

# **Committee:** Licensing Committee

**Date:** 27 November 2014

**Wards:** All.

**Subject:** Licensing and Gambling legislation

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

**Lead member:** Councillor Nick Draper, Cabinet Member for Community and Culture.

**Forward Plan reference number:** N/A

**Contact Officer:** Barry Croft, Licensing Manager, London Boroughs of Merton and Richmond upon Thames Joint Regulatory Services Partnership.

## **Recommendations:**

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A. Members to note and comment on the report.

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### **1. Purpose of report and executive summary.**

1.1 To provide members of the licensing committee with information concerning the following matters:

The joint regulatory services partnership;

The process concerning the updating of the London Borough of Merton's Licensing and Gambling policies in 2015 with a view to publication in 2016;

The process involved in considering whether to introduce an cumulative impact zone for Mitcham Town Centre;

Advising on the progress made on the voluntary restriction on the sale of beers from off licence premises in Mitcham above 5.5% ABV; and

Advising on any updates to the Licensing Act 2003 or the Gambling Act 2005 which may be of interest to the Committee.

## **2. Details.**

### **2.1 Joint Regulatory Services Partnership.**

Since 01 August 2014, the London Borough of Merton has been part of a joint regulatory services partnership with the London Borough of Richmond upon Thames, with the effect that the services of licensing, trading standards, environmental health (pollution) and environmental health (commercial) are now shared between the two boroughs.

The shared service has its own head of service, Paul Foster, and is also overseen by a joint management board, consisting of senior officers from the two boroughs, and a joint regulatory committee, consisting of two Council Members from each borough.

The stated aims of the collaboration are to achieve early savings, to drive out further efficiencies by looking at current practices and to make the service more resilient. Thus far changes to the service have only been made at the managerial level. Changes to the operational level are envisaged next year.

The change means that the former post of Environmental Health (Pollution) and Licensing Manager has now been deleted. All matters relating to Licensing are now managed by Barry Croft, Licensing Manager London Borough of Merton and the London Borough of Richmond upon Thames Joint Regulatory Services Partnership, who has responsibility for licensing matters in both boroughs.

### **2.2 Review of the Statements of Merton's Licensing and Gambling Policies.**

There is a statutory requirement that the under the Licensing Act 2003 and the Gambling Act 2005 that the council reviews its policies under these Acts. In the case of alcohol, regulated entertainment and late night refreshment, administered under the Licensing Act 2003, the Council's Licensing Policy must be re-published every five years. In the case of betting shops, lotteries, bingo and gaming machines, administered under the Gambling Act 2005, the Council's Statement of Principles under the Gambling Act 2005 must be re-published every three. The current Licensing Policy under the Licensing Act 2003 will expire on 06 January 2016 and the current Statement of Principles under the Gambling Act 2005 will expire on 31 January 2016.

Both policies must be adopted by full council before they expire and both are subject to a public consultation process. It will therefore be necessary to place both policies before full council before or during January 2016 but before the dates on which they expire. It is not yet possible to formalise a date for this process, as the meeting dates have not been published beyond May 2015.

Both the Licensing Act 2003 and the Gambling Act 2005 require that various parties be consulted prior to the publication of the statement of Licensing Policy. The consultation period proposed for both policies will be three months.

Before the matter is brought before full council, it will be introduced and discussed at a licensing committee hearing next year at a date to be decided.

### **2.3 Consideration of a Cumulative Impact Zone Being Introduced in Mitcham Town Centre.**

At a recent meeting with the Licensing Manager Barry Croft, Councillors Draper and Hanna asked about the possibility of introducing a Cumulative Impact Zone (CIZ) in Mitcham town centre, concerns having been raised about issues such as street drinking and disorder.

The effect of adopting a special policy of this kind is to create a rebuttable presumption that applications for the grant or variation of premises licences or club premises certificates which are likely to add to the existing cumulative impact will normally be refused or subject to certain limitations, following relevant representations, unless the applicant can demonstrate in the operating schedule that there will be no negative cumulative impact on one or more of the licensing objectives.

There are currently two CIZs in the borough, one in Wimbledon Village, the other in the Wimbledon Broadway area.

The adoption of a CIZ requires that it be included in the statement of licensing policy, following the procedure described in this report, meaning that the matter must effectively be decided by full council.

The steps that must be followed when considering the adoption of a CIZ are governed by Chapter 13 of the Guidance issued under Section 182 Licensing Act 2003. Those steps are as follows:

1. Identify concern about crime and disorder; public safety; public nuisance; or protection of children from harm;
2. Consider whether there is good evidence that crime and disorder or nuisance are occurring, or whether there are activities which pose a threat to public safety or the protection of children from harm;
3. If such problems are occurring, identify whether these problems are being caused by the customers of licensed premises, or that the risk of cumulative impact is imminent;
4. Identify the boundaries of the area where problems are occurring (this can involve mapping where the problems occur and identifying specific streets or localities where such problems arise); and

5. Consult those specified in section 5(3) of the 2003 Act, and subject to the outcome of the consultation, include and publish details of the special policy in the licensing policy statement.

Paragraph 13.23 stipulates that “ ...*There must be a clear evidential basis for the decision to include a special policy within the statement of licensing policy ...*” The Guidance then goes on to list the information from which the necessary evidence can be gleaned, which includes crime and disorder statistics; complaints made to the police and local authorities regarding anti social behaviour and environmental health issues; complaints made to the local authority by local residents; residents’ questionnaires; evidence from local councillors and evidence obtained from local consultation. The Guidance also states that the authority can also take into consideration such matters as trends in licensing applications, for example the type of application and terminal hours; changes in terminal hours to premises and the capacity of premises at various times of the day. The Guidance also states that where the local authority believe that where there are problems in an area resulting from the cumulative impact of licensed premises, and where the information to support that assertion is insufficient or not readily available, it can consider undertaking or commissioning a specific study to assess the position.

The consultation process involves contacting various parties, namely:

- The chief officer of police for the licensing authority’s area;
- The fire authority for that area;
- Such persons as the Licensing Authority considers to be representative of holders of premises licences issued by that authority;
- Such persons as the Licensing Authority considers to be representative of holders of club premises certificates issued by that authority;
- Such persons as the Licensing Authority considers to be representative of holders of personal licences issued by that authority; and
- Such other persons as the Licensing Authority consider to be representative of business and residents in its area.

Should it be determined that sufficient evidence to adopt a special policy exists, the process of amending the Licensing Policy as described previously in this report starts. The resulting change to the statement of Licensing Policy would, if all other matters are considered and the necessary amendments made, result in its being considered reviewed for the purposes of the Act, as the existing licensing policy would effectively be replaced. Therefore, it might be prudent to conduct a full review of the

policy, taking all relevant matters into account as well as the consideration of a CIZ in Mitcham town centre.

#### 2.4 **Voluntary Restriction on High Strength Beers and Ciders in Mitcham Town Centre.**

Following concerns raised by the Metropolitan Police about the problems caused by street drinking in the Mitcham town centre area, the licensing team, in collaboration with the licensing sergeant at Wimbledon Police Station, decided to research methods of controlling the sale of high strength beers and ciders from licensed premises in that area, notably those that are exclusively licensed for off sales.

Under the terms and conditions of the Licensing Act 2003, the only method of imposing conditions on an existing premises licences would be by seeking a review, a procedure that would not only require evidence that a given specific licenced premises was undermining the licensing objectives, but would also result in a formal hearing to determine the matter. Given the number of premises concerned, this would be both a lengthy and costly process.

Given that the information from the Police, indicated that there is an issue with the consumption of high strength beers and ciders by street drinkers in Mitcham Town Centre, it appeared that an alternative method of tackling the problem would be some form of voluntary agreement among retailers undertaking not to sell beer and ciders over 5.5% ABV. Another method considered was asking the retailers to consider applying for a free minor variation, adding a condition to their premises licences prohibiting the sale of beer and ciders over that figure.

Clearly the option of suggesting a minor variation has the advantage of making the resulting condition enforceable. However, the initial approach to licence holders suggesting this course would need to be supported by reliable evidence and, further, could be said to be contrary to the rule of natural justice, since it implies that all licensed premises in the area are equally implicated in contributing to the problem.

It was therefore decided that best way of dealing with the issue would be by asking licence holders to sign a voluntary agreement undertaking not to sell high strength beers and ciders over 5.5% ABV. Whereas such an agreement is not enforceable, it has the advantage of being completely fair and so free from any challenge over fairness. Further, it presents a means of working with the trade to solve local issues, leaving more punitive measures available to deal with identified problem premises.

A series of joint visits have been conducted in the area, during which the police and licensing officers have broached the possibility of such an agreement with local shopkeepers. The response has been generally positive but with the caveat among those who run small businesses that the larger outlets should also be prepared to become involved in the scheme. Currently, we understand that the police are in negotiation with Morrisons, a larger outlet in the area, with a view to that organisation championing the scheme.

Though a joint enterprise, the scheme is led by the police. Therefore the licensing team await the outcome of the possible agreement of Morrisons and will assist in moving the matter forward, when our police colleagues have decided on the appropriate strategy.

## 2.5 **Updates on Licensing Legislation.**

### **Revised section 182 guidance under the Licensing Act 2003.**

The Home Office published revised guidance under section 182 of the Licensing Act 2003 in October 2014. This document replaces the section 182 guidance which was published in June 2014. The changes made to this latest versions of the section 182 guidance are summarised in the explanatory memorandum to the revised guidance issued under section 182 of the Licensing Act 2003 attached at **Appendix "A"**.

### **Revision to the Temporary Event Notice form (October 2014).**

The Home Office has revised the temporary event notice form to include a section on the provision of sex entertainment. Notice givers are now required to identify the provision of any sex entertainment to be provided at the same time as licensable activities. For the purposes of this change the Home Office have categorised sex entertainment as a relevant entertainment.

### **Updated Mandatory Conditions.**

The Home Office have updated the mandatory conditions which appear on all premises licences and club premises certificates issued by the Licensing Authority. The updated mandatory conditions include the following:

- A ban on irresponsible drinks promotions;
- To ensure free portable drinking water for customers is available;
- To ensure that small measures of beer, wine and spirits are offered and that customers are made aware of them; and
- To ensure that all those who sell or supply alcohol have an age verification policy in place requiring them to ask anyone who looks under the age of eighteen for proof of age.

It has been confirmed by the Home Office that renewals for personal licenses will be abolished by the Deregulation Bill

### **Renewal of personal licenses.**

The Home Office have announced that personal licence holders, who's personal licence is due to expire in 2015, will not be required to renew their licence. An amendment will be made to the Licensing Act 2003 by the Deregulation Bill which is due to be published in the spring of 2015. The Home office have also confirmed that proposed changes to the Licensing Act 2003, brought about by the Deregulation Bill for the renewal of personal licenses, may not receive Royal Assent before the first date of the expiry of some personal licenses.

To overcome this, the Home Office propose to introduce transitional arrangements which will require the personal licence holder to notify the relevant Licensing Authority of their intention to renew their personal licence. The Home Office will be publishing an application form and guidance to address this matter. This simple notification will not require the payment of a renewal fee or the submission of a new criminal records check by the personal licence holder.

### **Locally Set Licensing Fees.**

At a recent Institute of Licensing conference, attended by the Licensing Manager, a Home Office representative confirmed that the Government were still considering the comments received following publication of the consultation document on locally set fees under the Licensing Act 2003. The Home Office representative would not be drawn to give any further comment regarding this matter. The current mandatory fees for applications made under the Licensing Act 2003 have been in place since November 2005.

### **3. Alternative options.**

3.1 None for the purposes of this report.

### **4. Consultation undertaken or proposed.**

4.1 None for the purposes of this report.

### **5. Timetable.**

5.1 None for the purposes of this report.

### **6. Financial, resource and property implications.**

6.1 None for the purposes of this report.

### **7. Legal and statutory implications.**

7.1 None for the purposes of this report.

### **8. Human rights, equalities and community cohesion implications.**

8.1 These are statutory functions and are applied globally.

### **9. Crime and Disorder Implications.**

9.1 The service has a statutory duty to contribute to the reduction of crime and disorder in Merton under Section 17 Crime and Disorder Act 1988. The prevention of crime and disorder is also one of the council's statement of licensing policy.

By examining issues raised such as the possible adoption of a CIZ in Mitcham town centre and the possible introduction of a scheme to limit the sale of high strength alcohol, the licensing authority is contributing to that commitment.

- 10. Risk management and health and safety implications.**
- 10.1 All risk and health and safety implications have been considered when compiling this report. None are apparent.
- 11. Appendices – the following documents are to be published with this report and form part of the report.**
- 11.1 Appendix “A” explanatory memorandum to the revised guidance issued under section 182 of the Licensing Act 2003.
- 12. Background Papers – the following documents have been relied on in drawing up this report but do not form part of the report.**
- 12.1 The Licensing Act 2003; and
- 12.2 Revised guidance issued under section 182 of the Licensing Act 2003.