

WEST DUNBARTONSHIRE LICENSING BOARD

Report by the Clerk to the Licensing Board

Licensing Board : 29 October 2013

Subject: Licensing Policy Statement – Overprovision

1. Purpose

- 1.1** On 17 June 2013 the Board agreed to consult regarding overprovision of certain types of licensed premises in localities within West Dunbartonshire. The purpose of this report is to advise the Board of consultation responses received. Thereafter, following consideration of its consultation responses, the Board is asked to finalise its policy on overprovision.

2. Recommendations

- 2.1** It is recommended that the Board:-

- a) Agree that there is overprovision of Licensed Premises within West Dunbartonshire and agree the areas of overprovision and categories as suggested in the consultation document and at points 3.2.2 and 3.2.3 of this report; and
- b) Determine whether there should be a refinement of the Overprovision policy to consider the positive health benefits associated with increased employment opportunities as a factor that applicants can demonstrate in support of their application and a factor that may rebut such a presumption;

which policy is to come into effect on 30 November 2013, subject to the equalities impact screening disclosing no significant adverse impact, and the Chair of this meeting being satisfied that the detailed wording reflects the decisions of the Board today.

3. Background

- 3.1** Section 7 of the Licensing (Scotland) Act 2005, provides that the Board's Licensing Policy Statement shall 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. In considering whether there is overprovision in any locality, the Board must have regard to the number and capacity of licensed premises in the locality and consult.
- 3.2** The Board's present Licensing Policy Statement expires on the 30 November 2013. The overprovision assessment needs to form part of the new Licensing Policy Statement.

3.2.1 On 17 June 2013 the Board considered a report, annexed to which information was provided by West Dunbartonshire Alcohol and Drugs Partnership, on:-

- Alcohol Related Death Rate
- Alcohol Related Hospital Admissions/Discharges Rate
- Alcohol Related Mental Health Admissions/Discharges
- Alcohol Related Brain Damage Admissions/Discharges
- Alcohol Aggravated Crimes
- Alcohol Specific Crime Rate
- Public Disorder Incidents
- Domestic Incidents involving alcohol
- Density of Licensed Premises, crimes and incidents
- Fire Statistics
- Noise Complaints-Licensed Premises

across different localities in West Dunbartonshire and where statistical evidence is available to specific localities.

3.2.2 In light of the data, the Board decided to consult on whether there was over-provision of certain types of licensed premises in certain areas or localities. The type of licensed premises which the Board wished to consult about to ascertain if there is overprovision were:-

- Pubs
- Nightclubs
- Off sales and local convenience stores
- Supermarkets

3.2.3 The areas or localities the Board wished to consult about were:-

- Whitecrook.
- Dalmuir.
- Drumry/Linnvale/North Kilbowie.
- Parkhall/Radnor Park.
- Mountblow/Parkhall.
- Goldenhill/Hardgate/Parkhall.
- Faifley/Hardgate.
- Dumbarton Central/Silverton/Townend.
- Duntocher.
- Dumbarton East - Barnhill/Crosslet/Milton/Bowling.
- Dumbarton West - Brucehill/Dennystown/Kirktonhill.
- Dumbarton North East - Bellsmyre/Silverton East.
- Bonhill.
- Renton.
- Jamestown/Old Bonhill.
- Alexandria/Balloch.
- Balloch North East - Gartocharn/Mill of Haldane.

- 3.2.4** A copy of the report to the Board meeting on 17 June 2013 together with the annexed report from West Dunbartonshire Alcohol and Drug Partnership (“ADP”) is attached at Appendix 1.
- 3.2.5** A copy of Part 2 of the consultation document is attached at Appendix 2. The consultation was in the form of an issues based questionnaire.
- 3.2.6** The consultation was made available on the Board’s website and the persons who were specifically consulted about such are as attached at Appendix 3.

3.2.7 Consultation responses were received from the following:-

- Scottish Enterprise (“SE”) – Appendix 4.
- West Dunbartonshire Licensing Forum (“The Forum”) – Appendix 5.
- Castle Leisure Group (“CLG”) – Appendix 6.
- Police Scotland – Appendix 7.
- Alcohol Focus Scotland (“AFS”) – Appendix 8.
- West Dunbartonshire Community Health Care Partnership (“CHCP”) – Appendix 9.
- West Dunbartonshire Alcohol and Drug Partnership (“ADP”) – Appendix 10.
- West Dunbartonshire Housing Economic and Environment Department (“HEED”) – Appendix 11.
- Anonymous response 1 – Appendix 12.
- NHS Greater Glasgow and Clyde (“NHS GG & C”) – Appendix 13.
- Anonymous response 2 – Appendix 14.
- Co-operative Retail Trading Group (“The Co-op”) – Appendix 15.

3.2.8 The Board received the following responses to the undernoted question areas:-

(a) Q 2 (a) Whether there is overprovision of Premises within West Dunbartonshire licensed to sell alcohol

- (i) All parties that choose to respond to this question apart from SE and the Council’s HEED department (who both responded in general terms as to the question) stated that there was overprovision of premises within West Dunbartonshire.
- (ii) The Co-op in a full response expressed concern as to the concept of overprovision and outlined several areas of concern. The Co-op outlined criteria it believed should be applied before assessments of overprovision on health grounds are made.
- (iii) AFS stated that they did not possess sufficient local knowledge to provide detailed comment however, offered some general comments on the approach to assessing overprovision.

(b) Q 2 (b) If there is such overprovision, in which areas is there overprovision?

- (i) All parties who choose to respond to this question (with the possible exception of the Co-op) agreed with the areas previously identified by the Board. Police Scotland further stated that as alcohol is sourced and purchased all over West Dunbartonshire and persons travelling to other areas it is hard to identify localized problem areas.
- (ii) The Co-op in a full response with regard to which, areas there is overprovision raised a number of matters with regard to statistics and the basis upon which, overprovision is assessed.

(c) Q 2 (c) If there is overprovision, in what categories or types of premises is there overprovision?

- (i) All parties that responded on this matter agreed with the categories that were identified by the Board apart from Police Scotland and the Co-op. Police Scotland believed the categories should be pubs and off sales. The Co-op believed that if there is overprovision, this comes from the large supermarkets. The Co-op did not believe that West Dunbartonshire is overprovided with smaller convenience stores.
- (ii) SE suggested that the Board consider excluding walk up bars where they form part of a restaurant/and or hotel and the walk up bar is demonstrably not the principle element of the applicants business. They also made a representation with regard to tourism.

(d) Q 2 (d) If there is overprovision, why is there such overprovision?

- (i) CLG believed that this was due to lack of previous control.
- (ii) Police Scotland referred to the widespread availability of alcohol and its involvement in criminal behaviour.
- (iii) The CHCP and ADP outlined various statistics and the easy availability of alcohol. 96 % of people within West Dunbartonshire are a 15 minute walk away from buying alcohol.
- (iv) AFS outlined a number of general comments with regard to questions 2 (a) – (d) and referred to the availability of alcohol under this heading.
- (v) NHS GG & C referred to the documented relationship between the availability of alcohol and alcohol consumption.
- (vi) The Co-op referred to its previous comments with regard to questions 2 (a) – (d).

(e) **Q 2. (e) Do you agree that the Board should refine its current policy to consider the positive health benefits associated with increased employment opportunities as a factor that applicants can demonstrate in support of their application and a factor that may rebut such a presumption?**

- (i) SE and WDC's HEED department both agreed in their full responses that consideration should be given in this regard to refine the policy.
- (ii) The Forum, CLG, NHS GG & CC and AFS all opposed this proposal and raised various matters with regard to job creation and that the concern that a new premises could lead to job losses elsewhere. Although, it was conceded that there are positive health benefits from employment it was stated by respondent's that it does not follow that this will automatically result in increased employment opportunities or positive benefits.
- (iii) The Co-op was on balance opposed to this and outlined in its response several factors.
- (iv) CHCP and ADP agreed with the proposal but that the proposal should not have a negative impact on the health of population. Police Scotland agreed with the proposal.
- (v) One of the anonymous respondents who made a response on this matter stated that whilst, it is reasonable for the benefit of job creation to be considered as an element of the decision making, the onus should be on the applicant and the current policy should remain.

4. Main Issues

4.1 Q 2(a) Whether there is overprovision of Premises within West Dunbartonshire licensed to sell alcohol

- (i) The consultation responses as a whole seemed to indicate the belief that there was an overprovision of premises within West Dunbartonshire. There was challenge from one party with regard to the whole concept of overprovision. The Board however, has had such a policy in place for 3 years and its evidence based approach to such has been much heralded. Accordingly, it is recommended that a similar approach is adopted to assessing whether, there is overprovision of licensed premises as occurred in 2010.

4.2 Q 2 (b) If there is such overprovision, in which areas is there overprovision?

- (i) There seemed to be almost unanimity that the 17 intermediate data zone areas chosen by the Board and identified from the ADP report and statistical evidence are the areas that should be subject of an overprovision assessment. It is recommended that the Board adopt the specified areas as the areas overprovided for in the categories outlined below at Question 2 (c).

- (ii) The Co-op in its response query the evidence based used to 'prove' overprovision. This will be subject of a presentation by the ADP at the Board who will speak to the terms of their report, Members are invited to ask questions thereon on any matters with regard to statistical evidence produced and the methodologies and comparisons thereon.

4.3 Q 2 (c) If there is overprovision, in what categories or types of premises is there overprovision?

- (i) Although, there was some further comment from parties that the definitions should be further looked at it is recommended that these definitions as adopted by the previous Clerk in reports to Board are followed. The only slight change being that "vertical drinking establishments" are now called "pubs" for ease of definition. It is recommended that these 4 categories which, formed part of the previous Statement of Licensing Policy are the areas that the Board determine the types of premises which, are overprovided for.

4.4 Q 2 (d) If there is overprovision, why is there such overprovision?

- (i) The responses to such seemed to focus on the wide availability of alcohol which is indeed an issue nationwide.

4.5 Q 2. (e) Do you agree that the Board should refine its current policy to consider the positive health benefits associated with increased employment opportunities as a factor that applicants can demonstrate in support of their application and a factor that may rebut such a presumption?

- (i) This is the question area that attracted a wide and split response on. The CHCP and ADP agreed with the proposal but stated that it should not have a negative impact on the health of the population. SE outlined in a full response the concerns with regard to tourist investment with regard to the terms of the current policy. The Council's HEED department outlined the unemployment statistics within West Dunbartonshire which, are high compared to the national average. The position with regard to employment bringing positive health benefits was referred to and particular, examples of the current policy and current issues of potential investment. It is the position as correctly, identified by NHS GG & C that guidance suggests that the Board cannot take into account commercial considerations and are irrelevant to policy. Therefore, the Board cannot look at commercial interests in granting a premises licence.
- (ii) The Forum and CLG raised concerns with regard to this being used as a factor to rebut the current presumption and AFS questioned whether it should be considered at all as a factor to rebut the presumption. Throughout, the responses opposed to this there seemed to be a focus on what is actually "job creation".

4.6 The starting point of any application is that regardless of the terms of any policy the Board need to consider the individual facts and circumstances of the application in front of it. This is currently, explicitly stated at point 26 of the current policy. Under the previous Statement of Licensing Policy there were

applications for new Premises Licences (despite the strict terms of the policy) in areas where the policy had said there were overprovided. Very few were granted however, applicants did refer in their submissions in front of Board to this factor of job creation and the Board now has evidence in front of it with regard to the positive health benefits associated with employment. The current terms of the policy also crucially, allowed a 'rebuttable presumption' and the onus on the applicant to provide robust and reliable evidence to the Board why the benefit to the licensing objectives through the grant of the application outweighs the detriment to the licensing objectives and the Overprovision Policy. There is no suggested change to this rebuttable presumption other than a refinement to allow the Board to consider health benefits associated with employment as a factor that may rebut such a presumption.

- 4.7 It is a decision for Board to consider the responses in respect of this matter and determine what is incorporated into its policy on overprovision. If the Board decides after consideration to incorporate this refinement to its policy, then it would still be for the Board in every application in front of it (in the areas and categories of overprovision) to apply the terms of Section 26 of its policy and determine whether there is robust and reliable evidence in front of the Board and what weight to place to this factor if applicants seek to argue the positive benefits associated with employment insofar, as it relates to the Licensing Objectives. Many of the concerns and issues raised by consultees will be able to be considered by the Board in particular applications.

5. People Implications

- 5.1 There are no staffing or people implications for the Board in this review and implementation of the Licensing Policy Statement.

6. Financial Implications

- 6.1 There are no financial issues other than the relatively minor costs of publicising and consulting on the Licensing Policy Statement.

7. Risk Analysis

- 7.1 It is important that the Licensing Policy is in place by 30 November 2013 to provide clear guidance to applicants and members of the public in relation to the policies of the Board.

8. Equalities Impact Assessment (EIA)

- 8.1 An equalities impact screening will be carried out in respect of the Board's decision today with regard to the Statement of Licensing Policy

9. Consultation

- 9.1 The Board as narrated at point 3.2.6-2.7 has undertaken a wide and extensive consultation

10. Strategic Assessment

10.1 The Board as narrated at point 3.4 has undertaken a wide and extensive consultation

10.2 Improve the Well-being of Communities and Protect the Welfare of Vulnerable People

The Licensing Policy requires to support the licensing objectives, all of which are related to this strategic priority of improving the well-being of communities.

10.3 Improve Life Chances for Children and Young People

The specific licensing objective of protecting children and young people from harm in the Licensing (Scotland) Act 2005 is accordingly related to this strategic priority.



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Appendices:

- Appendix 1** – Report to the Board on Overprovision dated 17 June 2013 with ADP report “*Overprovision-what does the evidence say?*”
- Appendix 2** – West Dunbartonshire Licensing Board – Consultation Document-Part 2 – Consultation on Overprovision of Licensed Premises
- Appendix 3** – List of persons/parties written out to with regard to the consultation document.
- Appendix 4** – Scottish Enterprise
- Appendix 5** – West Dunbartonshire Licensing Forum
- Appendix 6** – Castle Leisure Group
- Appendix 7** – Police Scotland
- Appendix 8** – Alcohol Focus Scotland
- Appendix 9** – West Dunbartonshire Community Health Care Partnership
- Appendix 10** – West Dunbartonshire Alcohol and Drug Partnership
- Appendix 11** – West Dunbartonshire HEED
- Appendix 12** – Response 1 from an unknown party
- Appendix 13** – NHS Greater Glasgow and Clyde

Appendix 14 – Response 2 from an unknown party
Appendix 15 – Co-operative Retail Trading Group, Clydebank
Co-operative Society

Background Papers: Statement of Licensing Policy 2010-2013.

Wards Affected: ALL