

## LICENSING COMMITTEE - 2 DECEMBER 2020

### COUNCIL – 8 DECEMBER 2020

#### PART I – NOT DELEGATED

#### 5. EXTENSION TO ADOPT EXISTING STATEMENT OF LICENSING POLICY 2016-2021 (DCES)

##### 1 Summary

- 1.1 The Statement of Licensing Policy 2016-2021 (“the Policy”) was adopted in 2016 in line with the requirements of the Licensing Act 2003 (as amended). The Policy was up for review in August 2020 and will come to an end on 7 January 2021. The current Policy is attached at **Appendix A**.
- 1.2 Due to work commitments, limited department resources coupled with the Coronavirus pandemic, Officers have not been able to undertake a full review to ensure a new updated Policy is in place and agreed by Full Council by 7 January 2021. A review is currently underway and Officers seek Member support to agree an extension to the adoption of the existing Policy (solely as an interim measure) up until 18 May 2021 to coincide with Annual Council. Legal Counsel’s advice has been sought and is summarised within the report.
- 1.3 Officers also seek Member agreement to a new timescale for implementation of the amended Policy to ensure it can be implemented from May 2021. The timescale for implementation will include a minimum 6 week public consultation process.

##### 2 Details

- 2.1 The Licensing Act 2003 (as amended) requires the Council, in its role as the Licensing Authority, to prepare a Statement of Licensing Policy. The aim of the Policy is to promote the four licensing objectives; prevention of crime and disorder, public safety, prevention of public nuisance and protection of children from harm, and seeks to balance the interests of both businesses and residents to make sure Three Rivers continues to offer a wide choice of high quality and well managed premises within a safe and orderly environment.
- 2.2 Section 5 of the Licensing Act 2003 requires that each licensing authority must in respect of each 5 year period:
  - a) Determine its policy with respect to the exercise of its licensing functions, and
  - b) Publish a statement of that policy before the beginning of the period.
- 2.3 The Act also requires the Council to consult a variety of persons and organisations ([section 5\(3\) of the Licensing Act 2003 \(as amended\)](#)).
- 2.4 When the Policy expires Officers will need to take care in considering how much weight should be attached to the Policy when determining the relevant licences. It is therefore important that Officers receive a resolution that the existing Policy can still be used following its expiration.
- 2.5 Officers are currently undertaking a review of the Policy and aim to have it completed for Members to review in January 2021 before going out to a public consultation. To

achieve adoption of the new updated Policy, Officers have set out a schedule of implementation as follows. This is also enclosed at **Appendix B**.

- 2 December 2020 (Licensing Committee): Members to consider and agree continued adoption of existing Licensing Policy as an interim measure, see section 3 of this report.
- 8 December 2020 (Full Council): Resolution passed to continue to adopt existing Policy prior to its expiry in January 2021 on an interim basis.
- 27 January 2021 (call an extraordinary Licensing Committee): Members to consider updated Policy and to agree to a public consultation for 6/8 weeks (subject to extent of changes proposed)
- Call a further extraordinary Licensing Committee towards the end of March 2021: Officers to bring report back following expiry of consultation period. Members to consider agreement to new Policy / any amendments required.
- 18 May 2021 (Annual Council): Council to adopt new updated Policy.

2.6 If the Schedule of Implementation is followed by Officers it will ensure that an amended Policy can be in place within approximately 4 months from its original expiry.

### **3 Options and Reasons for Recommendations**

3.1 Following discussion at Committee, there are 2 options available for Members:

**Option 1:** Authorise Officers to continue to adopt the existing Policy as an interim measure and to agree to the Schedule of Implementation for the new updated Policy (**Appendix B**).

**Option 2:** Decide not to do anything.

### **4 Policy/Budget Reference and Implications**

4.1 The recommendations in this report are within the Council's agreed budgets.

4.2 The purpose of this extension is to ensure that the existing Policy can still be given a degree of weight in decision making following its expiration.

4.3 There are no budget implications.

4.4 There are no performance indicators impacted.

### **5 Staffing, Environmental, Community Safety & Public Health Implications:**

5.1 None specific.

### **6 Financial Implications**

6.1 There are no financial implications.

### **7 Legal Implications**

7.1 The delay in updating the Policy by 7<sup>th</sup> January 2021 will result in a clear breach of the requirements of the Licensing Act 2003 as Section 5 is mandatory and

prescriptive, so there will be some risk to the Council until it can adopt the amended Policy. Such risk will need to be assessed on a case-by-case basis but the risk to the Council cannot be discounted. As such, and as set out above, a Schedule of Implementation is proposed which seeks to adopt the amended Policy as soon as possible, having regard to the Committee process and public consultation.

7.2 Due to the potential risk, a Licensing law specialist Counsel's advice has been sought which noted that Counsel is not aware of any direct case law which relates to the status and/or weight to be attached to an 'expired' statement of licensing policy. As a result, the Council will be somewhat in uncharted circumstances. That said, the Council can refer to genuine exceptional circumstances as to how the delay has surfaced and is looking to mitigate the risk by adopting the amended Policy as soon as it practicably can. Counsel agreed that a timescale of implementation should be conducted to minimise risk.

## 8 Equal Opportunities Implications

### 8.1 Relevance Test

Has a relevance test been completed for Equality Impact?	No
Did the relevance test conclude a full impact assessment was required?	N/A

### 8.2 Impact Assessment

8.2.1 There is no detrimental impact likely towards any protected group from introducing the Policy.

## 9 Customer Services Centre Implications

9.1 If agreed, all CSC staff will be made aware of the extension.

## 10 Communications and Website Implications

10.1 The Committee resolution will also be made publically available next to the Policy on its website.

## 11 Risk and Health & Safety Implications

11.1 The Council has agreed its risk management strategy which can be found on the website at <http://www.threerivers.gov.uk>. In addition, the risks of the proposals in the report have also been assessed against the Council's duties under Health and Safety legislation relating to employees, visitors and persons affected by our operations. The risk management implications of this report are detailed below.

11.2 The subject of this report is covered by the Regulatory Service Plan. Any risks resulting from this report will be included in the risk register and, if necessary, managed within this/these plan(s).

Nature of Risk	Consequence	Suggested Control Measures	Response <i>(tolerate, treat)</i>	Risk Rating
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			<i>terminate, transfer)</i>	<i>(combination of likelihood and impact)</i>
<p><b>Option 1:</b></p> <p>There is a risk to the Council if the Policy is not reviewed there would be a breach of its statutory duty under Section 5 of the Licensing Act 2003.</p>	<p>Legal challenge that decision making was made on an expired, out of date Policy.</p>	<p>Officers to carefully consider the weight given to the expired Policy after the 7<sup>th</sup> January 2021.</p> <p>Officers to follow Schedule of Implementation of new Policy.</p>	<p>Treat.</p> <p>Officers are seeking agreement to adopt the current Policy for an interim period via the Licensing Committee and Full Council.</p> <p>Officers will also set out a clear Schedule of Implementation to ensure the amended Policy is reviewed and adopted as soon as practicable.</p>	<p><b>6</b>; from expiration of Policy in January 2021.</p> <p>The risk will decrease the closer the amended Policy is adopted.</p> <p>Any appeals which are likely to be heard after 7<sup>th</sup> January 2021 will take time to go through the Courts meaning it is highly likely that the amended Policy will be in force by the time the appeal is heard.</p>
<p><b>Option 2:</b></p> <p>There is a risk to the Council if the Policy is not reviewed there would be a breach of its statutory duty under Section 5 of the Licensing Act 2003</p>	<p>Legal challenge that decision making was made on an expired, out of date Policy with no resolution from the Council to continue to have regard to the Policy.</p>	<p>Officers to carry out review without resolution to use existing Policy.</p>	<p>Treat.</p> <p>Officers would carry out review as soon as practicable but would not have Council agreement to continue to give weight to existing Policy.</p>	<p><b>8</b>; from expiration of Policy in January 2021.</p> <p>With no clear timetable to implement the amended Policy and no resolution agreement to adopt the existing Policy for an interim period the Council would be at greater</p>

				risk of legal challenge.
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11.3 The above risks are scored using the matrix below. The Council has determined its aversion to risk and is prepared to tolerate risks where the combination of impact and likelihood scores 6 or less.

<b>Very Likely</b> ----- <b>Likelihood</b> ----- ▼ <b>Remote</b>	<b>Low</b>	<b>High</b>	<b>Very High</b>	<b>Very High</b>
	4	8	12	16
	<b>Low</b>	<b>Medium</b>	<b>High</b>	<b>Very High</b>
	3	6	9	12
	<b>Low</b>	<b>Low</b>	<b>Medium</b>	<b>High</b>
2	4	6	8	
<b>Low</b>	<b>Low</b>	<b>Low</b>	<b>Low</b>	
1	2	3	4	
<b>Impact</b>				
Low -----▶ Unacceptable				

**Impact Score**

- 4 (Catastrophic)
- 3 (Critical)
- 2 (Significant)
- 1 (Marginal)

**Likelihood Score**

- 4 (Very Likely (≥80%))
- 3 (Likely (21-79%))
- 2 (Unlikely (6-20%))
- 1 (Remote (≤5%))

11.4 In the officers’ opinion none of the new risks above, were they to come about, would seriously prejudice the achievement of the Strategic Plan and are therefore operational risks. The effectiveness of the management of operational risks is reviewed by the Audit Committee annually.

**12 Recommendation**

12.1 It is recommended to Council to:

- i) Authorise Officers to continue to adopt the existing Statement of Licensing Policy 2016-2021 for an interim period up until 18 May 2021.

ii) Authorise Officers to review the Policy in line with the Schedule of Implementation (**Appendix B**).

Report prepared by: (Lorna Fryer, Lead Licensing Officer)

**Data Quality**

Data sources:

[Licensing Act 2003 \(as amended\)](#)

Data checked by: Matthew Roberts, Team Leader, Development Management

Data rating:

<b>1</b>	<b>Poor</b>	
<b>2</b>	<b>Sufficient</b>	
<b>3</b>	<b>High</b>	<b>X</b>

**Background Papers: None**

**APPENDICES**

**Appendix A:** Statement of Licensing Policy 2016-2021 (“the Policy”)

**Appendix B:** Schedule of Implementation of amended Policy