

REPORT OF THE DIRECTOR OF RESILIENT COMMUNITIES**LICENSING AND SAFETY COMMITTEE****22nd FEBRUARY 2023****Walsall Night Time Economy and control of closing times for licensed premises.****1.0 Summary of Report**

- 1.1 The report sets out the legislation, guidance and Walsall Council's own Statement of Licensing Policy with regard to the control of opening and closing hours for premises licensed under the Licensing Act 2023.

2.0 Recommendation

- 2.1 That the Licensing and Safety Committee note that it is not possible within the current statement of licensing policy to impose a blanket closing time on premises operating in Walsall town centre, and that each application must be considered on its individual merits.
- 2.2 That the committee note that the statement of licensing policy can be reviewed at any time, however Home Office guidance states that licensing authorities must always consider each application and must not impose predetermined licensed opening hours.
- 2.3 That a further report is brought to the committee with data and evidence to determine if there are recurring problems such as high levels of alcohol-related crime and disorder in specific areas at specific times; serious public nuisance; and other instances of alcohol-related anti-social behaviour which is not directly attributable to specific premises, to determine if an early morning alcohol restriction order (EMRO) is appropriate.

3.0 Background

- 3.1 Walsall like many urban towns has a number of licensed premises within its town centre that draw people from around the borough and wider conurbation to attend and enjoy the facilities on offer.
- 3.2 Since autumn 2020 Walsall Council's community safety and enforcement service and Walsall Police have had regular meetings using an operational name of Argonite to monitor and control crime, disorder and anti-social behaviour within Walsall town centre's night time economy.

3.3 Over the course of this period Walsall Police have made changes to the shift patterns worked by their neighbourhood teams to ensure that there is regular and consistent police presence in the NTE from Friday and Saturday nights until 05:00 on Saturday and Sunday mornings. This change has shown commitment from the police commander to protect the safety of those within the NTE and others affected by the NTE but has resource implications for policing across Walsall as there is a finite number of police staff to cover all demand in the Borough.

3.4 Some of the successes of Operation Argonite include

- Weekly meetings to review weekend crimes and disorder and implement actions prior to the forthcoming weekend in order to improve management of premises or to deploy resources effectively.
- Continual liaison with council CCTV staff to gather evidence of crime, disorder and ASB in the NTE for use in enforcement activity.
- Letters sent to nine separate premises where failings of management appear to have resulted in crime, disorder or ASB on the NTE.
- Two premises issued with Partnership actions plans to improve performance with one responding positively and one failing.
- Removal of benches in Leicester Street where persons under the influence of alcohol were sitting and were prone and vulnerable.
- Review of licence of premises where crime and disorder and public nuisance were of concern leading to the revocation of the licence.
- Objection to Temporary Event Notices where in the view of police and Local Authority the event would breach Licensing Objectives.
- Implementation of bus gate in Bridge Street with over 140 warnings being given to motorists driving down the road during the prohibited hours.

3.5 It was with great sadness that a young man Bailey Atkinson was recently killed in Walsall town centre. Whilst the incident happened in the town centre during the NTE hours and the investigation is ongoing, at this stage no fault is being apportioned to any licensed premises within the town. It has however brought into focus the safety of all those living, working and visiting the town and a consideration of what more can be done to safeguard customers, businesses and indeed public services.

3.6 One such consideration is whether additional controls can be placed upon licensed premises to close earlier, for example 02:00. This would reduce the number of hours where people are present in Walsall town centre consuming alcohol from licensed premises at night or in the early hours of the morning.

- 3.7 At present venues have different closing times depending on their business model and depending on the hours requested at the time of the application for the licence and any subsequent variations to their licence. Licence holders can choose to stay open to the full extent of the hours contained within their licence or vary their opening and closing hours as long as this is within the times allowed by their licence conditions.
- 3.8 Appendix 1 is a list of all licensed venues within the town centre. The list of licensed venues also includes fast food venues, restaurants, filling stations who will also be affected by the decision of introducing an early morning restriction order (EMRO).

Walsall Council Statement of Licensing Policy

- 3.9 The council is required by the Licensing Act 2003 section 5(1) to have a Statement of Licensing Policy. The current policy was approved by Licensing and Safety Committee on the 25 August 2021 and subsequently approved by Council on the 20th September 2021. As required by law the policy is reviewed every five years unless an issue occurs during that period that requires a change to be made. A copy of this policy and associated report can be found at **Appendix 2**.
- 3.10 The Statement of Licensing Policy should be read as a complete document however section 9 specifically references licensing hours

9 Licensing Hours

- 9.1 Walsall Council wishes to emphasise that consideration will always be given to the individual merits of any application. However, it is clear that in some circumstances adopting more flexible licensing hours, in relation to the sale of alcohol, may be an important factor in avoiding a concentration of customers leaving premises simultaneously and generally lead to a slower dispersal of people from licensed premises. This can help to reduce the friction at late night fast food outlets, taxi ranks and other sources of transport, which can be hot spots for disorder and disturbance.
- 9.2 Walsall Council recognises that providing consumers with greater choice and flexibility is an important consideration when it comes to developing thriving night-time local economies, which are equally important for local investment and employment. That said, economic considerations must always be balanced carefully against the duty to promote the four licensing objectives and the rights of local residents.
- 9.3 Each application will always be considered on its own individual merits, however, it should be recognised that restricting the hours of operation in some cases can play an important role in preventing public nuisance, especially in residential areas where there is a history of noise complaints relating to a particular premises from those living within the vicinity.

9.4 In accordance with 'the guidance', retail premises (e.g. shops, stores and supermarkets) will generally be permitted to sell alcohol for consumption off the premises during the normal hours they are open for shopping purposes.

9.5 However, in the case of individual premises known to be a focus of disorder and disturbance, then, subject to relevant representations, some limitation on licensing hours may be appropriate.

3.12 Section 12 of the Statement of Licensing Policy sets out Walsall Councils Cumulative Impact Policy

12.1 Under the Home Office Guidance, issued under section 182 of the Licensing Act 2003, the definition of Cumulative Impact is:

"Cumulative impact is the potential impact on the promotion of the licensing objectives of a number of licensed premises concentrated in one area"

Walsall Council's Cumulative Impact Policy is defined within the Statement of Licensing Policy and covers mainly premises that fall within the WS1 post code area. The Cumulative Impact Policy will be reviewed every 3 years in line with section 5A of the Licensing Act 2003. .

3.13 The policy also states that

12.11 The cumulative impact policy will not be used to revoke existing licences or certificates. However, such a policy may be a justification to refuse an application to vary a licence or certificate in circumstances where the variation is directly relevant to the policy and the refusal is strictly necessary for the promotion of the licensing objectives, each case must be treated on its own merits.

3.14 In terms of the conditions attached to a premises licence the policy states

18 Licence Conditions

18.1 The Authority may only impose conditions (other than mandatory conditions) on a premises licence or club premises certificate (and in certain circumstances Temporary Event Notices) where they form part of an applicant's operating schedule or following a decision of the licensing sub-committee at a formal hearing. However this may include the voluntary addition, by the applicant, of conditions following mediation in response to the submission of a relevant representation,

18.2 Any conditions attached to licences, certificates and other authorisations must be tailored to the individual style and characteristics of the premises and events concerned and will reflect, as far as possible, local crime prevention strategies.

18.3 The Authority will not attempt to impose any 'blanket' conditions which apply to all premises, but the applicant's operating schedule, which forms part of the application should include sufficient information to enable a responsible authority or other person to assess whether the steps being taken to promote the licensing objectives are satisfactory or not.

Home Office guidance

3.15 The section 182 Guidance issued by the Home Office and which Licensing authority's such as Walsall use to ensure they conduct their duties in a fair and consistent manner is 90 pages long and has not therefore been produced as an Appendix to this report. The link to read the Guidance is as follows.

[Section 182 Guidance](#)

The guidance states the following with regard to hours of trading and licence conditions.

Hours of Trading

10.13 The Government acknowledges that different licensing strategies may be appropriate for the promotion of the licensing objectives in different areas. The 2003 Act gives the licensing authority power to make decisions about the hours during which premises can conduct licensable activities as part of the implementation of its licensing policy statement. Licensing authorities are best placed to make decisions about appropriate opening hours in their areas based on their local knowledge and in consultation with responsible authorities. However, licensing authorities must always consider each application and must not impose predetermined licensed opening hours, without giving individual consideration to the merits of each application.

Early morning alcohol restriction orders

3.16 The Licencing Act 2003 makes provision for early morning alcohol restriction orders (EMROs) which the s182 guidance states at section 17 are

'designed to address recurring problems such as high levels of alcohol-related crime and disorder in specific areas at specific times; serious public nuisance; and other instances of alcohol-related anti-social behaviour which is not directly attributable to specific premises.'

3.17 An EMRO as described by the s182 guidance:

- applies to the supply of alcohol authorised by premises licences, club premises certificates and temporary event notices;
- applies for any period beginning at or after 12am and ending at or before 6am. It does not have to apply on every day of the week, and can apply for different time periods on different days of the week;
- applies for a limited or unlimited period (for example, an EMRO could be introduced for a few weeks to apply to a specific event);
- applies to the whole or any part of the licensing authority's area;
- will not apply to any premises on New Year's Eve (defined as 12am to 6am on 1 January each year);

- will not apply to the supply of alcohol by those who provide hotel or similar accommodation to their residents between 12 am and 6am, provided the alcohol is sold at those times only through mini-bars and/or room service; and
- will not apply to a relaxation of licensing hours by virtue of an order made under section 172 of the 2003 Act.

3.18 The s182 Guidance clarifies the delegation as regards an EMRO

17.6 Introducing an EMRO is a licensing function. Therefore, this is not the responsibility of a council's executive. The final decision to make an EMRO (or to vary or revoke one) must be made by the full council of the licensing authority. Any preceding steps, including advertising the proposed EMRO, holding hearings and making a determination to put before the full council for its final decision, are for the licensing committee of the licensing authority. The licensing committee may delegate these steps to the licensing sub-committee or officers as it sees fit.

3.19 Walsall Councils Statement of Licensing Policy states the following with regard to EMROs

14 Early Morning Restriction Orders (EMRO)

14.1 Walsall Council has considered the parameters of such orders, but has resolved that none be implemented at this time. The council reserves its right to introduce such orders, but will only do so after ensuring it has gone through the statutory consultation process and a formal decision has been made in respect of all evidence and comments received.

3.20 In terms of the process of implementing an EMRO Licensing authorities should consider firstly:-

- working in partnership with licensed premises on voluntary measures and encouraging the creation of business-led best practice schemes in the area;
- reviewing licences of specific problem premises;
- introducing a Cumulative Impact Assessment;
- use of the new closure power in the Anti-social Behaviour, Crime and Policing Act 2014 which replaces section 161 of the 2003 Licensing Act. This new closure power can be used to protect victims and communities by quickly closing premises that are causing nuisance or disorder. Further guidance on this power can be found on the gov.uk website, under the Anti-social Behaviour, Crime and Policing Act: anti-social behaviour guidance;
- use of other mechanisms such as those set out in paragraph 14.47 of this Guidance
- The EMRO must be advertised for 42 calendar days

The process for an EMRO is further described at **Appendix 3**

Public Space Protection Orders

3.21 Walsall Council implemented a Public Spaces Protection Order (PSPO) covering parts of Walsall town centre on 28 September 2017. The PSPO was put in place as a means to tackle on going anti-social behaviour that was having a detrimental effect on the quality of life of those who live and work in the locality. The order is there to ensure the law abiding majority can use and enjoy public spaces safely, free from anti-social behaviour. The order has been extended from 28 September 2020 to 11.59 hours to 27 September 2023.

3.22 The PSPO is contained at Appendix 4 but the basic prohibitions it covers are

- No person shall remain in a shop, betting office, or food outlet so as, without reasonable excuse, to cause harassment, alarm, or distress.
- No person shall remain at Walsall Market, shown hatched in blue on the map so as, without reasonable excuse, to cause harassment, alarm, or distress.
- No person without reasonable excuse shall in a public place use a hypodermic needle to inject themselves or another.
- No person shall, without reasonable excuse, throw down, drop or otherwise deposit and leave in any public place a hypodermic needle or other drug paraphernalia.
- No person shall beg in a manner so as to cause harassment alarm or distress.
- No person shall remain in a bus station, a bus shelter, at the cenotaph or in the doorway of any building so as, without reasonable excuse, to cause harassment, alarm, or distress.
- No person shall consume alcohol.
- No person shall consume any psychoactive substances.
- No person shall, except in a lavatory, urinate or defecate in a public place.

It is also ordered that the following specified things are done by persons carrying on specified activities in the restricted area.

- Any person in charge of a dog in a public place must keep the dog on a lead or otherwise under physical control at all times. The provisions of this Order relating to the control of dogs do not apply to any person who is registered blind in accordance with section 29 of the National Assistance Act 1948, to any person who is deaf and in charge of a dog trained by Hearing Dogs for Deaf People and to any person suffering a disability and in charge of a dog trained by a charity to assist with them.

3.23 The PSPO states

It is a criminal offence for a person, without reasonable excuse:-

- (a) to do anything, save for consuming alcohol in breach of a public spaces protection order, that the person is prohibited from doing by a public spaces protection order, or
- (b) to fail to comply with a requirement to which the person is subject under a public spaces protection order.

A person guilty of the above offence is liable on conviction to a fine not exceeding £1000.

Offence of consumption of alcohol in breach of prohibition in order

- A constable or authorised person may require a person not to consume, in breach of a public spaces protection order alcohol or anything which the constable or authorised person reasonably believes to be alcohol.
- A constable or authorised person may require a person to surrender anything in their possession which is or which the constable or authorised person reasonably believes to be, alcohol or a container for alcohol.

A person who fails without reasonable excuse to comply with a requirement made by a constable or an authorised person commits an offence and is liable on summary conviction to a fine not exceeding £500.

Use of this PSPO or further refinement of the PSPO may lead to more prohibitions being included which would assist the council and police in tackling anti social behaviour in the NTE.

4.0 **Resource Considerations**

4.1 **Financial:** Any legal challenge to the authority from decisions made with regard to the Licensing Act 2003 would require the services of Counsel to formulate and present the authority's case in whichever court of summary jurisdiction the appeal occurs. This cost would have to be met by the Licensing Authority and costs born by the appellant(s) should they be successful may also have to be paid by the authority.

4.2 **Legal:** Walsall Council is a Licensing Authority as defined by section 3 of the Licensing Act 2003 its duties are described by section 4 of the Act

General duties of licensing authorities

- (1) A licensing authority must carry out its functions under this Act ("licensing functions") with a view to promoting the licensing objectives.
- (2) The licensing objectives are—
 - (a) the prevention of crime and disorder;
 - (b) public safety;

- (c) the prevention of public nuisance; and
 - (d) the protection of children from harm.
- (3) In carrying out its licensing functions, a licensing authority must also have regard to—
- (a) its licensing statement published under section 5, and
 - (b) any guidance issued by the Secretary of State under section 182.

4.3 Since this power was created in 2012, to date not a single EMRO has been brought into effect by a Licensing Authority in England and Wales.

5.0 Staffing issues:

5.1 None

6.0 Citizen Impact

6.1 The Licensing Act and therefore Walsall Councils Statement of Licensing Policy is concerned with upholding the following licensing objectives

- The prevention of crime and disorder;
- Public safety;
- The prevention of public nuisance; and
- The protection of children from harm.

Therefore any decision taken by the committee should seek to uphold these objectives in terms of their impact upon all citizens within Walsall.

7.0 Community Safety

7.1 The Licensing Act and therefore Walsall Councils Statement of Licensing Policy is concerned with upholding the following licensing objectives

- The prevention of crime and disorder;
- Public safety;
- The prevention of public nuisance; and
- The protection of children from harm.

Therefore any decision taken by the committee should seek to uphold these objectives in terms of their impact upon all communities within Walsall.

8.0 Environmental Impact

8.1 None

9.1 Performance and Risk Management Issues

9.1 Decisions by the committee must be compliant with all relevant legislation and if they deviate from the Guidance produced by government the reasons for that deviation must be explicitly stated.

10.0 Equality Implications

10.1 Nothing arising from this report.

11.0 Consultation

11.1 None required.

12.0 Supporting Documents

Appendix 1 – Licensed Venues in Walsall Town Centre

Appendix 2 – Statement Of Licensing Policy

Appendix 3 – Process for EMRO

Appendix 4 – PSPO – Walsall Town Centre

13.0 Contact Officer

13.1 David Elrington

Head of Community Safety and Enforcement

Telephone: 01922 653023

Email: david.elrington@walsall.gov.uk