

REVIEW OF STATEMENT OF LICENSING POLICY

1 SUMMARY

- 1.1 This report details proposed amendments to the Council's statement of licensing policy that was approved on 21 December 2004.
- 1.2 It proposes changes to the original policy with suggested wording, where appropriate, and seeks Members' approval for embarking on public consultation.

2 INTRODUCTION

- 2.1 Section 5 (4) of the Licensing Act 2003 requires the Council to keep its licensing policy under review and to make such revisions to it at such times as the Council thinks necessary.
- 2.2 Prior to making any changes the Council must carry out a consultative process to include the police and fire authorities, holders of premises licences, club premises certificates and personal licences and representatives of businesses and residents in the area.
- 2.3 Following any changes being made the Council have to publish either a new statement of licensing policy or a statement of the revisions.

3 BACKGROUND

- 3.1 The approved policy of this Council, consistent with the majority of other Essex local authorities, was derived from the model developed and agreed by the Essex Joint Licensing Officer's Forum.
- 3.2 The Essex model took great account of the Statutory Guidance issued under section 182 of the Licensing Act 2003 and, to large extent, used the same or paraphrased language from the guidance.
- 3.3 Rochford's policy had been amended from the original 'Essex' draft in light of the responses received to the consultation process undertaken prior to consideration by Full Council. In particular the policy contained less prescriptive terminology in respect of certain matters, which have now been subject to judicial review.
- 3.4 Following publication in January 2005, the licensed trade sought judicial review of Canterbury City Council's statement of licensing policy, which had been broadly based upon the 'Essex' model.
- 3.5 In short, the decision of the High Court was that the policy was overly prescriptive in regard to the requirements made of applicants in submitting their applications for premises licences and club premises certificates.
- 3.6 It should also be noted that the Department for Culture, Media and Sport (DCMS) has indicated that the Statutory Guidance will be reviewed when the

Act has been fully implemented. At present there are no specific indications of when the revised guidance will be published.

- 3.7 In light of the Canterbury judicial review, it would be prudent to start to review the policy now, even though Rochford's policy statement has not been challenged.
- 3.8 It is suggested that the first stage should be for Members to consider adopting the amended terminology shown at Appendix A.
- 3.9 A decision can be made at a future date, in light of developments in publishing the revised guidance, before embarking upon the consultation process. However, if the revised guidance is not issued soon after full implementation of the Act, then it would be best to proceed with the consultation and subsequent changes to the policy.
- 3.10 A further report will be made on any responses received to the consultation and the final changes to the Statement of Licensing Policy will have to be approved by Full Council.

4 RISK IMPLICATIONS

- 4.1 There is a statutory obligation for the statement of licensing policy to be constantly reviewed in light of its operation and amended, as necessary.
- 4.2 There is a high risk that, if unchanged, those or similar areas of the policy that gave rise to the judicial review will form the basis for successful legal challenge.
- 4.3 If the policy remains unchanged and is successfully challenged, costs would almost certainly be awarded against the Council.
- 4.4 If successfully challenged on the content of the policy, the Council's reputation would be harmed.
- 4.5 The Committee are bound by the provisions of the Act, the statutory guidance issued by the Secretary of State and its own statement of licensing policy in administration of the licensing regime and in determining licensing issues. The Council cannot permit a situation to arise whereby the integrity of its policy is challengeable on grounds previously the subject of successful judicial review.

5 LEGAL IMPLICATIONS

- 5.1 There may be a potential for decisions made in determining licensing applications to become subject of judicial review or appeal if the statement of licensing policy is not credible and is subject to legal challenge,

6 RECOMMENDATION

- 6.1 It is proposed that the Committee **RESOLVES**

- (1) To consider and approve the proposed amendments to the Statement of Licensing Policy, for consultation.
- (2) That the Head of Housing, Health and Community Care be authorised to consult on the amendments at an appropriate time.

G Woolhouse

Head of Housing, Health & Community Care

Background Papers: -

None

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APPENDIX A

Page No.	Paragraph no.	Line no.	Proposed Text
5	1.3	1 - 3	Delete 1 st sentence.
5	1.3	3 - 5	Replace 2 nd sentence with ‘ In this policy, bold type refers to matters that the Licensing Authority considers to be of particular importance for applicant’s to consider in preparing an application.’
5	1.6	All	Replace with ‘Applicants should consider what measures are required to be implemented and maintained in respect of each of the four licensing objectives that are relevant to the individual style and characteristics of their premises, the types of licensable activities and events proposed to be carried out in them. Where appropriate, applicants should consider whether or not any additional measures are required in respect of occasional or specific events that it is intended or are likely to attract larger audiences.’
8	Insert new 1.28		‘Regulations to the Licensing Act 2003 require that where applications and notices are given electronically, they must also be given the application in writing, i.e. in manuscript form with a signature.’
9	1.28	3 – 5	Delete all from ‘However’ to end of paragraph
9	1.30 & 1.31		Transitional Period & Grandfather Rights - Delete all, no longer relevant
9	1.35	2	Insert ‘(and who can make them) between ‘Representations’ and ‘Reviews’
10	1.39	1	Delete ‘therefore’
10	1.40	4	Change ‘presentations’ to ‘representations’

10	1.40	All	Change type font to bold.
10	1.39 & 1.40	All	Move to before existing 1.37 and 1.38
13	1.58	1	Delete 'Essex Police and/or Essex County Fire and Rescue Service'
13	1.59	2	Insert after 'licence' with ' or club premises certificate, based upon one or more of the licensing objectives not being met'
15	2.6	1	Replace 'expects' with 'suggests' and 'would' with 'should'
15	2.8	1 & 2	Replace 'must' with 'should' and 'that are planned' with 'that are considered necessary'
16	2.12	All	Replace with 'The Licensing Authority suggests that the issue of occupancy capacity be considered and addressed, where necessary, within an applicant's operating schedule.'
16	2.15	3	Delete all after 'planned' and insert 'applicants must take such measures as they consider appropriate to ensure the capacity of the premises is not exceeded.'
17	3.4	All	Replace all with 'When preparing an application for grant or variation of a premises licence or club premises certificate, applicants should consider if there are any particular issues effecting crime and disorder, having regard to their particular type of premises and/or activities proposed. Where an applicant identifies such issues, they should include such steps as are considered appropriate to deal with them within the operating schedule.'
17	3.5	1	Replace all before the 1 st bullet point with 'Examples of some of the issues that impact on crime and disorder are: -'
19	4.2	All	Replace all with 'When preparing an application for grant or variation of a premises licence or club premises certificate, applicants should consider if there are any particular issues effecting

			public safety (including fire safety), having regard to their particular type of premises and/or activities proposed. Where an applicant identifies such issues, they should include such steps as are considered appropriate to deal with them within the operating schedule.'
19	4.3	1	Replace all before the 1 st bullet point with 'Examples of some of the issues that impact on public safety are: -'
21	5.5	All	Replace with "When preparing an application for grant or variation of a premises licence or club premises certificate, applicants should consider if there are any particular issues effecting public nuisance, having regard to their particular type of premises and/or activities proposed. Where an applicant identifies such issues, they should include such steps as are considered appropriate to deal with them within the operating schedule.'
21	5.6	1	Replace all before the 1 st bullet point with 'Examples of some of the issues that impact on public nuisance are: -'
23	6.5	All	Replace with "When preparing an application for grant or variation of a premises licence or club premises certificate, applicants should consider if there are any particular issues effecting safeguarding children from harm, having regard to their particular type of premises and/or activities proposed. Where an applicant identifies such issues, they should include such steps as are considered appropriate to deal with them within the operating schedule.'
23	6.6	3	Delete all between sentence beginning 'Applicants' and 1 st bullet point and insert 'Examples of some of the issues that impact on protecting children from harm are: -'
25	6.10	All	Replace with "In the case of film exhibitions, applicants should consider appropriate measures that may be implemented for restricting children from viewing age-restricted films classified according to the recommendations of the British Board of Film Classification, or exceptionally those made by the Licensing Authority and, where appropriate, such measures should be included within the operating schedule.'