

Appendix C

Statement of Licensing Policy – Supporting Information

1. Introduction/Background

- 1.1 Section 5 of the Licensing Act 2003 requires all Licensing Authorities to prepare and publish a Statement of Licensing Policy (SLP) with respect to the exercise of its licensing functions.
- 1.2 The SLP will last for a maximum of five years and can be reviewed and revised by the authority at any time.
- 1.3 The Council's present SLP was published on 12th December 2013 and therefore must undergo a review and be republished on or before 11th December 2018.

2. Supporting Information

- 2.1 The 2013 SLP has served its purpose. This new policy has significantly updated the 2013 SLP including taking account of broader legislative changes. Due to the general reformatting of the Statement, it has not been possible to include all of the amendments as track-changes. However, a summary of the material changes are as follows:
 - Revised introduction confirming purpose and scope
 - Added section 2 on general principles and processes
 - Added section 3 on making an application (NB there is detailed guidance for applicants on the 'how-to' at <http://www.westberks.gov.uk/index.aspx?articleid=28111> which is kept separate from the policy so it can be updated immediately as required)
 - Added section 4 about the purpose of the Operating Schedule
 - Added sections 5-8 with suggestions for each licensing objective about what the licensing authority would expect to see considered with applications
 - Added section 9 on representations and mediation
 - Added section 11 on decision making
 - Added section 13 on personal licences and section 14 on club premises certificates
 - Added section 15 about the management of licensed premises
 - Added complaints and inspections to section 16 with enforcement
 - Added section 17 about reviews of premises licences
 - Added Appendix A – list of consultees and Appendix C – Glossary
 - Removed responsible authority contact list – covered within the guidance for applicants as per link above
- 2.2 Further amendments have been considered in light of the consultation responses, as outlined at section 6. However, it is felt that following the amendments made to the SLP, the majority of the matters raised have been sufficiently addressed. Additionally, some of the comments received include suggestions which are already mandatory, such as the provision of tap water in 'on-licensed' premises, or are felt

to be sufficiently covered in national guidance, such as that produced under section 182 of the Act. More details on the analysis of consultation outcomes is given at Appendix D to this report.

- 2.3 It should be noted that as part of the wider Public Protection Partnership (PPP) this policy has been drafted in consultation with colleagues across Bracknell and Wokingham. It is a stated objective of the PPP to reduce duplication and derive efficiency from economies of scale. There may be occasion where terminology is used to describe processes which vary from authority to authority. It is acknowledged that as part of the feedback process these may be amended to suit the individual authorities own style and culture.

3. Options for Consideration

- 3.1 There were no other options considered. This SLP has been subject to consultation with interested parties and the wider public.

4. Proposals

- 4.1 That the Council approves the revised SLP at Annex E.

5. Conclusion

- 5.1 There is a mandatory duty on the Council to publish an updated SLP and the substantive policy objectives being proposed are considered to be in the best interests of the Council and the trade. A public consultation has also informed this process.
- 5.2 The updated SLP is also seen as being broadly consistent with our PPP partners' objectives and whilst there may be some localised deviations they are only minor in nature, enabling the Council to benefit from economies of scale and resilience.

6. Consultation and Engagement

- 6.1 A consultation was carried out between 20th August 2018 and 5th October 2018. The bodies consulted are included at Appendix A of the revised Statement.
- 6.2 Details of the responses received to this consultation are included at Appendix D of this report.
- 6.3 It is noted that some of the comments received are general comments rather than specific responses to the SLP that has been drafted.
- 6.4 Early discussions with the Chairman of the Licensing Committee and members of the Committee who expressed an interest in its development have informed the revised SLP.

Background Papers:

None

Subject to Call-In:

Yes: ☐ No: ☒

The item is due to be referred to Council for final approval



Delays in implementation could have serious financial implications for the Council ☐
Delays in implementation could compromise the Council's position ☐
Considered or reviewed by Overview and Scrutiny Management Commission or
associated Task Groups within preceding six months ☐
Item is Urgent Key Decision ☐
Report is to note only ☐

Wards affected:

All

Strategic Aims and Priorities Supported:

The proposals will help achieve the following Council Strategy aim:

☒ **P&S – Protect and support those who need it**

The proposals contained in this report will help to achieve the following Council Strategy priority:

☒ **P&S1 – Good at safeguarding children and vulnerable adults**

Officer details:

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Job Title: Licensing Officer
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Appendix D

Consultation Responses

Public Health and Wellbeing West Berkshire Council

- The Licensing Authority recognises that the health and wellbeing of communities can be adversely affected by drinking alcohol.
- The licensing authority recognises that alcohol related harm places increasing demands on the health service. Therefore preventative steps must be taken in order to protect and improve the health and wellbeing of our community
- There is also potential for health bodies to participate in the licensing process in relation to the protection of children from harm. This objective not only concerns the physical safety of children, but also their moral and psychological wellbeing.
- Evidence relating to under-18s alcohol-related emergency department attendance, hospital admissions and underage sales of alcohol, could potentially have implications for both the protection of children from harm and the crime and disorder objectives. Health bodies can provide evidence to lead or support representations in relation to this objective. In relation to proxy purchases, data collected by health bodies could be used to inform other responsible authorities, including the police and licensing authorities, about a prevalence of proxy purchasing in a particular area.
- Although less obvious, health bodies may also have a role to play in the prevention of public nuisance where its effect is prejudicial to health and where they hold relevant data.
<https://bmcpublichealth.biomedcentral.com/articles/10.1186/s12889-016-2766-x>
- The promotion of public health is not a licensing objective as set out in the Act. However, the Licensing Authority would seek to encourage and support where appropriate, any voluntary initiatives that premises may wish to adopt to help reduce alcohol harm within our communities.
Such initiatives may include:
 - Avoiding the sale of beers, lagers and ciders over 6.5% ABV which are sold in plastic bottles or metallic cans, (Note: this does not include premium, craft or specialist products as these are not a target for problem drinkers);
 - Taking steps to consider the display of alcohol in such a manner that will not unduly encourage people to drink irresponsibly and equally limit the exposure children have to alcohol advertising;
 - Refraining from placing alcohol products amongst, near or next to confectionary that would usually be consumed by children or young people (which would include till point toys or stickers);
 - The use of breathalysers as a means of determining intoxication and supporting door staff decisions not to admit, or serve customers who are already intoxicated;
- A shift in drinking patterns and consumption gives rise to concerns that harm from alcohol may now be driven by low cost "off" sales, and not necessarily by sales in pubs. We recognise that the more visible harms created by drunk and disorderly behaviour in the night-time economy are also increasingly driven by pre-loading cheap alcohol from shops and supermarkets.
- There is also a responsibility under the protection of children that we identify that Child exploitation is often associated with young people being coerced or encouraged to drink or alcohol may be a factor in risk taking behaviour by young

people who drink irresponsibly and then get involved in activities that otherwise they would not. Nationally, evidence has been found of the sexual exploitation of children taking place on licensed premises, or licensed premises being used for the purposes of grooming and enticement.

- I also have a concern regarding road safety and alcohol sales particularly the sales in Garages and service stations and wonder if we could perhaps have a discussion around restricting sales after 11pm and before 6am. West Berkshire have a high incidence of alcohol related Road Traffic Accidents which increased dramatically in 2014-16. We are red on this indicator. I would like to see something in the policy about restricting sales in Garages but am unsure what can be done around this. Gateshead do have something in their policy around monitoring sales of fuel and other goods. I am not sure if you monitor this in any way.
- I would also like to see something in the policy- possibly as an appendix similar to the appendix provided by Portsmouth about responsible drink promotions free water and the availability of smaller measures
- Our interest is regarding the cumulative impact section which lays out that objections on the basis of cumulative impact will be considered if the objector can demonstrate the impact on public nuisance. I would like the policy to allow provision for objection on the basis of health, for example if the objector can demonstrate that the area suffers from significant health issues such as obesity or alcohol admissions then the Licensing Authority will consider the impact of late night refreshment applications/ alcohol sales etc.
- Paragraph 6.2 – reference should be made to the Health and Wellbeing Board as a major partnership forum and the Safer Communities Partnership should be replaced with 'Building Communities Together Partnership' (which fulfils the role of the SCP).

Holybrook Parish Council



Holybrook Parish Council

Serving the communities of Beansheaf Farm & Fords Farm

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18th September 2018

Cheryl Lambert
Public Protection Partnership
Environmental Health and Licensing
West Berkshire District Council
Council Offices, Market Street
Newbury, Berkshire RG14 5LD

Dear Mrs Lambert

Ref: Licensing Policy Consultation

Thank you for inviting Holybrook Parish Council to comment on WBCs Review of Statement of Licensing Policy.

Whilst it is acknowledged that the policy is based on standardized directives, Holybrook Parish Council make the following comments/observations:

- Section 4.8.4 'guidance and assistance to licence applicants'
Please consider adding: '.... and information for those wishing to make an objection'.
- Section 4.10.4 'The Licensing Authority will inform.....'
Holybrook Parish Council ask that 'residents directly affected by the proposal' be added to the list.
- Sections 5.5
It is requested that 'reasonable' be replaced with a more specific guideline. It is suggested in earlier paragraphs that this may be two calendar months. However, of course, 10 working days could actually be considered reasonable.
- Section 16 (The Late Night Levy)
Holybrook Parish Council wish to know why the decision has been taken by WBC to not charge the Late Night Levy?

We look forward to your response.

Yours sincerely

Pamela Kirkpatrick, Clerk, Holybrook Parish Council

PLEASE ADDRESS ALL CORRESPONDENCE TO THE CLERK

Punch Taverns



WEST BERKSHIRE COUNCIL STATEMENT OF LICENSING POLICY CONSULTATION

Punch Taverns Response

Punch is one of the UK's largest leased pub companies, with around 1300 pubs across the UK. From the spirit of our local community pubs, the energy of our lively city centre hot spots and sports bars, to the warmth and calm of our inviting country inns; our pubs are the heart of all we do.

We are a business of people that love pubs! With a mixed estate of high quality leased, tenanted and retail pubs, our years of experience have enabled us to develop a leading proposition for those wishing to work with us and run a pub business of their own. We provide industry leading, tailored business support to our Publicans and develop market-leading, flexible agreements and retail concepts to suit all aspirations.

Under the ownership of Patron and May Capital, we have exciting plans to grow our business: longer term through potential acquisition opportunities and – in the here and now – by substantially investing in our teams, our pubs and Publicans.

Corporate Social Responsibility (CSR) is embedded across many elements of our business, from corporate fundraising to responsible retailing. We have dedicated teams in place to assist in ensuring that our premises operate to the highest standards. We strive to ensure that our pubs are not operating irresponsible drinks promotions or serving underage drinkers or those who are intoxicated.

The Punch Buying Club, our online ordering and communications portal, also has a section dedicated to Risk Management providing our Publicans with a wide range of downloadable educational tools, advice and pub-friendly materials, which can be used by pub managers and team members.

As supporters of Drinkaware we do not condone irresponsible promotions and pricing of alcohol, and we have actively supported Drinkaware's campaigns to help tackle binge drinking amongst 18 to 25 year olds. Responsible retailing forms a key part of our Publican training and we provide clear guidance on current legislation and best practice. We also support industry led initiatives to promote responsible retailing and are active members of industry trade bodies such as British Beer Pub Association (BBPA) and the British Institute of Innkeeping (BII).

We are pleased to be able to contribute to this consultation, we have always prided ourselves with working with Local Authorities and Responsible authorities.

We would like to make the following points some which are specific to the policy and referenced and some which are more general which we would ask be taken into account.

Section 4: The Licensing Process

4.11 refers to the process being quasi-judicial in nature. With respect, this is not the case, the process is administrative. This was succinctly set out by the House of Lords in their recent 10-year review of the Licensing Act 2003, where their Lordships state:

"The licensing function of a licensing authority is an administrative function... The licensing authority has a duty, in accordance with the rule of law, to behave fairly in the decision-making"

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procedure, but the decision itself is not a judicial or quasi-judicial act. It is the exercise of a power delegated by the people as a whole to decide what the public interest requires." (para 98)

Section 6: Partnerships and Policy Integration

We are pleased to see a section on policy integration.

Licensing policies works best when they reference, and indeed work with, other council strategic plans and policies. For instance, planning strategies and local cultural strategies often inform applicants for either new licences or variations to licences as to what the council are looking to do in terms of promoting culture, leisure use and night-time economy uses in a particular area.

Often it can be difficult to find these documents online and therefore reference to them and indeed a general statement that the authority will take into account other strategies is both a pertinent and of benefit to applicants and responsible authorities alike.

Links to specific strategies will also assist new potential businesses to understand and factor in the likely costs of entry into the area.

Section 8: Licence Conditions

Whilst Punch Taverns recognise the importance of conditions on premises licences in certain circumstances, such as to prevent or to mitigate the potential risk of certain activities undermining the licensing objectives, we have a concern that more and more conditions are being placed on a licence that are then enforced as breaches of the licence in their own right. Licensing authorities are obliged to promote the 4 licensing objectives. Breaches of condition in and of themselves are an offence under Section 136 of the Licensing Act and on summary conviction can lead to an unlimited fine and/or up to 6 months in prison. It is important that this distinction is recognised in your policy and that breaches of condition in and of themselves are a matter for the Courts; whereas an undermining of the licensing objectives, which can happen with or without conditions being on the licence in any event, are the province of the licensing authority to deal with. We would suggest that this distinction is made in your policy as it will re-enforce the message both for responsible authorities and for operators who hold premises licences in your area.

Punch has always been happy to work with licensing authorities in relation to conditions being imposed on a licence where they are necessary and proportionate to achieve an identifiable aim. However, we are concerned with the prevalence of standard conditions being used across all licences within any particular class. This has taken over from a proper analysis of the need for such conditions in the first place.

In particular, we have seen a rise in conditions being imposed upon premises licences by responsible authorities, irrespective of the nature of the application being made. For instance, a variation to the plans attached to a licence to effect a simple alteration in layout and where there is no change in licensable activities, increase in customer area, or removal of internal lobbies, for instance, sometimes result in officers seeking to ride on the back of that application to impose conditions that are in no way relevant to it. The case of *Taylor v Manchester City Council* makes it clear that any conditions imposed on a premises licence that are not part of the application must relate to that application itself and should not stray into other areas when it is varied. It is important again that this is referenced in policy in order to prevent unnecessary hearings and often additional expense to applicants seeking to make simple changes to their licence but are then held to ransom by responsible authorities who know that operators are unlikely to challenge their right to impose such conditions where the cost would be send the matter to a hearing.

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We submit that the imposition of large numbers of conditions on a premises licence is self-defeating. Premises licences form one part of a significant number of regulatory requirements that must be observed by publicans and this is often forgotten by regulators who often only think in terms of their one area of expertise. This means that they often do not see the wood for the trees. Policies that set out an expectation of long operating schedules or worse, require officers to object to applications unless the applicant applies their standard conditions, place an unnecessary burden on operators without necessarily helping to promote the licensing objectives. The City of London licensing authority, for instance, will only impose conditions if deemed absolutely necessary. It is not unusual to see licences with only a handful of conditions.

The reason for this is that they expect operators to promote the licensing objectives, not go through the motions of complying with conditions because they have to. Also, licences grandfathered in 2005 would, likely have few or no conditions on them. We have seen no evidence to suggest such premises have undermined the licensing objectives more than "conditioned licences."

We would challenge any authority to suggest that this approach leads to more issues with licence holders undermining the objectives. If anything this clarity of approach means that operators are freed up to adapt their businesses as the demands of the market change, freeing up officers from having to undertake lengthy inspections of licences and then having to send out enforcement letters relating to conditions that are breached in the observation without any real evidence that the breaches themselves undermine the objectives. This in turn frees up resources for enforcement against poorly behaving premises and dealing with unlicensed operators.

Section 10: Cumulative Impact

We note that your policy excludes cumulative impact zones, and we feel that this is appropriate in these circumstances.

Cumulative impact policies can have the effect of dissuading operators from even attempting to get a licence. This unintentionally penalises operators considering smaller more novel applications (simply because of the prohibitive cost), often resulting in them looking to take their ideas elsewhere and thereby wasting a chance to develop a more rounded and vibrant economy in the CIP. For the same reason, such policies also promote ubiquity and stagnation as the only operators willing to take on the risk and outlay of applying in cumulative impact zones are larger established chains with the financial backing to fight for a licence. Given the plight of the pub market 5 years ago and now the casual dining market, in part because their offers failed to change as the market developed around them, the use of CIPs needs careful oversight to ensure it is not deterring investment

Cumulative impact assessments need to be scrutinised with an open mind. Stagnation will kill a vibrant area and CIP's, if left to choke the area they were designed to protect can do as much damage as good. If a CIP is deemed necessary, we would expect that it clearly and explicitly states the type of premises that it intends to apply the rebuttable presumption to, for instance, nightclubs or off-licences, rather than just applying to all licensed premises. This would allow for an area to gradually adapt and change with the policy, so long as the policy then adapts and changes to the area.

Section 13: The Planning System

We feel it is a useful guide for applicants and responsible authorities to have a statement in your policy that reflects the fact that licensing and planning are entirely separate regimes albeit there is overlap in terms of the licensing objectives and planning's 'amenity' remit. In practical terms this means that neither planning nor licensing should need to be obtained first, so long as the applicant understands that both regimes need to be complied with.

We would also urge you to clarify in your policy that where conditions are stipulated on a planning permission, such as restriction on hours or activities, these do not need to be

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repeated in the premises licence, unless there is good reason to do so. Often conditions relating to extract systems, closing times of external areas, etc. appear on both permissions and on occasion they do not even mirror the other. This leads to additional and unnecessary expense for licence holders should such conditions need to be amended.

Paragraph 1.19 of the Guidance makes it clear that overlap between regimes should be avoided where possible.

Other matters we would ask the committee to consider

Agent of Change

Whilst we recognise that the principle is currently being debated in terms of planning, it is equally as important in licensing. We recommend that the licensing policy expressly recognises that developers of new residential developments need to protect their buyers from potential sources of noise disturbance, not expect existing licensed premises to have to adapt their offer to accommodate the new development. In particular, small pubs often rely on live or recorded music, provision of social events and other community based promotions, such as beer festivals, in order to survive and thrive.

We have, unfortunately, seen a rise in complaints and reviews directed at existing premises that have often been at the heart of the community for over a century, from residents moving into new properties nearby. Whilst it is incumbent upon licence holders to promote the licensing objectives, it is iniquitous and arguably a breach of their Article 1, Protocol 1 human right to peaceful enjoyment of property, which includes their premises licence, to have their livelihood threatened and sometimes taken away because of poorly designed and constructed residential property built next door.

GDPR

We note that the policy does not make reference to the GDPR

One of the most significant changes in recent times has been the change to data protection legislation introduced via GDPR. Whilst the obvious effects of this regulatory change relate to protecting personal data held on behalf of individuals, such as social media, mailing lists, email data bases and various other forms of storage of someone else's data, there are other effects that need to be reflected in licensing policy.

For instance, the requirement for CCTV at a premises licence is not only expensive to install, but we question the value of such systems in terms of crime prevention and detection, especially in smaller community pubs. However, it is now commonplace for police to demand CCTV in almost all premises and to insist upon complicated and demanding CCTV conditions to be added to premises licences. In addition, operators of CCTV systems have to consider the GDPR implications. In particular, anyone who stores data, including CCTV footage of individuals, which is classed as data for the purposes of GDPR, must be responsible for its safe collection, storage, usage and disposal. Handing over CCTV footage to Police officers in the active investigation of a criminal offence, such as a fight, would obviously be a legitimate reason for providing data. However, a condition with a general requirement to hand over CCTV at the behest of a licensing officer or police officer would arguably breach GDPR were it to be enforced. This means that there are numerous CCTV conditions on licences that would likely, were one to try and enforce them as they are written, cause an operator to breach GDPR. Similarly, club scan conditions need to be thought about in terms of GDPR and the obligations of the data holder. For instance, the time for which any data is stored and the purpose for storing that data needs to be made clear to people handing over their data. Again conditions that require such data to be handed over at the behest of an officer other than in investigating a criminal offence would in all likelihood breach GDPR.

We feel therefore that this need to be addressed in the policy in order to ensure that conditions are updated to ensure compliance and that CCTV in particular is not being universally required where there is no real and pressing need for it.

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Prevention of Public Nuisance

The prevention of public nuisance licensing objective is to be widely interpreted, as set out in the Statutory Guidance. However, we often come across conditions imposed on licences, as well as the investigation of complaints that do not relate to public nuisance. For instance, conditions that refer to 'nuisance', rather than 'public nuisance', set a significantly higher barrier-one that was not intended by the Licensing Legislation. We also see this in terms of enforcement action where often enforcement officers will allege that a nuisance, often a private nuisance, has occurred and demand action under the terms of the premises licence. Clearly this is beyond that which was intended by Parliament and therefore we suggest that your policy reflects the need for public nuisance to be demonstrated and for conditions relating to nuisance to relate to public nuisance rather than any wider definition. In particular, we suggest that expressly stating that private nuisance is not a licensing objective would assist in all parties understanding what is and is not the remit of licensing legislation.

Minor Variations

The use of minor variations is a very useful tool and we feel that your policy should reflect this. Minor variations are there to ensure that cost and time is saved where appropriate for applicants seeking to make changes to their licence that would not undermine the objectives. We feel it would assist if you set out in your policy those applications that would fall ordinarily within the minor variation class. We would propose these are as follows:-

- Changes to layout that do not increase the customer area (beyond a de-minimis increase of, we would suggest, 10%).
- Amendment and removal of conditions in agreement with responsible authorities.
- Changes to opening times to allow for earlier opening for premises for non-licensable activities, ie. to permit premises to open to serve coffee and/or breakfast.
- Removal of conditions that are no longer relevant to the operation of the premises or are redundant following imposition of new law, such as the Regulatory Reform (Fire Safety) Order 2005.

On and Off-Sales

Recently we have become aware that the definition of on and off-sales has caused some confusion. In particular there appears to be confusion around whether an off-licence is required for customers to take drinks outside premises, for instance onto the pavement, and consume their drinks there.

We contend that such a sale is an on-sale. If one considers the nature of the offence of selling alcohol without the appropriate licence, it is clear that the intention is that the person making the sale is the one who would be charged with the offence, rather than, say, the purchaser. Therefore, in selling a drink in an open container for immediate consumption, it cannot be argued that the publican has made anything other than an on-sale. It is inconceivable that the law intended that should this person step outside the premises, or indeed take that drink away with him, that this would somehow transform that on-sale to an off-sale. The terms 'on' and 'off sales' originate from the Licensing Act 1964. Analysis of the legislation (by reference to off-sales) demonstrates that all off-sales had to be intended to be sold for consumption away from not only the licensed premises but any land associated with that premises or land immediately adjoining it for them to be considered an off sale. The intention was to ensure that in a situation where a seller makes an on-sale, that on-sale does not become an off-sale simply by means of it being consumed in the immediate environment of the premises, such as an unlicensed garden or on the pavement outside the pub.

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As such, we feel that this needs to be clarified in the policy. We would propose a statement along the following lines:-

"On and off-sales are defined by reference to the intention of the seller at the time of sale. A sale in an open container for immediate consumption at the premises is an on-sale. This extends to where the person who has purchased the drink at the bar and then consumes it either in a pub garden or on the pavement immediately outside the premises.

An off-sale is a sale designed for consumption away from the premises and its immediate environs. This will usually be in a sealed container such as a bottle or can and the seller when selling that drink had no intention for the purchaser to remain at the premises to consume it"

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