

WEST DUNBARTONSHIRE LICENSING BOARD

Report by the Clerk to the Licensing Board

1 November 2022

Subject: Licensing Policy Statement

1 Purpose

- 1.1 To inform the Licensing Board (“the Board”) of the requirement to publish a Licensing Policy Statement (“Policy”) by November 2023.
- 1.2 To set out the issues that the Board will have to consider when preparing its Policy and the work that it is proposed that officers will undertake.
- 1.3 To advise the Board of a proposed timetable for publishing its Policy and an Assessment of Overprovision.

2 Recommendations

It is recommended that the Board:-

- 2.1 Carries out an informal consultation so to gather statistical evidence to inform its Overprovision Assessment and to identify particular issues to consider when preparing its Policy;
- 2.2 Requests the assistance of West Dunbartonshire Council, Police Scotland, West Dunbartonshire Alcohol Drug Partnership, and NHS Greater Glasgow and Clyde in providing statistical evidence;
- 2.3 Requests that the Licensing Forum considers any statistical evidence provided to it and produces a report outlining its recommendations regarding, first, any issues that the Board might wish to consider as part of its next Policy and, second, localities where Overprovision may exist;
- 2.4 Calls on the Licensing Standards Officers to produce a report that outlines the numbers of licensed premises within localised intermediate data zones and that this report also includes details of licensed hours and capacities of premises;
- 2.5 Agrees that the Clerk is authorised to work along with the West Dunbartonshire Alcohol and Drugs Partnership and other partners in the Council, Police Scotland, NHS Greater Glasgow and Clyde, and any other relevant body to identify and agree on the exact data which is to be gathered;
- 2.6 Seeks views from Police, NHS Greater Glasgow and Clyde, Community Councils, the West Dunbartonshire Alcohol Drug Partnership, and trade

on any issues that the Board might wish to consider as part of its next Policy; and

2.7 Notes the proposed timetable for preparation of the next Policy.

3 Background

3.1 Section 6 of the Licensing (Scotland) Act 2005 requires that a licensing board within 18 months of the Local Government elections has a Policy in place. The existing Policy will continue until it is superseded by said updated Policy.

3.2 In terms of Section 7 of the Act, the Policy must include a statement as to the extent to which the Board considers there to be overprovision of: (a) licensed premises; or (b) licensed premises of a particular description, in any locality within the Board's area ("Assessment of Overprovision"). It is for the Board to determine the localities within its area and in doing so, the Board may determine that the whole of its area is a locality.

4 Main issues

Requirement to consult

4.1 The Act requires that the Policy seeks to promote the licensing objectives. It is therefore necessary for the Board to build a robust evidence base that underpins the Policy and the decisions made as part of that Policy.

4.2 As part of this duty, the Board must consult, at a minimum, with the following parties:-

- The Licensing Forum;
- The Health Board; and
- Such other persons as the Board thinks appropriate.

4.3 A copy of the current Policy is attached at Appendix 1. It is recommended that views are sought from stakeholders including Police, NHS, the West Dunbartonshire Alcohol Drug Partnership, Community Councils and trade are asked for any comments on the operation of the Board's policy over the past four years.

Assessment of Overprovision

4.4 It is important any determination the Board makes as to the extent or otherwise of Overprovision in any locality is founded on robust statistical evidence. Therefore, on receiving and analysing said material, the Board will consider whether any, or all, of its localities show indicators of overprovision and thereafter formally consult on these.

- 4.5 In its last Assessment of Overprovision, the Board determined that there was overprovision of public house, nightclub, off sale and local convenience stores, and supermarket type licensed premises within West Dunbartonshire in 16 of the 18 localities. This policy statement allowed the Board to give regard to the health benefits of increased employment opportunities when considering whether to overturn the rebuttable presumption against the grant of a licence. This policy was tested in the reported case of *Martin McColl v West Dunbartonshire Licensing Board*.
- 4.6 In order to allow the Board to prepare a new Assessment of Overprovision, it is recommended that the Board requests that West Dunbartonshire Alcohol Drug Partnership co-ordinate the gathering of statistical evidence relating to the five licensing objectives to inform the next Policy and Overprovision Assessment. Thereafter, it is proposed that the Local Licensing Forum consider the evidence and make recommendations to the Board.
- 4.7 Details of the number and capacity of different types of premises in each of the intermediate data zones and the total of premises within the authority wide area will be produced to the Board as these are matters that the Board must have regard to. It is proposed that this report also outlines the licensed hours of premises within the data zone localities identified. The Board is entitled, if it wishes, to consider licensed hours in terms of its Assessment of Overprovision and also have regard to any matters it “thinks fit”.
- 4.8 The Board can also consider, if it wishes, to consult upon whether the entirety of its area is overprovided for in respect of any premises category. It is recommended that at this stage that the Board looks at information on a localised basis and then makes the decision as what to consult upon with regard to Overprovision, after fully considering the terms of information produced to it.

Legal issues

- 4.9 There are various legal tests with which a new policy must comply. The key points are: that the Board's policy must be based on grounds which relate to and are not inconsistent with, or destructive of the purposes of the Licensing (Scotland) Act 2005. The function of the Board is to regulate the sale of alcohol and therefore, there should be a clear link between the Policy and the licensing of the sale of alcohol.
- 4.10 The Board, in preparing a Licensing Policy Statement, also has to have regard to the guidance by the Scottish Government further to section 142 of the Licensing (Scotland) Act 2005. The current guidance was produced in 2007 and is now some 15 years old. It is hoped that new guidance is produced in time for the Board to consider it when this Policy is being formulated. The Clerk will provide an update report to the Board as and when this guidance is ready. It is understood that the Government's preparations for issuing updated guidance is at a late stage.

Proposed timescales

4.11 The proposed timescales are as follows:-

- The Clerk meets with representatives of West Dunbartonshire Alcohol Drug Partnership and Police Scotland to identify and agree the statistical data which is necessary – November to January 2022.
- Key stakeholders are informally consulted to seek their views on policies which would merit specific review – November to December 2022.
- Statistical data reported by West Dunbartonshire Alcohol Drug Partnership to Local Licensing Forum – Further discussions required.
- The Board is asked to consider the statistical evidence and any comments received from the Police and Local Licensing Forum, and identify parts of the Licensing Policy Statement which it would wish to review - Meeting of Licensing Board meeting in April 2023.
- The Clerk will report back to the Board with the terms of the proposed draft policy or the issues paper for consultation- Meeting of Licensing Board in or around May 2023. Formal public consultation period - three months – May 2023 to July 2023.
- Consideration of consultation responses and adoption of new Licensing Policy Statement – Meeting of Licensing Board meeting in or around September 2023.
- Publication of new Policy – November 2023.

5 People Implications

5.1 The work involved in gathering evidence and preparing the Policy has workload implications for the Board during 2022/23 but this can be accommodated within existing staffing resources.

6 Financial and Procurement Implications

6.1 The Policy will allow applicants to assess whether there are sufficient prospects of success should they proceed with an application. Therefore, a clear policy will assist applicants in avoiding unnecessary expenditure on lodging and legal fees.

6.2 A policy that is legally unsound or based on erroneous material is more likely to be legally challenged. Such a challenge, should it be successful, will leave the Board liable to possibly substantial legal fees. A well-

evidenced Policy will diminish the chances of a successful legal challenge.

7 Risk Analysis

- 7.1 It is a legal requirement to adopt a new Policy. This requires to be done by November 2023. Failure to do so would result in reputational loss for the Board. Furthermore, the lack of a Policy could undermine the Board's ability to scrutinise applications.

8 Equalities Impact Assessment (EIA)

- 8.1 An EIA will be required for the new Policy.

9 Environmental Sustainability

- 9.1 The Environmental Assessment (Scotland) Act 2005 places a duty on the Council to identify and assess the environmental consequences of its proposals.
- 9.2 Under the provisions of the Local Government in Scotland Act 2003 the Council has to discharge its duties in a way which contributes to the achievement of sustainable development. In terms of the Climate Change Act, the Council has a general duty to demonstrate its commitment to sustainability and the community, environmental and economic impacts of its actions.
- 9.3 The information contained within this report has been considered under the Act. However, no action is required as the Act does not apply to the matters presented in this report.

10 Consultation

- 10.1 The preparation of the Policy will be undertaken in consultation with the Local Licensing Form which will involve representatives from different parts of the trade, community, police, health. young people etc. Community Planning partners will be involved in preparation of the data and the Forum, Police, licensed trade and Council will be asked for preliminary views on areas to be reviewed. Thereafter there will be a full public consultation on either a proposed Policy or Issues Paper middle of 2023.

11 Strategic Assessment

- 11.1 In terms of the Council's Strategic Priorities, the purpose of licensing is to protect the welfare of the community, including vulnerable people.

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Appendices: None

Background Papers: West Dunbartonshire Licensing Board Statement of
Licensing Policy 2018.

Wards Affected: All