

Consultation Responses

Responses from a Member of Cheshire East Council:

My comments on the above consultation are as follows:

1. Please could the existing policy be retained and be simply updated, as it is a better policy.

2. The draft licensing policy fails to acknowledge that the Government's legislative changes to the Licensing Act 2003 under the Police and Reform and Social Responsibility Act 2011 are about giving local people and Local Authorities a greater say, which should be included as the aim of the new policy:

- *Measures to give communities and local authorities greater control over alcohol licensing to tackle problem premises. They will have new powers to restrict premises from selling alcohol late at night if necessary and be able to clamp down harder on premises who persistently sell to children - doubling the fine to £20,000*
- *A stronger local influence on licensing decisions by allowing everyone the option to comment on licensing applications - not just those living close to premises, and ensuring health and policing concerns are considered more widely so that the impact of licensing on crime and disorder or public safety can be taken into account*
- *Introducing a late night levy allowing councils to charge for late-night licences to pay for extra policing - leaving premises to pay rather than the taxpayer*

<https://www.gov.uk/government/news/new-reforms-put-public-at-the-heart-of-policing>

Instead this policy does not give the LA greater control over alcohol licensing to tackle problem premises. It tries to curtail the Licensing Authorities discretion when the policy should only be guidance and makes it even more difficult to refuse a licence. It is based on a permissive view of licensing instead of helping to restrict licensing and reduce harmful drinking. The emphasis in the draft policy is in my view steering policy in a totally wrong direction and I hope the Licensing Committee will in the meantime retain the existing policy which is a much better policy.

Licensing Officer Comments:

The changes made by the Police Reform and Social Responsibility Act 2011 did make changes to the Licensing Act 2003, including:

- *Removal of the vicinity test*
- *Including the Licensing Authority as a Responsible Authority*

- *Including the Director of Public Health as Responsible Authority (but not including a Public Health Objective)*
- *Amending Temporary Event Notices (extending the time and number that can be given and providing EHOs the power to object)*
- *Amending the evidential burden from necessary to appropriate*

The Government did not take away the presumption to grant an application where there are no objections.

3. Since the Cabinet in item 7 on the 17th of September 2013 may recommend asking the Licensing Committee to consider the introduction of a Late night levy in accordance with the existing statement of licensing policy. It would seem sensible to consider re-consulting on this policy at the same time, so that any changes on the late night levy can be included. In addition it would be helpful to do so, as there are a significant number of changes necessary to improve the proposed draft policy, to such an extent that a new consultation with a different better draft policy would be welcome.

4. The draft policy fails to spell out the important changes to the Licensing Act 2003 on who can make objections to licences as a result of the changes in section 105 to 108 of the Police Reform and Social Responsibility Act 2011, no longer just those in the vicinity as long as such objections are not frivolous or vexatious. Mention is possibly made in paragraph 22.4 but is so unclear, it needs to be spelt out, as many people are still of the belief that it is still only those who live or work in the vicinity that are entitled to object.

<http://www.legislation.gov.uk/ukpga/2011/13/notes/division/2/2/1/3>

Licensing Officer Comments:

In preparing the draft policy, Officers determined not to include information that was available by other means, to avoid duplication and an overly burdensome length. The changes identified are set out in both the legislation that brought about the changes and in the statutory guidance issued by the Home Office.

5. The policy is written as if the aim is to promote and encourage licensed premises, and make it difficult to refuse, as if they are always beneficial, instead of adopting the more balanced approach in the existing policy. For example, please delete paragraph 5 of this draft policy except for 5.3 bullet point 1.

Licensing Officer Comments:

The Policy is designed to highlight to all those concerned that the Licensing Authority must consider each case on its own merit, must discharge its responsibilities with a view to promoting the Licensing Objectives, and must balance the right of an applicant to apply for relevant permissions and the rights of those to make objections.

6. In line with Government thinking the focus should instead be on producing a

licensing policy with the aim of reducing harmful drinking.

<https://www.gov.uk/government/speeches/late-night-drinking-consultation-on-secondary-legislation-for-the-late-night-levy-and-early-morning-restriction-orders>

<https://www.gov.uk/government/policies/reducing-harmful-drinking>

Licensing Officer Comments:

Harmful drinking is not in itself a matter that is relevant for inclusion in this Policy.

7. It should include a forward as in the existing policy, to say that it is just a guide and the Council as a Licensing Authority will ultimately determine each application on its merits.

Licensing Officer Comments:

The inclusion of a foreword has not been deemed necessary. The requirement to consider each case on its own merit is included at para 2.6.

8. The introduction in paragraph 1 of the existing policy is much better and clearer than in the new draft and places more details in the appendix.

9. Paragraphs 2 and 3 of the existing policy should be clearly repeated at the start. Paragraph 3 is very important as it makes the point of the need to consider each case on its merits and nothing should override an interested party (now “other persons”) or responsible authority to make representations. It is something mentioned later in the draft policy but should be part of the start of the policy in setting the scene.

Licensing Officer Comments:

The requirement to consider each case on its own merit is included at para 2.6 and the right to make a representation is set out at para 2.8.

Comments on the Draft Policy with reference to the Paragraphs in it.

Suggestions on the need for changes and deletions:

10. Please delete 1.3 as the aim of the policy should be to reduce harmful drinking and to give *communities and local authorities greater control over alcohol licensing to tackle problem premises*. This aim is to assist in making Licensing policy in line with the recently endorsed Cabinet report on the need to review all Council policies on their health implications, in this case to reduce harmful drinking.

Licensing Officer Comments:

The Licensing Authority must discharge its responsibilities with a view to promoting the Licensing Objectives all other matters are irrelevant.

11. Please delete paragraph 2- aim and mission as above; include 4.6 of existing policy on the need for the balances mentioned in that paragraph of the existing

policy.

12. Please delete paras 2.1. to 2.4, except retain the last sentence of 2.1. Para 2.2 sounds like licensed premises help with culture rather than the reverse.

Licensing Officer Comments:

The Licensing Authority must recognise that a wide variety of premises apply for permissions under the Licensing Act 2003, including:

- *Cinemas and Theatres*
- *Restaurants*
- *Guest Houses and Hotels*
- *Pub and Nightclubs*

The alcohol and entertainment industry is diverse and complex and it would be difficult not to recognise that a well run industry does benefit the economy of Cheshire East and does contribute the culture and amenity of our communities.

13. 2.3 missing in numbering, please delete 2.4 except the first sentence.

Licensing Officer Comments:

The error in numbering will be corrected.

14. Please delete 2.5 as unclear on the meaning of *equal importance*- do you need all 4 or is one of the objectives sufficient?

Licensing Officer Comments:

This paragraph makes it clear that no one objective is more important than another and is similar in wording to that used in the Statutory Guidance issued by the Home Office.

15. Paragraphs 2.6. and 2.8 are better stated in the current policy of paragraph 2 and in the correct place of priority.

16. Please delete 2.9. as it makes the policy over-riding which is contrary to paragraph 3 of the current policy allowing each case to be determined on its own merits.

Licensing Officer Comments:

The wording in 2.9 is compatible with the requirement to determine each case on its own merit and the requirement to not fetter discretion.

17. Please delete paragraph 2.10- it fetters the discretion of the Licensing Authority and is unnecessary.

Licensing Officer Comments:

This paragraph states the position in accordance with sections 18, 35, 72 and 85 of the Licensing Act 2003. Where no relevant representations are made the Licensing Authority must grant the application (subject only to the relevant mandatory conditions and conditions consistent with the Operating Schedule).

18. In paragraph 3.6 why does it not say it is the responsibility as opposed to normally is the responsibility of the premises licence holder?

Licensing Officer Comments:

The Licensing Authority cannot fetter its discretion. There are many instances where the premises licence holder might be a company or brewery who has leased the premises and therefore not in direct control of staffing issues.

19. Paragraphs 5 please delete 5.2. Contrary to reduction of harmful drinking and communities having a greater say.

Licensing Officer Comments:

The reduction of harmful drinking, whilst an important aim, is not a matter to be considered when determining applications etc. All matters to be considered must relate to one or more of the Licensing Objectives.

20. Paragraph 5.4- confusing list what is safer clubbing –more details could be given in appendix.

Licensing Officer Comments:

Safer Clubbing is a Home Office strategy that provides information to Licensing Authorities, club managers and promoters. Its aim is to make clubbing a safer activity and dealing with drug use.

21. Paragraph 6 fine.

22. Paragraph 7 generally fine except change word in 7.2 to *detrimental* rather than *significant* as level set too high, not allowing for Licensing Committee discretion.

23. Para 7.8 unclear on how long etc, not necessarily helpful.

Licensing Officer Comments:

The Power extends to Police Officers of a rank no lower than Superintendent. Where they believe there is a link to class a drugs they can issue a closure notice which closes the licensed premises to anyone other than a resident. Within 48 hours the Police must make application to the Magistrates' Court for a closure order. The Court will make an order as it sees fit and close the premises for any period not exceeding 3 months.

24. Para 7.11 unnecessary?

25. Paras 8 to 10 should some of this description be in appendices to cut down the length of the main body of the statement?

Licensing Officer Comments:

These paragraphs relate to the Licensing Objectives how they will be consider and promoted. They are therefore the most important part of the Policy.

26. Para 9.7 information point but only a temporary measure and premises that are likely to be detrimental to peace and quiet and residential amenity should not be allowed. Need to stress that point in this policy as have done in the existing policy in paragraphs 8.3 and 8.4 which should be included in this policy. Please include these paragraphs.

27. Please add to last bullet point on 10.2 *and irresponsible drink promotions*.

Licensing Officer Comments:

Irresponsible drinks promotions are dealt with under the mandatory conditions.

28. Please delete paragraph 11 and replace by existing paragraph 7. Paragraph 11 is incomprehensible and the provisions for objections in 11.7 for objectors are not practical and unworkable. How will objectors know about occupancy rates and so forth? For example, objectors may wish to argue, for example, that an area of a particular town such as Sutherland Street and Park Green in Macclesfield has too many drinking establishments, creating a cumulative impact. It could be shown on a map there are too many and that should be sufficient. Government policy is to lower the evidential hurdle for cumulative impact policies not increase it as can be shown from the following link.

[http://www.instituteoflicensing.org/Public/Non%20Event%20Presentations/Home%20Office%20PRSR%20Act%20-%20presentation%206%2010%202011%20v1%204%20\[Compatibility%20Mode\].pdf](http://www.instituteoflicensing.org/Public/Non%20Event%20Presentations/Home%20Office%20PRSR%20Act%20-%20presentation%206%2010%202011%20v1%204%20[Compatibility%20Mode].pdf)

Licensing Officer Comments:

The cases of R (app J D Wetherspoon) v Guildford Borough Council (2006) and R (app Portsmouth City Council) v 3D Entertainment Group (CRC) Ltd (2011) both confirm the requirements of evidence to implement a CIP and when dealing with applications and have been considered when drafting this section. The Licensing Authority must also recognise that cumulative impact is a concept outside of primary legislation and is a product of the Statutory Guidance issued by the Home Office.

29. The explanation in paragraph 7 of the existing policy is much simpler and better. It will be tougher in Para 11 of new draft policy compared to Para 7 of current policy to argue about too many licences in an area, if the new draft Licensing Policy is adopted so should not be included as the idea is to reduce the evidential hurdle, but saturation areas are needed to prevent a cumulative impact and this area of the policy needs more work.

30. Please delete paragraphs 12.1 and 15.4, 17.1, 17.2, 21.3, 21.4, 22.3 and 22.6 as they are unnecessary and remove/limit the Licensing Committee's discretion and decision making powers.

Licensing Officer Comments:

- 12.1 – *This is a legal requirement*

- 15.4 – *This is the position confirmed by the Statutory Guidance issued by the Home Office*
- 17.1 - *This is an appropriate use of resources when dealing with enforcement and operation matters*
- 17.2 – *This principle is inherent in the legislation and statutory guidance*
- 21.3 – *This is the position set out in legislation*
- 21.4 – *Very often objections are made that can easily be overcome by the inclusion of conditions in the operating schedule (particularly where there has been a misunderstanding about the intended operation of the premises). When all parties are happy for the inclusion of further conditions objections can be withdrawn without the need for the Committee to hear the application. In practice this is currently being done and is especially successful with the Responsible Authorities who can advise applicants on the best way to mitigate harm to the objectives. It works less successfully with objections from other persons.*

None of the identified paragraphs the desecration of the Licensing Authority to depart from its policy where appropriate.

31. EMRO- description in paragraph 18 could be in an appendix?

32. Paragraph 21.1 and 21.2 unnecessary just appendix 1 is sufficient.

33. Please delete paragraph 22.4 and provide a clearer explanation such as *A stronger local influence on licensing decisions by allowing everyone the option to comment on licensing applications - not just those living close to premises, and ensuring health and policing concerns are considered more widely so that the impact of licensing on crime and disorder or public safety can be taken into account*, as well as the impact on the protection of children from harm and the public nuisance which may be a result of the premises.

34. Please delete paragraph 22.5 as suggests that children will not be properly protected.

35. Please delete second paragraph 24.1 as it is not appropriate to suggest the principles should apply when new legislation may have changed the principles.

Licensing Officer Comments:

Since it received Royal Assent the Licensing Act 2003 has been amended on no less than 12 occasions. To prevent the need to continually revise the Policy (a lengthy and costly process) the Licensing Authority needs to provide some provision for use of the Policy should future changes occur. If a fundamental change was made that necessitated a review that would be a matter for the relevant Cabinet Member to consider.

36. Please add at end about how it is possible to review the policy during the 5 years.

Licensing Officer Comments:

The Statement of Licensing Policy is one of the documents that is dealt with under the Council's Business and Policy Framework. Any Review of the Policy would therefore be instigated by the relevant Cabinet Member (who may or may not be acting on a recommendation from the Licensing Committee) as set out within the Council's Constitution. Any reviewed or revised Policy would be subject to statutory consultation before implementation.

In summary, in comparison with the existing licensing policy the new draft policy is:

- 37. Less easily readable and understandable, in places impractical for objectors to operate
- 38. Far too long- extends from existing policy of 16 pages to 35 pages long.
- 39. It could be far more succinct and extra material placed in an appendices
- 40. Fails to include important points in the existing policy
- 41. Provides lengthy and possibly irrelevant material
- 42. Is so complex in parts that it could not operate in practice.
- 43. It fails to take account of the cabinet endorsed recommendation on the need for every new council policy to be considered in terms of its health and well being impact.
- 44. It is contrary to the Cabinet support for minimum unit alcohol pricing to improve the impact on the well being and reduce the increasing health costs of alcoholism.
- 45. It is a permissive policy which fetters the discretion and decision making of the Licensing Committee and allows the Committee and local people to have a less rather than greater say. It should be guidance only.

I would like to be informed when the Licensing Committee reviews this draft policy, as if possible would like to attend and speak.

Please confirm receipt of this consultation response sent on the 16th of September and within the consultation period.

Licensing Officer Comments:

It should be recognised that the Policy is not just a tool for a Committee to use when determining an opposed application. It is also for applicants to refer to when compiling their Operating Schedule (where they set out how they will promote the Objectives, which is translated into conditions on the premises licence), for objectors to reference when setting out their objections, or calling for a Review of a permission. It is therefore appropriate that clear guidance is given to all those who may require it. The Licensing Authority must have regard to its Licensing Policy

when discharging its functions and can depart where there are reasons or evidence to do so.