

Date: 18 November 2020

Wards: All

Subject: Adoption of the Council's Statement of Licensing Policy 2021 - 2026 as required under Section 5 of the Licensing Act 2003.

Lead officer: Chris Lee, Director of Environment and Regeneration.

Lead member: Councillor Nick Draper, Chair of the Licensing Committee

Contact Officer: Caroline Sharkey, Licensing Manager, London Boroughs of Merton, Richmond upon Thames and Wandsworth Joint Regulatory Services Partnership and Guy Bishop Senior Lawyer Litigation and Planning Team.

Recommendations:

A. To adopt the Council's Statement of Licensing Policy 2021-2026 as required under Section 5 of the Licensing Act 2003, as approved by Members of the Licensing Committee on 15 October 2020.

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 were introduced under section 5A of the Licensing Act 2003 by section 141 of the Policing and Crime Act 2017. Under the legislation, a local authority must collect, publish and consult on the evidential basis for any proposal " that the licensing authority considers that the number of relevant authorisations in respect of 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 under section 4(1) to grant any further relevant authorisations in respect of premises in that part or those parts". The final Cumulative Impact Assessment must be included as part of the Licensing Policy.

2. **DETAILS**

2.1 **Consultation**

The Licensing Authority must carry out consultation with a prescribed list of consultees, listed in section 5(3) of the Act, before determining its policy. These include:

- The Chief Officer of Police
- The Fire and Rescue Authority
- The Director of Public Health.

- Persons/bodies representing local premise licence holders
- Persons/bodies representing local club premise certificate holders
- Persons/bodies representing local personal licence holders
- Persons/bodies representing local businesses and residents.

2.2 Their views must be given appropriate weight when the policy is determined. Subject to the statutory requirements; it is for each Licensing Authority to determine the extent of the consultation having regard to the cost and time.

2.3 At its meeting of 9 June 2020, the Licensing Committee approved a draft Statement of Licensing Policy for the purposes of public consultation and approved the arrangements for the consultation. The Licensing Committee also considered the available evidence of cumulative impact in the Borough. The Committee approved for consultation a general indication of the parts of the Borough where it believes that the number or density of licensed premises is having a cumulative impact leading to problems which are undermining the licensing objectives. The Cumulative Impact Analysis included the reasons for this belief and whether the special policy would relate to all premises licences and club premises certificates or only to those of a particular kind.

2.4 The public consultation of the draft Statement of Licensing Policy and Cumulative Impact Analysis took place between 15 June and 7 September 2020. Consultation was carried out as laid out in Sections 5.2 and 5.3 of the Policy. This included directly contacting Responsible Authorities, solicitors who regularly represent licensees in the Borough, trade associations, Ward Councillors residents' associations and other stakeholders who receive e-mail notification of applications received by the Licensing Authority. In addition, electronic copies of the consultation documents were published on the Council's website. The consultation was also publicised on social media by the Council.

3.0 **Responses on consultation on the Licensing Policy (excluding Cumulative Impact Assessment)**

3.1 During the consultation period the Licensing Authority received thirteen responses to the consultation on the draft Licensing Policy (excluding the Cumulative Impact Assessment which was subject to parallel but separate consultation) through the on-line survey. In addition, direct responses were received from the Metropolitan Police and the Director of Public Health.

3.2 Copies of responses received were presented to Members of the Licensing Committee for their consideration at the meeting held on Wednesday 15 October 2020.

4.0 **Cumulative Impact Assessment**

4.1 Section 141 of the Policing and Crime Act 2017 came into force on 6 April 2018 and gave cumulative impact assessments (CIAs) a statutory basis in the Licensing Act 2003. Until that date, cumulative impact policies (CIPs) were only

described in Home Office guidance on the 2003 Act. The guidance described cumulative impact as “the potential impact on the promotion of the licensing objectives of a significant number of licensed premises concentrated in one area.”

- 4.2 In 2016 the Home Office published its Modern Crime Prevention Strategy which included a range of measures to prevent alcohol-related crime and disorder. One of these was to put CIPs “on a statutory footing, to strengthen the ability of authorities to control the availability of alcohol and reduce alcohol-related crime and disorder, as well as providing industry with greater clarity about how they can be used”. At that time, the Home Office was concerned that the system could, among other things, lead to disproportionate restrictions on new business. They felt that CIP’s could be implemented on relatively weak grounds and remain in place for a number of years based on limited or outdated evidence. It was their belief that this could lead to disproportionate restrictions on new business and potentially an associated impact on communities where a CIP could prevent new venues in town centres which could enhance the area. The lack of evidence or a poor evidence base could also lead to the failure of a CIP to stand up to scrutiny in the courts in the event of an appeal or make it difficult for the authority, as a responsible authority, to protect the policy.
- 4.3 By giving Cumulative Impact Assessments a statutory basis, the Government believed that this would assist transparency in decision making. Under the 2003 Act, therefore, a licensing authority can publish a CIA to help limit the number or types of licence applications granted where there is evidence showing that the number or density of premises in an area is having a cumulative impact and leading to problems which are undermining the licensing objectives. The 2003 Act sets out what a licensing authority needs to do to publish a CIA. This includes consulting with residents and businesses in the borough and reviewing the Assessment every three years to ensure that it is current and remains rooted in strong evidence.
- 4.4 Under the amendments to the Licensing Act 2003 brought about by the Policing and Crime Act 2017, there is no longer a ‘rebuttable presumption’ that applications for licences in areas with CIP’s would be refused unless there was a strong reason put forward by the applicant to grant. Instead the requirements for determining new or variation applications are the same in areas with a CIP as they are elsewhere. However, anyone making a representation can have regard to the CIP when deciding whether to make a representation for or against an application.
- 4.5 At its meeting on the 9th June 2020, the Licensing Committee reviewed the evidence regarding the number of licensed premises and the impact such premises were having on crime and disorder, nuisance and health (through ambulance call out figures) across the borough. The Committee approved for consultation a general indication of the parts of the borough where it believed that the number or density of licensed premises was having a cumulative impact leading to documented problems which were undermining the licensing objectives. The Cumulative Impact Analysis included the reasons for this belief and whether the policy would relate to all premises licences and club premises certificates or only to those of a particular kind. The consultation revolved around the proposal that:
- Evidence is available to support retention of the two of the existing cumulative impact areas, Wimbledon Town Centre and Mitcham Town Centre;

- There is insufficient evidence to support the retention of a special policy for Wimbledon Village;
- It is not appropriate to include any other area of the borough in the Cumulative Impact assessment.

Wimbledon Town Centre CIA, consultation response

- 4.6 100 people responded to the on-line consultation. Of these, 89% agreed or strongly agreed that there should be a special policy on cumulative impact in respect of Wimbledon Town Centre. Responses from the Director of Public Health and the Metropolitan Police also supported the retention the cumulative impact policy. A copy of the responses were provided to Members of the Licensing Committee.
- 4.7 Having considered the evidence from the Cumulative Impact Analysis and the responses to the public consultation the Licensing Committee decided that the special policy on cumulative impact should be retained for Wimbledon Town Centre.

Mitcham Town Centre CIA, consultation responses

- 4.8 95 people responded to the on-line consultation. However, of these, 64% indicated that they had no view on whether there should be a CIA in Mitcham Town Centre. Of those that recorded a view (43 people), 76.7% were in favour of a special policy on Cumulative Impact relating to off-sales in Mitcham Town Centre. The Director of Public Health and the Metropolitan Police also supported the continuation of the special policy on cumulative impact in Mitcham Town Centre.
- 4.9 Having considered the evidence from the Cumulative Impact Analysis and the responses to the public consultation the Licensing Committee decided that the special policy on cumulative impact should be retained for Mitcham Town Centre relating to off-sales only.

Wimbledon Village, consultation responses

- 4.10 88 people responded to the on-line consultation. Of these 12.5% strongly agreed that there was insufficient evidence to retain a special policy on cumulative impact in Wimbledon Village. 87.5% disagreed or strongly disagreed with this statement. In addition, 65 responses were received directly objecting to the removal of a special policy in Wimbledon Village, with 5 in support. 1 accepted that there was insufficient evidence at this time for a special policy but wished assurance that the decision could be quickly reversed if problems started to occur. Direct responses were received from Parkside Residents Association, Wimbledon East Hillside Residents Association, Lauriston Road and Wilberforce Way Residents Association, Wimbledon Union of Residents' Associations, the Belvedere Estates Residents' Association, Merton Conservative Group, Wimbledon Village Ward Safer Neighbourhood Police Panel as well as from individual residents. Copies of all these responses were provided to the Licensing Committee for consideration
- 4.11 The Director of Public Health was of the view that the data presented in the cumulative impact analysis did not support a cumulative impact on the licencing objectives. The Metropolitan Police advised that Wimbledon Village had not suffered from crime or ASB associated with the cumulative effect of multiple premises selling alcohol.
- 4.12 Having considered the evidence from the Cumulative Impact Analysis and after carefully evaluating the responses to the public consultation the Licensing Committee decided that the special policy on cumulative impact should not be

retained for Wimbledon Village. However, the Committee asked that the evidence be reviewed in 18 months to assess what impact the removal of the special policy may have had.

5.0 Introducing a special policy on cumulative impact elsewhere in the borough – consultation responses

- 5.1 86 people responded to the on-line consultation but of these 87% had no view on whether a cumulative impact policy should be introduced anywhere else in the borough. Of the remainder 45% (5 respondents) felt that such a policy should be introduced with 54.5% (6 respondents) believing that no further special cumulative impact policies were needed. Of the 5 that indicated that they were in favour of introducing a policy elsewhere in the borough, only one indicated where that area should be. They were concerned that anti-social behaviour nuisance could increase in Raynes Park, particularly in view of the late night train service. In addition to the on-line consultation comments were received from Merton Conservative Group and the Director of Public Health. Both were concerned about the density of licenced premises in Morden Town Centre and the impact they were having on crime and anti-social behaviour. However, both acknowledged that Morden Town Centre is currently part of a planned redevelopment project but that the area should be kept under review.
- 5.2 Having considered the evidence from the Cumulative Impact Analysis and after evaluating the responses to the public consultation the Licensing Committee decided not to introduce a special policy on cumulative impact elsewhere in the borough at this time.

6.0 DECISION

- 6.1 Members of the Licensing Committee decided to approve the draft Statement of Licensing Policy attached at Appendix A with a recommendation for adoption by full Council.

7.0 ALTERNATIVE OPTIONS.

- 7.1 None for the purposes of this report

8.0 Consultation undertaken or proposed.

- 8.1 A twelve week (three month) public consultation was undertaken on the proposed Statement of Licensing Policy and the Cumulative Impact Analysis.

9.0 Timetable.

- 9.1 Following adoption by full Council the Statement of Licensing Policy 2021 -2026 will be published on the Council's website and will take effect from 6 January 2021

10. Financial, resource and property implications.

- 10.1 None for the purposes of this report.

11. Legal and statutory implications.

- 11.1 As set out in the report the licensing authority is required by section 5 the Licensing Act 2003 to determine and publish a Statement of Licensing Policy at intervals of not less than five years. The Licensing Authority is required to undertake a consultation process prior to determining its Statement of Licensing Policy.
- 11.2 Section 141 of the Policing and Crime Act 2017 amended section 5 of the Licensing Act 2003 placing the requirement of a cumulative impact assessment (“CIA”) on a statutory footing, instead of the adoption of Cumulative Impact Zones and Policies, as part of the licensing authority’s Statement of Licensing Policy.

Section 5A(1) of the Licensing Act 2003 (as amended) states:

- 11.3 “A licensing authority may publish a document (“a cumulative impact assessment” stating that the licensing authority considers that the number of relevant authorisations in respect of 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 under section 4(1) to grant any further relevant authorisations in respect of premises in that part or those parts.”
- 11.4 A cumulative impact assessment must set out the evidence for the authority’s opinion in accordance with subsection (1) above and must be referred to in the Statement of Licensing Policy.
- 11.5 Before introducing a Cumulative Impact Assessment the Licensing Authority is required to undertake a formal public consultation process and a CIA can only be introduced where it is supported by evidence. Paragraphs 14.29 to 14.33 of the Home Office Guidance issued under section 182 of the Licensing Act 2003 sets out what evidence and other matters the Licensing Authority may wish to consider.

12.0 Human rights, equalities and community cohesion implications.

12.1 These are statutory functions and are applied globally.

13.0 Crime and Disorder Implications.

13.1 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.

14.0 Risk management and health and safety implications.

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

15.0 Appendices – the following documents are to be published with this report and form part of the report.

15.1 Appendix “A” Draft Statement of Licensing Policy 2021-2026

16.0 **Background Papers – the following documents have been relied on in drawing up this report but do not form part of the report.**

- 16.1 The responses received in respect of the on-line consultation on the draft Statement of Licensing Policy.
- 16.2 The emails received from consultees
- 16.3 The Cumulative Impact Analysis,
- 16.4 The Licensing Act 2003
<https://www.legislation.gov.uk/ukpga/2003/17/contents>
- 16.5 Statutory Guidance made under Section 182 Licensing Act 2003
<https://www.gov.uk/government/publications/explanatory-memorandum-revised-guidance-issued-under-s-182-of-licensing-act-2003>
- 16.6 House of Commons Library Briefing Paper: Alcohol Licensing, Cumulative Impact assessments
<https://researchbriefings.files.parliament.uk/documents/CBP-7269/CBP-7269.pdf>

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