



REPORT OF THE DIRECTOR OF RESILIENT COMMUNITIES TO THE LICENSING AND SAFETY COMMITTEE

25 August 2021

LICENSING ACT 2003

WALSALL COUNCIL STATEMENT OF LICENSING POLICY 2021

1.0 Summary of report

- 1.1 The Licensing Act 2003 (s5) (LA03) requires Licensing Authorities within each five-year period to determine their policy with respect to the exercise of its licensing functions, and publish a statement of that policy.
- 1.2 This report informs the Licensing and Safety Committee of a review that has taken place of Walsall Council's Statement of Licensing Policy and the results of the public consultation undertaken from the 1st June 2021 to 1st August 2021.
- 1.3 Alongside the Statement of Licensing Policy review a Cumulative Impact Assessment (CIA) has been undertaken. These assessments are carried out where in the Licensing Authorities view the number of relevant authorisations in respect of premises in one or more parts of its area described in the assessment is such that it is likely that it would be inconsistent with the authority's duty to promote the licensing objectives. The CIA ought to be reviewed at least every three years, set out the evidence as to why it is needed, be consulted upon and published (s5A LA 03).
- 1.4 The report sets out evidence received from responsible authorities that has been used to inform the draft Statement of Licensing Policy and the Cumulative Impact Assessment and also includes responses received from the public during the consultation period.
- 1.5 As part of the consultation in relation to the CIA the authority received responses to the proposal to extend the criteria to include sale of alcohol for consumption off the premises and late night refreshment.

2.0 Recommendations

- 2.1 The committee is asked to consider the results of the public consultation and if satisfied with the process that has been followed and the outcomes of the consultation approve the proposed Statement of Licensing Policy and CIA before sending to a meeting of the full Council for final adoption. The results of the consultation are included within the report. A copy of the proposed policy is attached as **Appendix 1**.

3.0 **Background information**

- 3.1 Walsall Council is a licensing authority in accordance with section 3(1) of the Licensing Act 2003 and pursuant to section 5(1) of that same act the Council is required to determine and publish a Statement of Licensing Policy at least every five years.
- 3.2 The draft Statement of Licensing was put before members on the 31st March 2021 for consideration. Members noted the evidence provided within the report and gave approval for the draft policy to go out to public consultation.

Consultation Time Line

- 3.3 27th May 2021

All current premises licence holders & club premises certificate holders were written to by the Licensing Authority informing them of the council's review of the Policy, where they could view the current and proposed policy and how they could put forward their comments. A copy of the letter is attached as **Appendix 2**.

- 3.4 1st June 2021

The consultation commenced and the council's web page was uploaded with the appropriate documents together with an online link to respond to the consultation. The last date to make comments on the policy was the 1st August 2021.

Details of the consultation were sent by email to all agents and solicitors who have submitted Licensing Act 2003 applications in Walsall and who may therefore have an interest in this consultation.

The consultation was sent by email to elected members, the Chair of Licensing and Safety Committee and the Director of Resilient Communities.

All Responsible Authorities received an email inviting them to take part in the consultation as required by the Licensing Act 2003 and as set out in section 4.5 below.

- 3.5 11th June 2021

The policy was promoted by sending a link to the consultation via text message to licence holders for whom we held relevant contact details.

3.6 16th June 2021

Locality Managers sent the link to the consultation in their newsletter.

3.7 23rd June 2021

Consultation was promoted with elected members whose Wards were affected by the CIA.

3.8 6th July 2021

The Consultation was promoted with Walsall Pub Watch.

3.9 8 July 2021.

The consultation was emailed again to relevant agents and solicitors.

The Regulatory Services Manager promoted the Consultation at the Walsall Safeguarding Partnership Exploitation Sub Group.

3.10 12th July 2021

The Regulatory Services Manager promoted the policy at the Councils Town Centre Board meeting.

3.11 The Corporate Communications Team helped promote the consultation by posting the details on the Our Walsall Facebook page on the 14 June, 9th July, 22nd July and the 30th July. The Facebook site has over 16,000 followers.

The Consultation was also promoted through the corporate Twitter feed on the 14 June, 9th July, 22nd July and the 30th July. The corporate Twitter feed has over 34,000 followers.

Social media posts can be seen at **Appendix 5**

Consultation Outcome

3.12 During the consultation period, there were 14 responses made to the draft policy. The responses clarified that 64% (9) of respondents were in support of the policy, 14% (2) not in support and 21% (3) who don't know. **Appendix 3** is a summary of the responses received together with any comments made.

3.13 The data collected also shows that 71% (10) of respondents strongly

agree that Walsall should have a Cumulative Impact Policy (CIP) in place.

- 3.14 The proposed CIP policy has been extended to include streets that fall in the WS1 postcode area and specific streets that were mentioned in the Cumulative Impact Assessment (**Appendix 4**). The consultation shows that 64% (9) of the respondents strongly agree for the CIP area to be extended and to include all streets that fall within the WS1 postcode area.
- 3.15 The consultation results showed that 36% (5) of respondents suggested that other areas of the Borough should also be included within the CIP. In response to this suggestion it should be noted that the evidence used by Responsible Authorities including the Police and Local Authority process during the CIA does not show that there is a current need in the areas identified in the consultation for example Bloxwich, Blakenall, Paddock, Darlaston, Willenhall and Aldridge. The CIA will be reviewed every 3 years and data will be collected from Responsible Authorities to see if there is still a need to have a CIP and also to extend this in to other areas of Walsall where necessary.
- 3.16 The consultation was also promoted using the council's social media channels. **Appendix 5** is a copy of the social media posts.

Cumulative Impact Assessment (CIA)

- 3.17 Paragraph 14.26 of the section 182 Guidance (Licensing Act 2003) states:
- “The CIA must include a statement saying that the licensing authority considers that the number of premises licences and/or club premises certificates in one or more parts of the area described is such that it is likely that granting further licences would be inconsistent with the authority’s duty to promote the licensing objectives. As part of the publication a licensing authority must set out the evidential basis for its opinion”.*
- 3.19 As with a CIP, a CIA may be published by a licensing authority to limit the number or types of licence applications granted in areas where there is evidence to show that the number or density of licensed premises in the area is having a cumulative impact and leading to problems, which are undermining the licensing objectives.
- CIA's relate to applications for new premises licences, new club premises certificates, and the variation of existing premises licences and club premises certificates in the affected CIP area.
- 3.20 Guidance states that as CIPs were not part of the original 2003 Act, there are no transitional provisions that apply to CIPs pre-dating 6 April 2018. However, any existing CIPs should be reviewed at the earliest practical opportunity to ensure they comply with the current legislation.

- 3.21 It is recommended that the review should take place within three years of the commencement of the legislation that introduced CIAs or when the licensing policy statement is next due for review, whichever is sooner. This will ensure that any CIPs in place before the commencement of the provisions on CIAs now adhere to the principles in the legislation.
- 3.22 The change from a CIP to a CIA has no practical effect in respect of how applications may be dealt with when they are received. The differences are:
- the requirement that the Council must review the CIA every 3 years; and
 - there must be a full consultation before a CIA can be implemented.
- 3.23 Walsall Council's current CIP was introduced by the Council on the 8 September 2008, based on evidence provided by West Midlands Police. This evidence demonstrated that part of Walsall (namely the Town Centre) was being adversely affected by levels of crime, disorder and antisocial behaviour, specifically linked to the large number of licensed premises concentrated in the area.
- 3.24 As part of the current review of the CIP, it has been recognised that the cumulative impact of a number of late night refreshment premises (including cafes) in some areas may result in an increase of people either walking through, or congregating in, streets during the night.
- This may in turn have a number of undesirable consequences, for example;
- an increase in crime against property and/or person;
 - an increase in noise causing disturbance to residents;
 - traffic congestion and/or parking problems; (impact of the parking and it resulting in to a nuisance); and
 - littering and fouling.
- 3.25 These undesirable consequences may result in the amenity of local residents being placed under pressure, as it will not always be possible to attribute a particular problem to customers of particular premises. This means that, whilst enforcement action may be taken to ensure conditions are complied with at individual premises, this may not resolve all the problems being encountered.
- 3.26 It is proposed that the new CIP also takes into account the impact of the sale of alcohol for consumption 'off the premises' and the provision of 'late night refreshment' in the WS1 area when determining applications etc.
- 3.27 The report takes in to consideration data from responsible authorities from April 2017 – March 2020. The CIP will be relied upon in cases where, for applications relating to premises located within the CIP area

under the Licensing Act 2003, the applicant has failed to include sufficient measures for mitigating the potential impact of the grant of the licence undermining the licensing objectives, in line with the policy.

3.28 The use of the CIA will also depend upon the recovery of the economy and the level of activity in Walsall. Therefore, in determining the validity of representations the representation must be justified and include clear evidence and reasoning, which will stand up to scrutiny at a hearing, should one be required, and be relied upon in defending any subsequent decisions for example at Magistrates Court.

3.29 The primary evidence in Walsall Councils CIA (**Appendix 4**) relates to

- Statistics relating to Crime and Disorder including anti-social behaviour submitted by West Midlands Police.
- Statistics in relation to criminal activity around illicit tobacco in licensed premises submitted by the Chief Inspector of Weights and Measures (Trading Standards).
- Statistics related to littering issues provided by Clean and Green.
- Statistics relating to admissions to hospital relating to alcohol related harm submitted by the Director of Public Health.

3.30 The conclusion of the CIA states that

25 *'statistics show a decline in reported crime over the three-year period following the last review, which is positive. The number of offences is still at a high level and it is believed that the retention of the CIP along with the proposed changes will reduce that figure further, take strain off Police resources and make the areas identified safer for residents and legitimate business.'*

26. *Removing the CIP may have the opposite effect and lead to a deterioration in standards. It should be noted 2020 will be an unusual year for statistics due to the various 'lockdowns' and restricted trading that have occurred as a consequence of Covid 19.*

30 *Based on the statistical data evidence above from responsible authorities, the Council has determined that the Council should amend the current Cumulative Impact Policy area and expand this to include WS1 and also Wednesbury Road & Wallows Lane. The council has also resolved that there is also a need to expand the CIP to include Late Night Refreshments & Sale of Alcohol off the premises within the policy.*

4.0 Resource considerations

4.1 **Financial:** The costs involved in carrying out the consultation has been met from existing budgets held by the licensing service.

4.2 **Legal:** Members of the public, the trade or responsible authorities can

judicially review the policy.

- 4.3 The Council has a statutory duty to publish a Statement of Licensing Policy. It is important that the Statement of Licensing Policy provides an open and transparent policy regarding the Council's functions under the Licensing Act 2003. The Statement of Licensing Policy forms an essential part of the decision making process for licensing applications.
- 4.4 The Act also requires that the Statement of Licensing Policy should be kept under review and must be re-published at least every five years.
- 4.5 When revising its Statement of Licensing Policy, the Council is required to consult with:
 - the chief officer of police for the authority's area;
 - the fire and rescue authority for that area;
 - each local authority in England whose public health functions within the meaning of the National Health Service Act 2006 are exercisable in respect of an area any part of which is in the licensing authority's 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 considers to be representative of businesses and residents in its area.
- 4.6 The consultation has been made available for comment via the Council's website and publicised via social media and also through the local press. The consultation will take place over a period of 9 weeks.
- 4.7 There must be an evidential basis for the decision to publish a CIA. Local Community Safety Partnerships and responsible authorities, such as the police, may hold relevant information, which would inform licensing authorities when establishing the evidence base for publishing a CIA. Evidence of cumulative impact on the promotion of the licensing objectives needs to relate to the relevant problems identified in the specific area to be covered by the CIA. Information which licensing authorities may be able to draw on includes:
 - local crime and disorder statistics, including statistics on specific types of crime and crime hotspots;
 - statistics on local anti-social behaviour offences;
 - health-related statistics such as alcohol-related emergency attendances and hospital admissions;

- environmental health complaints, particularly in relation to litter and noise;
 - complaints recorded by the local authority, which may include complaints raised by local residents or residents' associations;
 - residents' questionnaires;
 - evidence from local and parish councillors; and
 - evidence obtained through local consultation.
- 4.8 When publishing a CIA, a licensing authority is required to provide evidence of problems that are being caused or exacerbated by the cumulative impact of licensed premises in the area described. The evidence must justify the statement in the CIA that it is likely that granting further premises licences and/or club premises certificates in that area (limited to a kind described in the assessment), would be inconsistent with the authority's duty to promote the licensing objectives.
- 4.9 To remove any confusion about the difference between the "need" for premises and the "cumulative impact" of a premises on the licensing objectives, "need" concerns the commercial demand for another business or premises and is a matter for the planning authority and the market. Government guidance makes clear that 'need' is not, and never can be, a matter for a licensing authority in discharging its licensing functions or for its statement of licensing policy.
- 4.10 In publishing a CIP, a licensing authority is setting down a strong statement of intent about its approach to considering applications for the grant or variation of premises licences or club premises certificates in the area described.

Having published a CIP a licensing authority must have regard to the assessment when determining or revising its statement of licensing policy. It is therefore expected that, in respect of each relevant application in the area concerned, the licensing authority will be considering whether it is appropriate to make a representation to its committee as a responsible authority in its own right.

However, the CIP will not fundamentally change how licensing decisions are made. The licensing authority may grant an application where it considers it is appropriate and where, based on the information provided by the applicant in the operating schedule, the applicant has sufficient measures in place to minimise the likelihood of the activities at their premises adding to the cumulative impact.

Applications in areas covered by a CIP should therefore give consideration to potential cumulative impact issues when setting out the steps that will be taken to promote the licensing objectives. Where relevant representations are received and a licensing authority decides to grant an application it will need to provide the applicant, the chief officer of police and all parties who made relevant representations with

reasons for granting the application and this should include any reasons for departing from their own policy.

- 4.11 A CIP may never be absolute. Statements of licensing policy should always allow for the circumstances of each application to be carefully considered and applications considered to be unlikely to add to the cumulative impact on the licensing objectives, to be granted. After receiving relevant representations in relation to a new application for, or a variation of, a premises licence or certificate, the licensing authority must consider whether it would be justified in departing from its CIP in the light of the individual circumstances of the case.

The impact can be expected to be different for premises with different styles and characteristics. For example, while a large nightclub or high capacity public house might add to problems of cumulative impact, a small restaurant or a theatre may not. If the licensing authority decides that an application should be refused, it must demonstrate why it considers that the grant of the application would be likely to undermine the promotion of one or more of the licensing objectives and that the addition of conditions would likely be ineffective in preventing the problems involved.

- 4.12 Failure to publish a new Statement of Licensing Policy would be a failure of the Council to comply with its duties as a licensing authority under the provisions of the Licensing Act 2003.

5.0 Staffing:

- 5.1 Nothing arising from this report.

6.0 Citizen Impact

- 6.1 The implementation of this proposed Statement of Licensing Policy and CIP will affect the way in which Walsall Council administers the licensing regime in the Borough in such a way that affords greater protection to its residents.

7.0 Community Safety

- 7.1 The introduction of the policy is for the benefit of the community and people of Walsall. It is a key policy for the Council and partners in protecting the communities of Walsall from harm that can be caused by licensed premises or as a consequence of having licensed premises in any given area.

8.0 Environmental Impact

- 8.1 Discussions with other services and partners could lead to Policy decisions being made that have a positive effect on litter control and, waste disposal.

- 8.2 In areas where Cumulative Impact Policies or Assessments have been introduced there is a possibility that businesses looking to invest may be deterred from doing so, due to perceived additional burdens being placed upon them.
- 8.3 This is balanced against impact of new and current business undertaking licensable activities in a particular area and the social and economic benefits of those businesses against the potential adverse environmental implications, such as public nuisance, crime and disorder and antisocial behaviour.

9.0 Performance and Risk Management Issues

- 9.1 As stated the impact of Covid 19 has meant the drafting and consultation of this Statement of Licensing Policy and CIP have been delayed and will therefore go beyond the five-year period that such matters are usually expected to be delivered by. Government is aware of the national impact Covid 19 has had on updating Policy's such as this.

10.0 Equality Implications

- 10.1 The Licensing and Safety Committee will ensure it has regard to the desirability of exercising its functions with regard to the need to eliminate discrimination and to increase equality of opportunity. Groups that have knowledge and experience of equality related issues will be included in all consultation that takes place.

11.0 Consultation

- 11.1 The Policy went through a 9-week consultation from the 1st June 2021 to the 1st August 2021. Further details are contained in the background section of the report.

12.0 Appendices

- **Appendix 1** Proposed Policy
- **Appendix 2** Letter to Licence Holders
- **Appendix 3** Consultation Response Summary
- **Appendix 4** Cumulative Impact Assessment

13.0 Contact Officer:

- 13.1 Sayful Alom – Licensing Team Leader Sayful.alom@walsall.gov.uk