

WEST DUNBARTONSHIRE LICENSING BOARD

Report by Clerk to the Licensing Board

9 May 2023

Subject: Statement of Licensing Policy – Overprovision Assessment

1. Purpose

1.1 To allow the Licensing Board to determine the extent to which it considers there to be overprovision of licensed premises, or licensed premises of a particular description in any locality within the Licensing Board's area.

2. Recommendations

2.1 It is recommended that the Licensing Board:-

- a. consider the material presented to at its meeting of 7 March 2023 and today and in particular, the statistics provided by the NHS, Police Scotland, and Licensing Standards Officer;
- b. have regard to the recommendations made by the Licensing Forum in relation to overprovision;
- c. satisfy itself that there is a dependable causal link between the alcohol-related harm and the number and capacity of licensed premises, in respect of the categories defined in the current Statement of Licensing Policy, in respect of all intermediate zones forming West Dunbartonshire with the exception of:-
 - i. IZ05 (Goldenhill, Parkhall North, East Kilbowie & Hardgate Central);
 - ii. IZ07 (Duntocher & Concho); and
 - iii. IZ09 (Old Kilpatrick)
- d. that the Board consult on the terms of its Assessment of Overprovision;
- e. that it continues to recognise the positive health benefits associated with increased employment opportunities as a factor that applicants may use in support of their application and a factor that may rebut such a presumption;
- f. consult on making increases in the capacities (both on and off-sales) of premises licences part of the assessment of overprovision;
- g. considers if there are any other matters relating to the Assessment of Overprovision that the Members may wish to consult upon; and

- h. agrees that the consultation results will be reported to it at a future Licensing Board meeting so as to inform the development of the Assessment of Overprovision.

3. Background

Statutory requirement to carry out an Assessment of Overprovision

3.1 Section 7 of the Licensing (Scotland) 2005 Act (“the 2005 Act”) requires that the Licensing Board’s Statement of Licensing Policy includes a statement as to the extent to which the Licensing Board considers there to be overprovision of licensed premises or licensed premises of a particular description, in any locality within the Licensing Board’s area. It is for the Licensing Board to determine the localities.

3.2 When considering whether there is overprovision in any locality, the Licensing Board:

- a) must have regard to the number and capacity of licensed premises in the locality (at Appendix 1);
- b) may have regard to such other matters as the Board thinks fit including, in particular, the licensed hours of licensed premises in the locality (details of licensed hours of licensed premises can be found at Appendix 1); and
- c) in terms of section 7(4) of the 2005 Act must consult with the Chief Constable of Police Scotland, the relevant Health Board, and such persons that the Board deem representative of the holders of a premises licence within the locality, persons who are resident in the locality, and such other persons as the Licensing Board thinks fit.

Guidance issued by Scottish Ministers under section 142 of the 2005 Act (“the Guidance”)

3.3 In January 2023, the Scottish Ministers issued updated statutory guidance to licensing boards. Section 142 of the 2005 Act requires that the Licensing Board must have regard to the Guidance.

3.4 Therefore, the Board must have regard to Chapter 5 of the Guidance when preparing its assessment of overprovision. A copy of this chapter can be found at Appendix 2.

Current overprovision policy

3.5 The current Licensing Board’s Licensing Policy Statement contains an assessment of overprovision. This assessment was agreed at the meeting of 18 September 2018. The assessment sets out that there is an overprovision of the following categories of licensed premises:

- Public Houses
- Nightclubs
- Supermarkets
- Off Sales and local convenience stores

3.6 The aforementioned assessment utilised intermediate data zone geographies as the localities for the assessment of overprovision. This approach was highlighted in the Guidance as good practice.

3.7 The Licensing Board concluded that a state of overprovision existed in all 18 localities with the exception of: -

- IZ09 (Old Kilpatrick); and
- IZ14 (Renton, Old Bonhill & Loch Lomond).

Effect of overprovision policy

3.8 An application for a new premises licence in area designated as being overprovided for with licensed premises faces a rebuttable presumption against the grant of the licence. In its current Statement of Licensing Policy, the Licensing Board recognises the positive health benefits associated with increased employment as a factor that applicants may use to support their application and a factor that may rebut such a presumption.

3.9 An overprovision policy has a number of purposes and paragraph 5.8 of the Guidance notes these as being:

- Enable Licensing Boards to take account of changes since the publication of their previous Statement of Licensing Policy and any subsequent supplementary statement of licensing policies which may have been issued.
- Improve public and trade confidence in the licensing system by setting out clearly the grounds on which overprovision should be determined.
- Recognise that halting the growth of licensed premises in localities is not intended to restrict trade but may be required to preserve public order, protect the amenity of local communities and mitigate the adverse health effects of increased alcohol consumption.
- Provide potential entrants to the market with a clear signal that they may incur abortive costs if they intend to apply for a licence in a locality which a Licensing Board has declared to have reached overprovision.

Consultation to date

3.10 At its meeting of 1 November 2022, the Licensing Board agreed to commence a pre-consultation exercise to inform the development of its Statement of Licensing Policy and Assessment of Overprovision.

- 3.11** As part of this exercise information was requested from Police Scotland, the local health board, and Licensing Standards. The information from Police Scotland related to details of crimes taking place in West Dunbartonshire, including those relating to alcohol and the information from Licensing Standards concerned the number, capacity, and licensed hours of licensed premises. The information from Police and Licensing Standards was considered at the meeting of 7 March 2023 and the Licensing Standards report is at Appendix 1 and the Police report at Appendix 3.
- 3.12** Information from the local health board, the NHS Greater Glasgow and Clyde will be considered at today's meeting.
- 3.13** The Licensing Board also received several responses to a pre-consultation exercise that it carried out. The responses are at Appendix 4 and the responses are considered elsewhere in this report.
- 3.14** The Licensing Board asked the Licensing Forum to consider the material received by it as part of its consultation exercise and provide to it recommendations around the development of its Statement of Licensing Policy and Assessment of Overprovision. In particular, the report from the Forum considers the statistics from the NHS and Police and the number and capacities of licensed premises and makes recommendations as to the localities where overprovision exists. This response from the Licensing Forum is enclosed at Appendix 5.

4. Main Issues

Information presented to the Licensing Board from the Health Board

- 4.1** The Licensing Board will consider the wide-ranging report from NHS Greater Glasgow and Clyde by way of a separate report.
- 4.2** This report addresses the impact of Minimum Unit Pricing on the statistics presented. The Licensing Board will note at paragraph 4.1.2 of that report the NHS write that while Minimum Unit Pricing is an “*essential component of Scotland's alcohol strategy*”, it remains the case that alcohol harm continues to an issue in West Dunbartonshire.
- 4.3** In addition to this report, West Dunbartonshire Health and Social Care Partnership conducted a community survey relating to patterns of alcohol consumption. Again, this survey will be considered by the Licensing Board by way of a separate report.

Information supplied to the Licensing Board by Police Scotland

- 4.4** Information supplied by Police Scotland shows the position within West Dunbartonshire for alcohol-related crime statistics. This information was considered by the Licensing Board at its meeting on 7 March 2023.

Licensing Forum recommendations

- 4.5** The Licensing Forum in relation to overprovision, recommends that the Licensing Board consider the following in relation to its Assessment of Overprovision:
- 1) satisfy itself that it is appropriate in all the circumstances to grant a licence bearing in mind the significant health harms being seen in areas of overprovision and whether the health benefits from employment support that, and have cognisance of the wider impact that a grant of a licence in overprovision locality may have; and
 - 2) That the Licensing Board should retain its evidence-led Overprovision Assessment. With this in mind, the Working Group was of the view that the material satisfies it that all localities are overprovided for with the exception of IZ05, IZ07, and IZ09. The rationale for the Forum's recommendation for this is set out in paragraph 5.7 of its report at Appendix 5.

Responses to pre-consultation exercise

- 4.6** The Licensing Board received various responses to the survey circulated as part of the pre-consultation exercise, including from the following organisations:-
- West Dunbartonshire Alcohol and Drug Partnership, West Dunbartonshire Health and Social Care Partnership, and NHS Greater Glasgow and Clyde
 - Scottish Grocers Federation;
 - Dumbarton Chamber of Commerce;
 - Aldi Stores Limited; and
 - Alcohol Focus Scotland
- 4.7** Not all respondents answered the questions relating to overprovision, however, those that did express a range of views. These views are summarised as follows:-
- West Dunbartonshire Alcohol and Drug Partnership, West Dunbartonshire Health and Social Care Partnership, and NHS Greater Glasgow and Clyde
- 4.8** This respondent noted that "*[c]urrent health data shows that alcohol-related harm and alcohol-specific deaths continue to be above the national average for West Dunbartonshire as a local authority. West Dunbartonshire has the 3rd highest alcohol-specific deaths across Scotland's council area.*" They support the retention of the current localities with the addition of IZ14 (Renton, Old Bonhill & Loch Lomond).
- 4.9** The respondents further suggest that the Licensing Board should have regard to increases in capacity by way of variation applications and the

licensed hours of premises (see paragraphs 4.20 to 4.22 of this report).

- 4.10** The respondent does not support the Licensing Board having continued regard to the positive health benefits associated with increased employment opportunities as they do not "*...offset the significant alcohol-related health harms within West Dunbartonshire*". This is a matter for the Licensing Board to determine having regard to all material before it.

Alcohol Focus Scotland

- 4.11** The respondent did not provide a tailored response to the pre-consultation questionnaire and instead provided a note outlining their views on the general policy and areas that require particular attention. In relation to overprovision, the note highlights the introduction of the updated Guidance and the fact that off-sales numbers in Scotland have reached their highest level since 2010.

Scottish Grocers Federation

- 4.12** The Scottish Grocers Federation suggests that "*overprovision is a blunt instrument and does little to reduce alcohol-related harm*" and that there is no causal link between alcohol-related problems and the number of premises with equality being the main determining factor.
- 4.13** The respondent further suggests that regard should be given to the positive impact that a convenience store can have on a local area. By way of example, the response notes that "*[a] store opening will create jobs and offer access to fruit and vegetables to the local community*" and that 75% of independent retailers have engaged in "*some form of community activity in the last year*" thereby demonstrating the important role stores play in community life.
- 4.14** In relation to the question of including increases of capacity as part of the Overprovision Assessment, the respondent argued against this and suggested that a "*presumption that no increase in alcohol capacity would be approved in the entire Board area would almost certainly mean that existing retailers would not invest in modernising and refitting stores*".

Dumbarton Chamber of Commerce

- 4.15** The respondent submitted that the current approach is too "*prescriptive*" and is contrary to a need to encourage regeneration, i.e. make West Dunbartonshire appealing as a place to live and work.

Aldi Stores Limited

- 4.16** Aldi Stores Limited's response highlighted the benefits that come through employment opportunities created by the opening of a new store.

4.17 The respondent further argues that supermarkets facilitate access to fresh fruit and vegetables as well as playing a role in the regeneration of areas.

Determining overprovision

4.18 When determining whether there is overprovision in a locality, the Licensing Board will have regard to:

- number of licensed premises;
- capacity of licensed premises;
- licensed hours of licensed premises;
- information ingathered as part of the pre-consultation exercise including data regarding alcohol related hospital admissions, alcohol specific deaths, alcohol related mental health admissions, Scottish Index of Multiple Deprivation, police incidents;
- if there is a potential for, or a reasonable basis for, consulting that there is a risk of adverse impact on the licensing objectives should more premises licences be granted; and
- is there a dependable causal link between the availability of alcohol in an area and alcohol-related harm?

The Licensing Board can have regard to the material in front of it as well as its own local knowledge in satisfying itself that there is a causal link between the number, hours and capacity of licensed premises and a concern for one or more of the licensing objectives. Once localities are determined, the Licensing Board will consult on these localities prior to the adoption of the Overprovision Assessment.

Categories of licensed premises

4.19 It is proposed that the Licensing Board, having regard to the material received as part of its pre-consultation exercise, retain the categories of licensed premises.

Variations of premises licence

4.20 A premises licence can be varied to increase its capacity, i.e. the size of its alcohol display for off-sales type premises or the number of persons permitted in the premises for on-sales type premises.

4.21 Increasing the capacity of licensed premises will increase the availability of alcohol and the Licensing Board will consider views through its consultation prior to concluding whether there is sufficiency of evidence to establish a causal link between the increase in capacity and an inconsistency of licensing objectives.

4.22 Where the Licensing Board to establish a causal link between an increase in the capacity and an inconsistency with the licensing objectives, then any variation application will face a rebuttable presumption against the grant of the application.

The current factors that the Board may consider in its rebuttable presumption in its current Statement of Licensing Policy

- 4.23** The Licensing Board's Assessment of Overprovision recognises the positive health benefits associated with increased employment opportunities as being a factor that applicants may wish to use in support of their application. The assessment further narrates that the Licensing Board expects the applicant to provide robust and reliable evidence as to why the benefit to the licensing objectives through the grant of their application outweighs the detriment to the licensing objectives and the Assessment of Overprovision.
- 4.24** The policy had regard to national and international studies that suggested that there is strong evidence that employment is generally good for physical and mental health. Such evidence includes *Is Work Good for your health and well-being?*, Burton and Waddell, 2006 and *Losing life and livelihood: A systematic review and meta-analysis of unemployment and all-cause mortality*, Roelfs, Shor, Davidson, Schwartz, 2011.
- 4.25** Members will be aware that this Assessment of Overprovision – of which the positive consideration of employment opportunities was part of – was judicially approved in the case of *Martin McColl Limited v West Dunbartonshire Licensing Board*, where there was a challenge as to whether the Board could consider such health benefits by increased employment opportunities, as a factor that may rebut such a presumption against grant in areas of overprovision.
- 4.26** As narrated at paragraph 4.5, the Licensing Forum while recognising that the opening of a licensed premises can bring benefits to the area recommends that the Licensing Board considers whether such a policy is appropriate owing to: (1) there being evidence that the societal costs of alcohol harm cancel any economic benefit; and (2) the possibility of the loss of jobs in other licensed premises owing to the grant of a licence and therefore the Licensing Board may wish only to grant the licence where it does not replicate the existing provision.

Next steps

- 4.27** The localities identified by the Licensing Board as being overprovided for will be consulted on as set out in paragraph 10. The outcome of the consultation will be reported to the Licensing Board. At that point the Licensing Board will finalise the Assessment of Overprovision and it will be published as part of the Statement of Licensing Policy.

5. People Implications

- 5.1** The work involved in gathering evidence and preparing the Policy has workload implications for the Board during 2023 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 The Licensing Board's Overprovision Assessment is an important tool in mitigating the health harms and anti-social behaviour caused by alcohol (where it can be shown that there is a link between these factors). The Overprovision Assessment is based on evidence provided by Police and NHS as well as taking into account the views of a wide range of stakeholders. The Assessment will be subject to statutory consultation prior to finalising. The EIA will be updated after consultation.

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

- The 2005 Act defines the persons that the Licensing Board must consult with when preparing its assessment of overprovision. These persons are:-
- The Chief Constable;
- The relevant health board;
- Such persons as appear to the Licensing Board to be representative of the interests of:-
 - Holders of premises licences in respect of premises within the locality;
 - Persons resident in the locality; and
 - Such other persons as it thinks fit.

10.1 Initial consultation has taken place with the Licensing Forum and its recommendations are articulated within this report. As outlined at paragraphs 3 a pre-consultation exercise has already taken place and its outcome reported to the Licensing Board on 7 March 2023 and today.

10.2 The Licensing Board will carry out an extensive and detailed public consultation on its licensing policy statement and assessment of overprovision. It will seek to engage with persons across a broad spectrum. The Licensing Board will seek to publicise widely the issues via a questionnaire style issues paper. The Board will publish the consultation on the Board's web page and social media to encourage community feedback and engagement.

11. Strategic Assessment

11.1 Licensing plays a key role to make sure our communities are resilient and thriving.

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Clerk to the Licensing Board
18 April 2023

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Appendices:	Appendix 1: LSO report Appendix 2: Chapter 5 of Guidance Appendix 3: Police report Appendix 4: Pre-consultation responses Appendix 5: Licensing Forum recommendations
Background Papers:	None
Wards Affected:	All