

# CHESHIRE EAST COUNCIL

## Cabinet

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<b>Date of Meeting:</b>	12 <sup>th</sup> November 2013
<b>Report of:</b>	Miss Kim Evans – Licensing Team Leader
<b>Subject/Title:</b>	Revised Statement of Licensing Policy
<b>Portfolio Holder:</b>	Cllr Les Gilbert, Communities and Regulatory Services

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### **1.0 Report Summary**

- 1.1 The Licensing Act 2003 requires that Licensing Authorities prepare and publish a statement of policy that they propose to apply when exercising their functions under the Act during the five year period to which the Statement applies.
- 1.2 The Council is required to review its existing statement of principles and publish the revised version by no later than 31<sup>st</sup> January 2014. In preparing a revised statement the Council must undertake a consultation exercise with those stakeholders identified by the legislation.

### **2.0 Recommendations**

- 2.1 That Cabinet support the recommendation of the Licensing Committee that the Council resolves to adopt the revised Statement of Licensing Policy (Appendix 1) to take effect on 1<sup>st</sup> February 2014.

### **3.0 Reasons for Recommendations**

- 3.1 To comply with the provisions of the Licensing Act 2003 and to enable the proper discharge of the Council's responsibilities for the regulation of alcohol sales, regulated entertainment and late night refreshment.

### **4.0 Wards Affected**

- 4.1 All

### **5.0 Local Ward Members**

- 5.1 All

### **6.0 Policy Implications**

- 6.1 None identified

## **7.0 Financial Implications**

7.1 None identified

## **8.0 Legal Implications**

8.1 In accordance with Section 4 of the Licensing Act 2003 (the Act) the Licensing Authority must discharge its functions with a view to promoting the four Licensing Objectives:

- The prevention of crime and disorder
- Public Safety
- The prevention of public nuisance
- The protection of children from harm

8.2 Section 5 of the Act 2003 the Licensing Authority is required to determine and publish a Statement of Licensing Policy 'with respect to the exercise of its licensing functions'.

8.3 The statement of policy forms part of the Council's Policy Framework. As such, the final decision to approve a statement of policy or a revision of the statement rests with full Council. In addition, in developing a revised statement of policy, the authority must comply with its Budget and Policy Framework Procedure Rules (as set out within the Constitution).

8.4 The case of *R (on the application of The British Beer and Pub Association) v Canterbury City Council [2005] EWHC 1318 (Admin)* is the only case that has specifically considered the role of the Statement of Licensing Policy and its content. This case confirms:

- The Policy must set out how the Licensing Authority will approach the making of decisions under the Act
- Applicants should be aware of the expectations of the Licensing Authority, but the content of an application is a matter for the applicant
- A Policy must not mislead an applicant into believing that s/he must meet requirements that are not relevant and must not suggest requirements that cannot lawfully be imposed
- The Policy must also be read as a whole and can be rendered wholly unlawful if parts are considered unlawful

8.5 In order to comply with statutory requirements, the following agencies must be consulted:

- Cheshire Constabulary
- North West Fire and Rescue Service
- Representatives of the local licensing trade
- Representatives of local businesses and residents

- 8.6 Statutory Guidance has been issued by the Home Office under Section 182 of the Licensing Act 2003. This Guidance must be taken into account by Licensing Authorities when formulating policy and making decisions. This is updated regularly and was last updated in June 2013. The Home Office has also issued non-statutory guidance “for Health Bodies on exercising new functions under the Licensing Act 2003” in May 2012. This is aimed at Health Bodies as Responsible Authorities. Care must be taken by a Licensing Authority if considering this Guidance since the promotion of the four licensing objectives is the Licensing Authority’s key responsibility.

## **9.0 Risk Management**

- 9.1 Should the Council not adopt a reviewed Statement of Licensing Policy within the required timeframe, all decisions made may be open to challenge.

## **10.0 Background and Options**

- 10.1 The first Statement of Licensing Policy approved by this Council came into effect in January 2009.
- 10.2 When exercising the functions of the Licensing Act 2003 the Licensing Authority must promote the statutory licensing objectives as stated in paragraph 8.1.
- 10.3 The Statement of Licensing Policy establishes a local framework for decision-making when considering applications for relevant permissions, or variations to existing terms and conditions. The Policy is of significant importance as the Licensing Committee and Sub-Committee are required to have due regard to it when determining an opposed application. It is therefore paramount that the policy sets out how the objectives will be promoted. Any matters not relevant to the promotion of the Licensing Objectives must be disregarded.
- 10.4 In addition to having regard to the Statement of Licensing Policy, the Licensing Authority must also have regard to the statutory guidance issued by the Home Office under section 182 of the Licensing Act 2003.
- 10.5 In accordance with the statutory timescales the revised policy must be in place to take effect from January 2014. When the Statement of Licensing Policy has been confirmed and published, subject to any further reviews and necessary consultation, it shall remain in force for a further period of five years (i.e. to January 2019).
- 10.6 The following timescales was applied to allow for the proper consideration of the draft statement of policy:

- Draft revised Statement approved for 6 week consultation period by relevant Cabinet Member – 15<sup>th</sup> July 2013
- Licensing Committee – 16<sup>th</sup> July 2013
- Corporate Scrutiny – 10<sup>th</sup> September 2013
- **End of Consultation – 16<sup>th</sup> September 2013**
- Licensing Committee – 30<sup>th</sup> September 2013 & 11<sup>th</sup> October 2013 to consider the consultation responses
- Confirmed by Cabinet – 12<sup>th</sup> November 2013
- To be adopted by Council – 12<sup>th</sup> December 2013
- Publication of Policy in January 2014
- Policy effective from January 2014

10.7 Members should note that the consultation period commenced following a decision of the Communities and Regulatory Services Portfolio Holder on the 15<sup>th</sup> July 2013.

10.8 The content of the Policy was also considered by the Members of the Licensing Committee on the 16<sup>th</sup> July 2013 with no changes proposed.

10.9 The consultation took place between 5<sup>th</sup> August 2013 and 16<sup>th</sup> September 2013 took the following form:

1. Letters were sent to all Premises Licence Holders and Club Premises Certificate Holders.
2. Letters were sent to all Personal Licence Holders who are Designated Premises Supervisors in the Borough.
3. All Responsible Authorities were contacted by email.
4. All Town and Parish Councils were contacted through the Council's Partnership Team. The Policy was also made available on the Partnerships Team's Sharepoint site.
5. All Borough Members were contacted by email.
6. The draft revision was available on the Council's website for public comment during the consultation period.
7. The Local Safe Guarding Adults Board was also contacted.
8. The Chambers of Commerce were contacted together with various national trade organisations.

10.10 The draft Policy was also considered by the Council's Corporate Scrutiny Committee on the 10<sup>th</sup> September 2013 who confirmed their approval of the draft Policy.

10.11 On the 30<sup>th</sup> September 2013 and the 11<sup>th</sup> October 2013 the Licensing Committee considered the responses received during the consultation

process. The Committee fully considered all of the responses received and gave appropriate weight to the proposal or points made. Any matters that could not have been taken into consideration, due to the legal framework that needs to be applied, were disregarded.

- 10.12 The final draft of the Revised Statement of Licensing Policy attached at Appendix 1 represents the final recommendation by the Licensing Committee.

## **11.0 Access to Information**

The background papers relating to this report can be inspected by contacting the report writer:

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