system

6. The Licensing Act 2003 has been in force since November 24th 2005 and governs the sale or supply of alcohol, the provision of regulated entertainment (music, dancing, films, plays, etc) and late night refreshment.
7. On the 16th December 2004 the Council passed Ashford Borough Council's Licensing Policy.
8. Section 5 of the 2003 Act requires a licensing authority to prepare and publish a Licensing Policy every three years. Our policy must be published before the authority carries out any function in respect of applications made under the 2003 Act and must be in place by the 7th January 2008.
9. The duty on licensing authorities, i.e. the Council, is to promote the licensing objectives at all times when carrying out functions under the Act. The four objectives are:
 - a. Prevention of crime and disorder
 - b. Promoting public safety
 - c. Prevention of public nuisance
 - d. Protection of children from harm

Ashford Policy Consultation

10. The Ashford revised Licensing Policy (“the policy”) as appended to this report has been developed in accordance with the Secretary of States Guidance under s182 (as revised) of the Licensing Act 2003.
11. It has also been influenced by High Court’s decision in *R (The British Beer and Pub Association and Others) v. Canterbury City Council (2005) EWHC 1318 (Admin)*.
12. The policy may set out how the Council will approach the making of such decisions, indicating what the Council considers to be important, what control measures it will be looking for, and so forth.
13. It is vital that the policy does not turn into a rule that is applied inflexibly and fetters the exercise of discretion. There must be a willingness to consider individual applications on their particular merits.
14. A policy relating to the decision-making stage under section 18(3) not only guides the decision-maker but also service to inform an applicant about what he should consider in preparing his application.
15. A statement of licensing policy is unlawful if and in so far as it prescribes or dictates the contents of an application and gives the impression that the council will assess, and exercise substantive discretionary powers in relation to, *all* applications and not just those that come through for a decision under section 18(3).
16. The licensing authority has no power at all to lay down the contents of an application and has no power to assess an application, or to exercise substantive discretionary powers in relation to it, unless there are relevant representations.
17. After the Court’s decision in 2005, Ashford Borough Council’s Licensing Policy was reviewed by Counsel and the recommended changes have been incorporated into the revised policy.
18. The following persons must be consulted about the review of this policy:
 - The Chief of Police;
 - The Fire and Rescue Authority;
 - Persons/bodies representative of local holders of premises licences;
 - Persons/bodies representative of local holders of club premises certificates;
 - Persons/bodies representative of local holders of personal licences; and
 - Persons/bodies representative of local holders of business and residents.
19. The views of the community were invited via press releases which appeared in the Kentish Express and on the front page of Ashford Borough Council’s website.

20. Many of the changes in the revised policy result from this court case, but the revisions to government guidance have also influenced the review. In addition to the change in emphasis and expectation promoted by the court case, the proposed changes include:
- The removal of the expectation of planning permission for applicants making applications under the 2003 Act;
 - The removal of the section on small capacity venues as this a technical matter which has had little relevance over the past three years;
 - The revision of the legislation behind occupancy limits;
 - Change in emphasis for premises open later than 23:00 in Tenterden; and
 - Information on the licensing of public open spaces.
21. It is recognised that the consultation process may identify further focus issues and these will be incorporated into the revised policy as appropriate.
22. A tracked change version of the changes was made to the policy passed in 2004 has been available in the Member's Room and one will also be available for consultation at the Executive and Licensing Committee meetings if any member wishes to see it.
23. During the public consultation, no responses were received from the public or responsible authorities regarding the policy, however the consultation period runs until Friday 23rd November and so an update will be provided at the meeting.
24. The Licensing Committee is asked to recommend a final policy to the Executive and Full Council.

Implementation Plan

25. A timetable for policy development and consultation is provided as follows:

October – November 2007	Consultation & policy development.
End of November 2007	Summary of consultation and revised policy will be brought before the Licensing Committee for consideration.
6th December 2007	Final version of the policy reported to Executive for recommendation for Council approval.
13th December 2007	Policy approved by full Council.
7th January 2008	Policy takes effect.

26. The Licensing Manager has reviewed the consultation responses and will make final suggestions at the meeting.

Financial Implications

27. The Secretary of State has established fee levels to provide full cost recovery of all licensing functions including preparation and publication of a statement of licensing policy. The consultation costs were calculated including the statutory requirements.

Risk Assessment

28. Notwithstanding this policy each application must be considered on its individual merits.
29. It is necessary and important to continue to evolve and keep Members, Officers and the public apprised of current legislation and guidance to meet its requirements.
30. Section 5(4) of the 2003 Act provides that the licensing policy must keep its policy under review during each three year period and make appropriate revisions.

Other Options Considered

31. The requirement to implement and enforce the Act, including the publication of a policy, is a statutory duty and the Secretary of States guidance to a large extent dictates the process.

Implications Assessment

32. Judicial review is a significant risk if the policy we adopt strays beyond the key licensing objectives.

Conclusion

33. The policy must be kept under regular review ensure that it responds successfully to new circumstances, changing case law and particularly the changes to Ashford in the coming years.

Portfolio Holder's Views

34. A copy of the draft report was sent to Councillor Bell.

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