

Committee: Licensing Committee

Date: 6 February 2020

Wards: All

Subject: Draft Statement of Licensing Policy 2021- 2026, including proposed Cumulative Impact Assessment

Lead officer: Chris Lee, Director of Environment and Regeneration

Lead member: Cllr Caroline Cooper-Marbiah, Cabinet Member for Commerce, Leisure & Culture

Contact officer: Helen Clark, Commercial Services Manager, London Boroughs of Merton, Richmond upon Thames and Wandsworth Joint Regulatory Services Partnership and Guy Bishop Senior Lawyer Litigation and Planning Team.

Recommendation:

- A. That the Licensing Committee approves, for preliminary consultation, the draft recommended Statement of Licensing Policy 2021-2026 as laid out in Appendix A.
 - B. That the Licensing Committee approves the review of the existing Cumulative Impact Zones in light of the introduction of legislation in 2018 governing Cumulative Impact Policies
 - C. That the Licensing Committee approves the data streams to be explored to establish a robust evidence base for adoption of a Cumulative Impact Assessment for the Borough.
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1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1 There is a statutory requirement under section 5 (1) of the Licensing Act 2003 (as amended) for the Council to review and re-publish its Statement of Licensing Policy every five years.
- 1.2 As of the 6th April 2018, Cumulative Impact Assessments (CIA) were introduced into legislation by the Policing and Crime Act 2017. The Act sets out what a licensing authority must do in order to introduce a Cumulative Impact Policy, including collecting, publishing and consulting on the evidential basis for its policy and the requirement to review the CIA (including public consultation) every three years. A Cumulative Impact Assessment must be included as part of the Authority's Licensing Policy. It is, therefore, proposed to carry out a full review of the evidential base for the existing Cumulative Impact Zones for Mitcham Town Centre, Wimbledon Town Centre and Wimbledon Village. The proposed data streams that will be used as a basis for the Cumulative Impact Assessment is laid out in the body of the report at paragraph 2.3

2. DETAILS

- 2.1 **Review of the Statements of Licensing Policy for the London Borough of Merton.**

There is a statutory requirement under the Licensing Act 2003 for the Council to review and re-publish its Statement of Licensing Policy every five years. The requirement to review and re-publish the Council's Statement of Licensing Policy was extended from three to five years by an amendment to the Licensing Act 2003 brought about by the Police Reform and Social Responsibility Act 2011. The current Statement of Licensing Policy will expire on 6th January 2021

Attached at Appendix A is the draft proposed Licensing Policy Statement 2021-2026 for members to consider. The Policy Statement has been drawn up based on the existing Policy and having regard to changes in legislation and Government Guidance.

The proposed Policy has been reviewed by the Senior Lawyer and legal advisor to the Licensing Sub-Committee.

Following this meeting it is proposed that officers of the Licensing Authority liaise with Responsible Authorities before the start of the public consultation period. This will enable officers to discuss the proposed changes to the Council's Statement of Licensing Policy, and to take into consideration points a Responsible Authority may want to present for consideration. Officers will also engage with Members, particularly those representing the areas covered by the current Cumulative Impact Policy. All comments and points raised by the Responsible Authorities or Councillors will be brought before a meeting of the Licensing Committee on the 9th June 2020. This will enable members to consider any final changes or proposed amendments before the start of the public consultation period.

Details of the responsible authorities are as follows:

- The local Chief Officer for the Metropolitan Police;
- The London Fire and Emergency Planning Authority;
- The local Planning Authority;
- The Director of Public Health;
- The local Children's Safe Guarding Board;
- The Manager of the local Environmental Health Team (Commercial);
- The Manager of the local Trading Standards Team;
- The Manager of the local Environmental Health Team (Environmental Protection); and
- The Home Office

If agreed at the June Licensing Committee, the draft Statement of Licensing Policy will be circulated for public consultation starting on the 15th June 2020. It is recommended that the public consultation period shall last for a minimum period of twelve weeks (three months).

Following the end of the public consultation period, officers of the Licensing Authority will collate comments received. Details of the comments received and any suggested changes to the draft Statement of Licensing Policy will be made available to members for discussion at a meeting before the Licensing Committee on a date yet to be confirmed. Following this meeting if Committee members agree to the proposed amendments to the draft

Statement of Licensing Policy, the Licensing Committee shall recommend adoption by Full Council that will formally adopt the revised Policy

2.2 Proposed amendments to the existing policy

The draft proposed policy largely mirrors the existing Policy. The opportunity has been taken:

- (i) to remove sections that merely re-iterate legislation, instead referring the reader to the appropriate websites;
- (ii) to add a new Glossary at the start of the Policy that explains terminology contained within the body of the Policy;
- (iii) to try to make the Policy clearer to read by making drafting changes;
- (iv) to expand the section profiling the borough and referring the reader to the Council's website to gain more information about the Council's policies and strategies;
- (v) to expand the matters that applicants are urged to consider when drawing up their operating schedules to reflect the representations commonly received from the Metropolitan Police and/or trading standards.
- (v) to add a new Appendix confirming delegations of licensing decisions and functions.
- (vi) to refer to the development of a set of model conditions that will be published on the Council's website.

However, it is proposed to introduce two new additions to the Policy:

- (i) To allow an applicant to show a film that has not been classified by the British Board of Film Classification if they present special circumstances to do so. In such circumstances the film must, instead, be classified by licensing officers of the Council. In all such cases at least 2 months' notice must be given and the applicant must pay a fee.
- (ii) The Policy now urges applicants to apply for a Temporary Event Notice at least two months in advance of the event to allow time for the police and Council officers to investigate whether there may be issues that could then be addressed in plenty of time for the event to be advertised with confidence.

2.3 Cumulative Impact

Cumulative impact is described as the potential impact on the promotion of the licensing objectives of a number of licensed premises concentrated in one area. Initially there was no statutory basis for a Council to introduce a cumulative impact policy, instead relying on Government Guidance which stated that a significant number of licensed premises concentrated in one area was a proper matter for the Authority to take into account when developing its policy statement. This allowed an Authority to adopt a specific 'cumulative impact' policy for particular areas of their borough if they considered that the number, type or density of licensed premises in one area was high or exceptional and serious problems of nuisance or disorder could occur outside or some distance from premises.

With effect from the 6th April 2018, cumulative impact assessments were introduced into legislation by the Policing and Crime Act 2017. The legislation states that a licensing authority may publish a document ("a cumulative impact

assessment”) stating that the licensing authority considers that the number of licenced premises in one or more parts of its area described in the assessment is such that it is likely that it would be inconsistent with the authority’s duty to uphold the licensing objectives to grant any further authorisations in respect of premises in that part or those parts. A cumulative impact assessment must set out the evidence for the authority’s opinion. Cumulative impact assessments may relate to all relevant authorisations or only to authorisations of a kind described in the assessment e.g. for premises selling alcohol for consumption off the premises only.

The Act sets out what a licensing authority must do in order to publish a cumulative impact assessment, including publishing the evidential basis for its opinion, the requirement to consult and with whom and the need to review the cumulative impact assessments (including public consultation) every three years. The evidence underpinning the publication of the CIA must be suitable as a basis for a decision to refuse an application or impose conditions.

The evidence of cumulative impact on the promotion of the licensing objectives needs to relate to the particular problems identified in the specific area to be covered by the CIA. The Secretary of State’s Guidance provides a list of Information which licensing authorities may be able to draw on when considering whether to publish a CIA including:

- local crime and disorder statistics, including statistics on specific types of crime and crime hotspots;
- statistics on local anti-social behaviour offences;
- health-related statistics such as alcohol-related emergency attendances and hospital admissions;
- environmental health complaints, particularly in relation to litter and noise;
- complaints recorded by the local authority, which may include complaints raised by local residents or residents’ associations;
- residents’ questionnaires;
- evidence from local and parish councillors;
- evidence obtained through local consultation;
- trends in licence applications by types and terminal hours;
- Capacities of licensed premises
- Underage drinking statistics.

The Licensing Authority is required to consult on its proposed CIA with the following:

- the chief officer of police for the area;
- the fire and rescue authority for the area;
- each local authority’s Director of Public Health in England (DPH);
- 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; and
- persons/bodies representative of businesses and residents in its area.

Previously, the adoption of a Cumulative Impact Policy created a ‘rebuttable presumption’ that applications for new or variation premises licences or club premises certificates (for premises within the cumulative impact area) would be

refused unless the applicant could demonstrate that the granting of the application would not have a negative cumulative impact on one or more of the licensing objectives. However, the Policing and Crime Act 2017 does not stipulate how the cumulative impact assessment should be used once published. Consequently, the requirements for determining new or variation applications are the same in areas with a cumulative impact assessment as they are elsewhere. But the licensing authority, responsible authorities and others can have regard to any assessment when deciding whether to make a representation to the Licensing Committee.

There are currently 3 Cumulative Impact Areas or Zones (CIZ) in the borough: Mitcham Town Centre, Wimbledon Town Centre and Wimbledon Village. The CIZ's for Wimbledon Town Centre and Wimbledon Village were first adopted in 2005. The CIZ for Mitcham Town Centre was introduced in 2016 and relates to the sale of alcohol for consumption off the premises only. Maps showing the extent of the CIZ's are attached at Appendix B

As previously stated there must be robust evidential basis for the decision to publish a CIA and this evidential basis must be open to scrutiny as part of the consultation process. Areas where a CIA is applied but is unsupported by evidence are liable to challenge by licence holders or applicants where decisions are refused on the basis of cumulative impact and such decisions are less likely to be upheld. Although the CIZ's have been reviewed over the years as part of the review of the Council's Licensing Policy, a full evidence gathering process has not been carried out for some years in relation to the Wimbledon Town Centre and Wimbledon Village CIZ's. In view of this it is proposed to carry out a full review of the existing Cumulative Impact Zones. It is proposed that the review will include a call for evidence from Responsible Authorities, seeking evidence from them on matters of crime and disorder, anti-social behaviour, health impacts including alcohol related emergency attendances and hospital admissions and environmental health complaints (particularly in relation to litter and noise). It is proposed that the following data sets be explored where possible::

- Licensed Premises Data: Where they are and what they are licensed for
Source: Merton Council records
- Violence against person (VAP) Data: Distribution of VAP Offences in Merton
Source: Police data extracted from CRIS and mapped
- Ambulance data – assaults and alcohol related call outs Data: where an ambulance was required - looking at high demand locations in Merton and the time when ambulance was required. Source: LAS data and mapped
- Rowdy or Inconsiderate Behaviour Data: Alcohol related ASB calls to police
Source: calls received by Police for Rowdy & Inconsiderate Behaviour
- Relationship between deprivation and alcohol related mortality rates Data: Rates of alcohol related mortality rates and levels of deprivation
Source: Multiple deprivation for Merton by Lower Super Output Area (LSOA).

- Environmental Health Noise Complaints Data: Environmental health noise complaints regarding licensed premises Source: Merton Council
- Complaints about licensed premises Data: Source: Merton Council, Metropolitan Police
- Underage sale data Source: Merton Council
- Annual residents survey and Community Safety Survey
- Children and Young Persons Survey
- Information from Ward Councillors

Members are asked to agree that the above data sets be used to draw up a Cumulative Impact Assessment for the Borough which will then be subject to public consultation and to consider whether any additional information should be sought.

3. CONSULTATION UNDERTAKEN OR PROPOSED

- 3.1 It is proposed that a further report be brought before the Licensing Committee in June 2020 with a finalised draft Licensing Policy, including the proposed Cumulative Impact Assessment. A twelve week (three month) public consultation will then be undertaken on the proposed Statement of Licensing Policy and proposed Cumulative Impact Assessment

4. TIMETABLE

- 4.1 Draft Statement of Licensing Policy to be used for public consultation to be brought before the Licensing Committee meeting on 9th June 2020
- 4.2 Public consultation to start on 15th June 2020. Public consultation to last for a twelve week period.
- 4.3 Comments received during the public consultation period and the final draft of the Statement of Licensing Policy to be submitted before the Licensing Committee on the 15th October 2020.
- 4.4 Statement of Licensing Policy to go to Full Council meeting for adoption on the 18th November 2020.

5. FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

- 5.1 None for the purposes of this report.

6. LEGAL AND STATUTORY IMPLICATIONS

- 6.1 None for the purposes of this report.

7. HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

- 7.1 These are statutory functions and are applied globally.

8. CRIME AND DISORDER IMPLICATIONS

- 8.1 The service has a statutory duty to contribute to the reduction of crime and disorder within the London Borough of Merton under Section 17 Crime and

Disorder Act 1988. The prevention of crime and disorder is also one of the licensing objectives as defined in the Licensing Act 2003 and in the Council's current Statement of Licensing Policy.

By examining issues raised such as the possible adoption of a Cumulative Impact Assessment covering specific areas of the borough the licensing authority is contributing to that commitment.

9. RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

9.1 All risk and health and safety implications have been considered when compiling this report. None are apparent.

10. APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT

- Appendix A – Draft Statement of Licensing Policy 2021-2026
- Appendix B - Maps showing the current Cumulative Impact Zones.

11. BACKGROUND PAPERS - THE FOLLOWING DOCUMENTS HAVE BEEN RELIED ON IN DRAWING UP THIS REPORT BUT DO NOT FORM PART OF THE REPORT.

11.1 The Licensing Act 2003; and

11.2 Revised guidance issued under section 182 of the Licensing Act 2003.

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