

**North East Derbyshire District Council**

**Council**

**5 November 2018**

<p><b>Licensing Act – Statement of Licensing Policy 2019-2024 Policy Review</b></p>
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**Report of Councillor M Gordon, Portfolio Holder for Environment and Chair of the  
Licensing Committee**

This report is public

**Purpose of the Report**

- To consider approval of the Council's revised **Licensing Act – Statement of Licensing Policy 2019-2024**.

**1 Report Details**

1.1 Under The Licensing Act 2003, the Council is responsible for the administration of licences and certificates for:

- The sale/supply of alcohol
- The provision of regulated entertainment and
- The provision of late night refreshment

1.2 The Act contains four licensing objectives, which underpin the functions of the legislation and the local authority, acting in their capacity as the licensing authority. These objectives are central to the regulatory regime created by the Act and are:

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

All decisions under the Act must be taken with a view to promoting these licensing objectives.

1.3 The Licensing 2003 imposes a statutory requirement upon North East Derbyshire District Council, as the statutory Licensing Authority to prepare a Statement of Policy.

1.4 This must be reviewed every 5 years, although the Council may reviews its policy at any time within that 5 year period should it see fit.

- 1.5 In accordance with the Licensing Act 2003, the Statement of Licensing Policy must be determined by full Council after consultation with prescribed bodies.
- 1.6 The Licensing Authority must have regard to the statutory guidance issued under section 182 of the Licensing Act 2003 when drafting its policy. The latest version was issued by the Home Office in April 2018.
- 1.7 The current statement of policy was adopted with effect from January 2011 following a full consultation exercise. At the time of adoption it incorporated all relevant and amended legislation guidance and reflected good practice.
- 1.8 In July 2018 the Licensing Committee approved a draft Statement of Licensing Policy for consultation with the public and stakeholders. That statutory consultation took place for a period of 11 weeks between 30 July 2018 and 15 October 2018.
- 1.9 That consultation is now complete and there have been three responses received. These were from, Trading Standards, Derbyshire Adult Safeguarding Board and the British Institute for Innkeepers. A summary of the consultation responses with officer comments is attached at **Appendix 2**.
- 1.10 Officers have made one minor amendment at page 28 of the Draft, which clarifies that Trading Standards are a Responsible Authority. The Draft Policy is attached at **Appendix 1**.
- 1.11 Members of the Licensing Committee have recommended the attached final version of the policy documents to Council for adoption.

## **2 Conclusions and Reasons for Recommendation**

- 2.1 The Licensing Act Policy has been reviewed in accordance with the Licensing Act 2003 which requires Licensing Authorities to prepare a Statement of Policy on a five year cyclical basis. The proposed revised Licensing Policy reflects recent changes in legislation and Statutory Guidance. It is a statutory requirement to prepare a Licensing Act Policy for the next five years and to publish that policy.
- 2.2 The proposed revised policy is fit for purpose, more simplified in its layout and follows the best practice of bordering Licensing Authorities.

## **3 Consultation and Equality Impact**

- 3.1 The Draft policy has been subject to an 11 week public consultation, with three responses received.
- 3.2 An Equality Impact Assessment has also been undertaken in conjunction with the Councils improvement team.

## **4 Alternative Options and Reasons for Rejection**

- 4.1 Leaving our current policy in place is not an option. There is a legal requirement that the Statement of Policy is updated.

## 5 Implications

### 5.1 Finance and Risk Implications

5.1.1 None anticipated.

### 5.2 Legal Implications including Data Protection

5.2.1 Having a policy which is up to date and compliant with the legislation, and fit for purpose and clearer to Premise Licence Holders and Applicants could assist in implementing rules while preventing a legal challenge by way of appeal or judicial review, with associated costs in defending the same.

### 5.3 Human Resources Implications

5.3.1 None.

## 6 Recommendations

6.1 That Council approve and adopt the Licensing Act Statement of Licensing Policy 2019-2024.

## 7 Decision Information

<b>Is the decision a Key Decision?</b> A Key Decision is an executive decision which has a significant impact on two or more District wards or which results in income or expenditure to the Council above the following thresholds: <i>BDC: Revenue - £75,000</i> <input type="checkbox"/> <i>Capital - £150,000</i> <input type="checkbox"/> <i>NEDDC: Revenue - £100,000</i> <input type="checkbox"/> <i>Capital - £250,000</i> <input type="checkbox"/> <input checked="" type="checkbox"/> <i>Please indicate which threshold applies</i>	No
<b>Is the decision subject to Call-In?</b> (Only Key Decisions are subject to Call-In)	No
<b>Has the relevant Portfolio Holder been informed</b>	Yes
<b>District Wards Affected</b>	All indirectly
<b>Links to Corporate Plan priorities or Policy Framework</b>	All

## 8 Document Information

Appendix No	Title
1 2	Draft NEDDC Statement of Policy 2019-2024 Consultation feedback
<b>Background Papers</b> (These are unpublished works which have been relied on to a material extent when preparing the report. They must be listed in the section below. If the report is going to Cabinet (NEDDC) or Executive (BDC) you must provide copies of the background papers)	
<ul style="list-style-type: none"> <li>Home Office, Revised Guidance issued under section 182 of the Licensing Act 2003, April 2018</li> </ul>	
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AGIN 9(a) (COUNC 1105) 2018 – Statement of Licensing Policies

# **Licensing Act 2003**

## **Statement of Licensing Policy**

**2019 -2024**



*We speak your language*

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Polish

*Mówimy Twoim językiem*

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French

*Nous parlons votre langue*

---

Spanish

*Hablamos su idioma*

---

Slovak

*Rozprávame Vaším jazykom*

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Chinese

我们会说你的语言

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## CONTROL SHEET FOR [policy title here]

<b>Policy Details</b>	<b>Comments / Confirmation (To be updated as the document progresses)</b>
Policy title	Licensing Act 2003 – Statement of Licensing Policy 2019-2024
Current status – i.e. first draft, version 2 or final version	First Draft
Policy author (post title only)	Licensing Manager
Location of policy (whilst in development) – i.e. L-drive, shared drive	S Drive
Relevant Cabinet Member (if applicable)	
Equality Impact Assessment approval date	TBC
Partnership involvement (if applicable)	
Final policy approval route i.e. Cabinet/ Council	Licensing Committee and Council
Date policy approved	TBC
Date policy due for review (maximum three years)	
Date policy forwarded to Improvement (to include on Intranet and Internet if applicable to the public)	

SECTION	CONTENT	PAGE NUMBER
1	Introduction	5
2	The Licensing Objectives and Licensable Activities	7
3	How this Statement of Policy Works	9
4	Strategic Links and Other Regulatory Regimes	10
5	Delivering Licensing Services	11
6	Applications, Notifications and their Consideration	12
	□□ Representations	
	□□ Panel/Committee Hearings	
7	Licensing Policies	14
	• Policy 1	
	• Policy 2	
	• Cumulative Impact	
	• Policy 3	
	• Adult entertainment	
	• Licence suspensions	
	• Reviews	
	• Early Morning Restriction Order (EMROs)	
	• Personal Licences	
	• Policy 4	
	• Temporary Event Notices	
8	Children	28
9	Equality and Diversity	29
10	General Enforcement Statement	30
11	Monitoring and Review of this Statement of Policy	31
12	Delegation	31
13	Contacts	31



## **1. INTRODUCTION**

1.1 North East Derbyshire District Council is a Licensing Authority for the purpose of the Licensing Act 2003. Section 5 of the Act requires all licensing authorities to Prepare and publish a Statement of Licensing Policy that they propose to apply in exercising their functions under the Act during the five-year period to which the policy applies. The Statement of Licensing Policy can be reviewed and revised by the Authority at any time.

1.2 North East Derbyshire borders the districts of Chesterfield, Bolsover, Amber Valley and Derbyshire Dales in Derbyshire, and Sheffield and Rotherham in South Yorkshire. We have a population of around 100,000 and have four main towns, Clay Cross, Dronfield, Eckington and Killamarsh.

A map showing the administrative boundaries of the district is at Appendix 1.

1.3 The District Council welcomes the diversity of leisure and entertainment opportunities available in the North East Derbyshire district and recognises that to maintain success the licensed leisure and entertainment industry has an important role to play. The Council also recognises the problems that can be caused if licensed activities are not properly managed and premises poorly run.

1.4 This Policy Statement seeks to establish sensible controls and appropriate guidance to encourage and further the efforts that are being made by the Council and its partners together with the licensed trade to help the Authority deal with issues that arise from licensable activities.

This will be achieved by:-

- ☐ Establishing and building upon best practice within the industry;
- ☐ Recognising and facilitating the role of partners and stakeholders;
- ☐ Encouraging self-regulation by licensees and managers;
- ☐ Providing a clear basis for the determination of licence applications; and
- ☐ Supporting related policies and strategies of the District Council.

- ☐ ☐ An inspection and enforcement regime targeted at premises that present a high risk.

- 1.6 The Authority is committed to working with its licensing partners and stakeholders in delivering the licensing function. This Policy Statement therefore seeks to provide information on the general approach that the Authority will take in carrying out its licensing functions.
- 1.7 In preparing and publishing this Policy Statement due regard has been given to the guidance issued by the Secretary of State under section 182 of the Act, and to good practice advice issued by approved government advisory bodies. In particular the Authority has consulted those persons and bodies as required by the guidance and given proper weight to their views. Partnership working between licensing authorities in Derbyshire has enhanced the production of this Policy Statement and will help ensure consistency in terms of both policy and enforcement where licensing boundaries meet.
- 1.8 This Policy Statement should not be regarded or interpreted as indicating that any requirement of law may be overridden; each application will be considered and treated on its own merits. No restrictive controls will be introduced or imposed unless they are felt to be necessary and appropriate.
- 1.9 There are certain matters which the Authority is prevented from taking into account or from dealing with in a specified way. For example the Authority is not entitled to take the issue of the “need” for further licensed premises into account when determining licence applications. On the other hand the cumulative impact of licensed premises on the promotion of the Licensing Objectives is a matter that can be properly considered by the Authority. Cumulative impact and related matters are dealt with in section 7 of this Policy Statement.
- 1.10 Nothing in this Statement of Policy prevents any one person or body applying for a variety of current permissions under the Act. Nor does it override the right of any Responsible Authority, any person or business to make representations or seek a review of a licence or certificate where provision has been made for them to do so in the Act.

## **2 LICENSING OBJECTIVES AND LICENSABLE ACTIVITIES**

2.1 In exercising their functions under the Licensing Act 2003, licensing authorities must have regard to the licensing objectives as set out in section 4 of the Act. 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.

Each has equal importance.

2.2 In carrying out its licensing functions, the Licensing Authority must also have regard to the licensing objectives, its Policy Statement and any statutory guidance under the Act and is bound by The Human Rights Act 1998. The Council must also fulfil its obligations under section 17 of the Crime and Disorder Act 1998 to do all that it reasonably can to prevent crime and disorder in North East Derbyshire.

2.3 Equality Act 2010 places a legal obligation on public authorities to have due regard to the need to eliminate unlawful discrimination, harassment and victimization; to advance equality of opportunity; and to foster good relations, between persons with different protected characteristics.

2.4 Guidance on the Licensing Objectives is available on the Government's website at: <https://www.gov.uk/guidance/alcohol-licensing>

2.5 Licensing law is not the primary mechanism for the general control of antisocial behaviour by individuals once they are beyond the direct control of the individual club, or business holding the licence, certificate or permission concerned. Licensing is about the management of licensed premises and activities within the terms of the Act and conditions attached to various authorisations will be focused on matters which are within the control of the individual licence holder and others.

- 2.6 The Licensing Authority will work in partnership with neighbouring authorities, the police, other agencies, local liaison groups, businesses and individuals towards the achievement of licensing objectives through good practice.
- 2.7 The Act only covers certain “licensable activities” namely:-
- (a) the sale by retail of alcohol
  - (b) the supply of alcohol by or on behalf of a club to a member
  - (c) the provision of “regulated entertainment” and
  - (d) the provision of late night refreshment
- 2.8 The definition of what constitutes “regulated entertainment” is complex and has been subject to Government deregulation. Whilst “regulated entertainment” potentially covers live or recorded music, dancing, plays, films, and certain types of sporting activity the Act itself provides various exemptions and restrictions on the types of activities which are subject to Licensing. In addition other legislation such as the Live Music Act 2012, the Legislative Reform (Entertainment Licensing) Order 2014 and the Deregulation Act 2015 (“2015 Act”) has de-regulated numerous activities. Further guidance can be found with the Home Office Revised Guidance issued under section 182 of the Licensing Act 2003 at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/705588/Revised\\_guidance\\_issued\\_under\\_section\\_182\\_of\\_the\\_Licensing\\_Act\\_2003\\_April\\_2018\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/705588/Revised_guidance_issued_under_section_182_of_the_Licensing_Act_2003_April_2018_.pdf)
- 2.9 Where an activity is licensable the promotion of the Licensing Objectives is the paramount consideration for the Authority. In the absence of valid representations from responsible authorities, other persons or businesses, all applications must be granted subject only to any prescribed mandatory conditions and such other conditions which are consistent with the operating schedule provided by the applicant. Where valid representations are received and maintained the application will normally be determined at a hearing before the Licensing Committee or one of its Panels. The Committee or Panel will then assess whether the application would result in the licensing objectives being undermined to such an extent that the application should be refused or, whether it would be possible to grant the licence subject to such conditions as are felt appropriate by the Authority.

- 2.10 Conditions will be tailored to the size, style, characteristics and activities taking place at the premises concerned. Conditions will be focused on matters that are within the control of individual licensees and others granted relevant permissions. Accordingly, these matters will centre on the premises and places being used for licensable activities and the vicinity of those premises and places. Whether or not incidents can be regarded as being “in the vicinity” of licensed premises or places, is ultimately a matter of fact to be decided by the courts in cases of dispute. In addressing such matters consideration will primarily focus on the direct impact of the activities taking place at the licensed premises on members of the public living, working or engaged in normal activity in the area concerned.
- 2.11 The imposition of standardised conditions is prohibited as being disproportionate and burdensome. It should be noted, however, that the Authority is permitted to establish pools of conditions from which appropriate and proportionate conditions may be drawn. Further details regarding such conditions can be obtained from the Licensing Team.

### 3. HOW THIS STATEMENT OF POLICY WORKS

3.1 The purpose of the Statement of Policy is to:

- ☐ provide a clear basis for determining licence applications;
- ☐ provide a clear framework for licensing strategies, including the effect known as ‘cumulative impact’;
- ☐ support wider strategies and policies of the Council.

3.2 The text of this Statement of Policy in **bold type** indicates the Policies with ***the reason*** for each policy shown immediately after ***in bold italics***.

3.3 This Policy sets out the Authority’s expectations in relation to certain matters. Whilst applicants are not obliged to meet these expectations in their Operating Schedules they may find that responsible authorities other persons and businesses are more likely to raise representations if they do not. This can lead to a delay with the application having to be considered by a Committee/Panel which may then either

refuse the application or impose conditions if the application is not found to sufficiently promote the licensing objectives and meet this Policy. On appeal the Court is also obliged to have regard to the terms and requirements of this Policy and can only depart from it if it has good reason.

- 3.4 In this Statement of Policy any reference made to the imposition of conditions refers to conditions imposed in accordance with the requirements of the Act outlined in paragraph 2.9 - 2.11 above. As a general rule the authority will seek to avoid attached conditions that duplicate existing legal requirements and obligations imposed by other regimes unless such obligations and requirements fail to adequately address the specific circumstances of the case.

#### **4. STRATEGIC LINKS AND OTHER REGULATORY REGIMES**

- 4.1 There is a range of strategic influences and statutory controls which affect the Licensing system in terms of policy formulation, administration and enforcement activities. Examples of these strategies can be found in the Section 182 guidance. The Authority will seek to have an active involvement in the development and review of these by ensuring an appropriate exchange of dialogue between the Licensing Authority and other relevant regimes. Such involvement may result in the imposition of conditions and formulation of policies supporting the relevant strategies where appropriate.
- 4.2 The granting of a licence, certificate or provisional statement will not override any requirement of the planning system or vice-versa. The licensing system will provide for the detailed control of operational matters, which are unlikely to be addressed through planning processes. However there will be overlapping issues of interest e.g. disturbance, which will remain material considerations for planning purposes as well as being relevant in terms of the licensing objectives. Applicants should also ensure that they have due regard to any planning restrictions on the use of premises when applying for licence/certification to avoid any possible enforcement action. Equally any planning approval for a premises does not imply that approval will be giving under the Licensing regime.

## **5. DELIVERING LICENSING SERVICES**

- 5.1 The Authority will make available guidance and such resources as required by law to enable engagement with the licensing process. Such guidance and resources may be accessed through the North East Derbyshire District Council web site, or by contacting the Authority direct.
- 5.2 The Licensing Authority will maintain an impartial role in service delivery and cannot act in favour of one party over another. The Licensing Authority may, in certain circumstances, act as a Responsible Authority. However this will only be done in exceptional circumstances and the Licensing Authority will not normally take over the role of other Responsible Authorities or Interested Parties.
- 5.3 Responsible Authorities are public bodies which must be fully notified of licence applications and are entitled to:
- Make representations
  - Request reviews
  - Make representations with regards to cumulative impacts

Details of Responsible authorities can be found on the Council's website at [ADD LINK](#)

## **6. APPLICATIONS, NOTIFICATIONS AND THEIR CONSIDERATION**

- 6.1 The procedure and documentation required for the various applications and notices is prescribed by the Act and Regulations. Further advice on these processes is available on the Council's web site. This section of the policy gives basic guidance on how those applications and notifications will be considered. Failure to comply with the statutory requirements may result in the application or notice being invalid.
- 6.2 The process of applying for new premises licences and full variations of current premises licences are dealt with in the same way and involve serving the application on all responsible authorities and advertising the application in the prescribed way. If objections are received the matter will be heard by the Licensing Committee of the Council. The fee for such applications depends on the size of the premises.

6.3 The process of a minor variation to current premises licences are dealt with differently. Minor variations can be applied for to vary times of activities but not to increase the hours when alcohol can be sold. The process can also be used when making minor structural alterations to the premises and to add or remove conditions from the licence. These minor variations should not have a material effect on the way in which the premises are operated and there is one set fee. The granting of a minor variation is determined at officer level after consultation with those responsible authorities affected. If the application is refused the applicant can resort to the full variation process.

## **6.4 Representations**

6.4.1 Guidance on making a representation is available from the Home Office - [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/705588/Revised\\_guidance\\_issued\\_under\\_section\\_182\\_of\\_the\\_Licensing\\_Act\\_2003\\_April\\_2018\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/705588/Revised_guidance_issued_under_section_182_of_the_Licensing_Act_2003_April_2018_.pdf) and a preferred form is available on the Council's Licensing Act Policy web page for individuals or groups to make their representations.

6.4.2 For a representation to be relevant it should relate to the likely effect of the grant of the application on one or more of the licensing objectives. Representations received outside the statutory period for making such representations will be invalid and will not be taken into consideration when the application is determined. The Licensing Authority also has the power to reject a representation made by someone other than a Responsible Authority if it finds it to be vexatious or frivolous. An example could be where a representation was made solely on the basis that the application would provide competition to an existing trader or where no link was made to any of the licensing objectives.

6.4.3 Where a representation proceeds to a hearing the Hearings Regulations allow for further information to be put forward in support of that representation. However, that material must only relate to the initial representation and must not add new grounds of objection. It is therefore vitally important that as much detail and evidence as possible is included at the time the representation is made. Representations made



without supporting detail and evidence may be viewed as frivolous or vexatious and disregarded.

6.4.4 Where representations are received the characteristics of an area and the impact that the premises may have upon that area will be a fundamental consideration in determining whether a licence should be granted and if so what conditions should be attached to it. Conditions will be focused on matters that are within the control of individual licensees and others in possession of relevant authorisations. These matters will centre on the premises being used for licensable activities and the vicinity of those premises. What amounts to the vicinity will be a question of fact to be determined in the light of the individual circumstances of the case. Consideration will primarily be given to the direct impact of the licensed activity on those who live, work or are engaged in business or other activities in the area concerned. However note the representation need not have come from someone who lives, works or is engaged in business in that area.

## **6.5 Panel/Committee Hearings**

6.5.1 The Act creates a presumption that applications will be granted unless a valid representation is raised. An application will then be determined by the Licensing Committee/Panel unless the issue that led to the representation can be negotiated to an agreed conclusion between the parties.

6.5.2 The Authority considers the effective and responsible management of the premises, the instruction, training and supervision of staff and the adoption of best practice in the leisure industry, which may include participation in such schemes as Best bar None, Purple Flag or Business Improvement Districts (BIDs), to be amongst the most important control measures for the achievement of all of the Licensing Objectives.

## **7. Licensing Policies**

### **Policy 1**

**The Authority expects to see evidence of the effective and responsible management of the licensed premises, such as examples of instruction, training and supervision**

of staff and the adoption of best practice used in the leisure industry, being specifically addressed within the Operating Schedule.

***REASON: To ensure the promotion of the licensing objectives.***

7.1 Licensing Law is not the primary mechanism for the general control of the anti-social behaviour of patrons once they have left the vicinity of the licensed premises rather it is part of a holistic approach to the management of the District.

7.2 Where appropriate the Authority will seek to identify mechanisms that are available for addressing the potential impact of anti-social behaviour arising both in respect of the management and operation of licensed premises themselves and that arising once patrons leave the licensed premises. Regard will be given to the section 182 Guidance in this respect and the following may be employed to address such behaviour and the potential for cumulative impact

- planning controls;
- ☐ ☐ Positive measures to create a safe and clean town centre environment in partnership with local businesses, transport operators and other departments of the local authority;
- The provision of CCTV surveillance in town centres, taxi ranks, provision of public conveniences open late at night, street cleaning and litter patrols;
- Powers of local authorities to designate parts of the local authority area as places where alcohol may not be consumed publicly;
- the confiscation of alcohol from adults and children in designated areas;
- ☐ ☐ Police enforcement of the general law concerning disorder and anti-social behaviour, including the issuing of fixed penalty notices;
- ☐ ☐ Prosecution for the offence of selling alcohol to a person who is drunk (or allowing such a sale);
- ☐ ☐ police powers to close down instantly for up to 24 hours (extendable to 48 hours) any licensed premises in respect of which a TEN has effect on grounds of disorder, the likelihood of disorder, or noise emanating from the premises causing a nuisance;

- The power of the police, other responsible authorities or other persons to seek a review of a licence or certificate; and
- ☐ ☐ Early Morning Alcohol Restriction Orders (EMROs)
- ☐ ☐ Any other local initiatives that similarly address these problems.

## **Policy 2**

**When preparing or considering applications, applicants, responsible authorities, other persons, businesses and the Licensing Authority shall, where appropriate, take into account the following matters in assessing both the potential for the Licensing Objectives to be undermined and the appropriateness of any conditions which may be offered or imposed on any resulting licence, certificate or permission:**

- (i) The nature of the area within which the premises are situated.**
- (ii) The precise nature, type and frequency of the proposed activities.**
- (iii) Any measures proposed by the applicant in the Operating Schedule.**
- (iv) The nature (principally in terms of the age and orderliness) and number of any customers likely to attend the licensed premises.**
- (v) Means of access to and exit from the premises.**
- (vi) Transport provision in the area and the likely means of public or private transport that will be used by customers either arriving or leaving the premises.**
- (vii) Parking provision in the area.**
- (viii) The potential cumulative impact (see below).**
- (ix) Other means and resources available to mitigate any impact.**
- (x) Such other matters as may be relevant to the application.**

***REASON: To ensure that all relevant matters are taken into consideration during the application process.***

**7.3** Levels of noise from licensed premises, which may be acceptable at certain times of day, may not be acceptable later in the evening or at night when ambient noise levels are much lower. The main impact of customers arriving, queuing and leaving should be confined to principal pedestrian routes as far as possible. The impact of noise

arising from patrons that are temporarily outside the premises (e.g. smoking), must be recognised and mitigated against.

- 7.4 Applicants should carefully consider the hours that they will wish to operate for each licensable activity and when to close their premises for the entry of customers and to require them to leave. They should consider each licensable activity separately and carefully, and reflect this in their operating Schedule. Shops, stores and supermarkets will normally be permitted to sell alcohol and or late night refreshment anytime when they are open for shopping unless there are good reasons related to the promotion of the licensing objectives for restricting these hours. Where a premises such as a shop is open for business outside of their licensable hour's consideration should be given to what steps will be taken to prevent the unauthorised sale of alcohol.
- 7.5 Applicants should consider the benefits of stopping serving alcohol before other licensable activities stop and a suitable time before the premises close and customers must leave. In noise sensitive areas operators should consider ceasing the playing of dance music and switching to quieter, slower tempo music with a less pronounced beat for a period prior to the closure of the premises.
- 7.6 Applicants should also consider making arrangements with local transport operators to provide information to customers to ensure they can access public transport and leave the vicinity of the premises quickly by the most appropriate route.
- 7.7 The Authority is mindful of the responsibilities that licence holders have for preventing anti-social behaviour on and within the vicinity of their premises. The Authority must, however, also bear in mind its statutory duty under the Crime and Disorder Act 1998 to do all it can to prevent crime and disorder in the District. Where appropriate conditions will be imposed which reflect local Crime Prevention strategies.
- 7.8 Applicants are expected to have carried out the relevant assessments under other legislation (e.g. fire precautions, health and safety at work, etc.) prior to submitting their applications. These assessments should be used to identify particular issues which may need to be addressed in the operating schedule in order to ensure that the objectives will not be undermined. Suggested methods of addressing Policy 2

may be outlined in more detail in any guidance issued by the Responsible Authorities but could include the matters listed below where appropriate.

7.9 The Licensing Authority will expect licensees to take all reasonable steps to prevent the entry of drugs into premises under their control, to take appropriate steps to prevent drugs changing hands within the premises, to take practical measures to prevent tragedies as a result of drug misuse by way of management and design of the premises and work collaboratively with the Police to deal with any such issues.

7.10 Examples of recommended management practice to minimise Crime and Disorder:

- ☐ ☐ Use of CCTV both within and outside the premises.
- ☐ ☐ Metal detection and search facilities.
- ☐ ☐ Procedures for risk assessing promotions and events such as “happy hours” and plans for minimising such risk.
- ☐ ☐ Measures to prevent the use or supply of illegal drugs.
- ☐ ☐ Employment of licensed door supervisors and other appropriately trained staff.
- Participation in an appropriate Pub Watch Scheme or other such scheme aimed at achieving a safe, secure and social drinking environment e.g bar tariffs (for all bar price lists to carry a guide of how many units of alcohol each individual drink contains) and recommendations that all licensees, managers or supervisors attend regular Pub Watch meetings or send a representative if they cannot attend.
- ☐ ☐ The licensee providing a taxi call point, waiting and concierge service for taxi marshalling at the licensed premises.
- ☐ ☐ Use of measures aimed at ensuring patrons are more relaxed and quieter when leaving the licensed premises e.g. playing quieter music and promoting non-alcoholic drinks towards the end of the event, ensuring good lighting outside the premises, staggering the closing time with regard to nearby licensed premises, etc.

7.11 Examples of recommended management practice to ensure public safety:

- ☐ ☐ The preparation and application of appropriate risk assessments.
- ☐ ☐ The setting and monitoring of occupancy levels for the premises.
- ☐ ☐ Reasonable facilities, access and egress for people with disabilities.

- ☐ Having glassware policies.

7.12 Examples of recommended management practice for the protection of children:

- ☐ ☐ Exclusion from the premises in certain circumstances.
- ☐ ☐ Implementation of a robust proof of age scheme

7.13 Examples of recommended management practice for preventing nuisance:

- ☐ ☐ Keeping doors and windows of licensed premises closed to minimise noise break out.
- Sound limiting devices, or insulation to contain sound and vibration so as to address noise break out not only from music but also, for example, from air handling equipment, generators or patrons.
- ☐ ☐ With popular premises that attract queues ensuring that the direction of any queue is away from residential accommodation.
- ☐ ☐ Proper and adequate door supervision.
- ☐ ☐ Erecting prominent notices at the exits to premises asking customers to leave quietly and not to slam car doors and repeating such requests verbally.
- Reducing the volume of music towards the end of the evening and where appropriate playing quieter, more soothing music as the evening winds down.
- ☐ ☐ Arrangements with licensed taxis or private hire vehicles to take patrons from the premises.
- ☐ ☐ In appropriate cases door supervisors or a manager patrolling nearby streets to assess for themselves whether there is a problem and how best to deal with it.
- ☐ ☐ Banning people who regularly leave in a noisy fashion and liaising with other premises on such bans.
- ☐ ☐ Where the premises have a membership scheme, including provisions in the conditions of membership concerning conduct and noise when leaving the premises.
- ☐ ☐ Adequate provisions for dealing with litter/refuse arising from the operation of premises.
- ☐ ☐ Appropriate times for and methods of dealing with bottle delivery, disposal and collection.
- ☐ ☐ The licensee providing a help line or contact number for concerned residents.

- 7.14 In some cases it may be helpful for applicants and/or their advisors to discuss their draft Operating Schedule with representatives of Responsible Authorities, before it is formally submitted. This will help ensure it properly addresses all relevant issues that might give rise to concern.

A document containing a pool of potential conditions can be found on the Council's website in order to assist with the type of wording which is required on an application. Any condition attached to a licence or certificate should be

- ☐ ☐ clear
- ☐ ☐ enforceable
- ☐ ☐ evidenced
- ☐ proportionate
- ☐ ☐ relevant
- ☐ ☐ be expressed in plain language capable of being understood by those expected to comply with them.

- 7.15 As a general rule, the Licensing Authority will seek to avoid attaching conditions that duplicate existing legal requirements and obligations imposed by other regimes unless such obligations and requirements fail to adequately address the specific circumstances of the case.

#### 7.16 **Cumulative Impact**

- 7.16.1 In some areas concentrations of licensed premises may exist where the combined effect of all of the premises, causes problems for a wider area and undermines, or potentially undermines, the Licensing Objectives.

- 7.16.2 This potential impact on the promotion of the Licensing Objectives by a significant number of licensed premises concentrated in one area is called "cumulative impact". This should not be confused with the issue of "need" which relates to the commercial demand for licensed premises and cannot be taken into account when determining licensing applications.

Having taken into account the evidence available the council is satisfied that there are no areas within the district presently suffering from cumulative impact. However

there is potential for a change in this situation. The Authority therefore considers it both necessary and appropriate to include an approach to this issue which can be applied in the event of evidenced need being established.

Any Cumulative Impact Policy adopted would create a rebuttal presumption that certain types of applications would be refused. The presumption would be rebutted where applicants can demonstrate through the Operating Schedule and, where appropriate, supporting evidence such as risk assessments, that the operation of the premises will not potentially add to the cumulative impact already being experienced.

Whilst the policy would not be applied inflexibly, the circumstances in which the presumption of refusal may be rebutted will need to be exceptional and directly related to the reasons why the policy was adopted. An application is not likely to be classes as exceptional merely on the grounds that the premises have been or will be operated within the terms of its licence or that they are or will be well managed. This is to be expected of any application. An example if the type of application which might be granted could be where re premises have been re-located or act as a direct replacement for others and where the impact is likely to be similar to the original location.

A Cumulative Impact Policy however does not relieve Responsible Authorities, other persons or businesses, of the need to make representations before such applications are considered. If no representations are received then the applicant must be granted in terms consistent with the submitted operating schedule. The authority will regularly review any cumulative impact Policy to assess its effectiveness.

Responsible authorities and interested parties may still make representations on specific applications concerning cumulative impact even though those applications are not for promises in an area covered by a cumulative impact policy. In such circumstances the application may be refused (though there will be no presumption that this will be the case), and the Authority may then choose to review this Statement of Policy and consult as to whether the particular area should be designated an area to which a cumulative impact Policy should apply.



### **Policy 3**

In cases where Responsible Authorities, other persons or businesses seek to establish that an application should be refused on the grounds that it would result in or further contribute to a cumulative impact in an area not designated as a saturation zone, which would undermine one or more of the Licensing Objectives the Local Authority expects that they shall:

- (i) Identify the boundaries of the area from which it is alleged problems are arising;
- (ii) Identify the Licensing Objective(s) which it is alleged will be undermined;
- (iii) Identify the type of licensable activity alleged to be causing the problem (e.g. sale of alcohol, late night refreshment etc)
- (iv) Provide full details and evidence to show the manner and extent to which it is alleged that the Licensing Objective(s) are being, or are at risk of being, undermined in the area;
- (v) Provide evidence to show that the undermining of the objective(s) is caused by the patrons of licensed premises in the area.

***REASON: To ensure that objections are neither frivolous nor vexatious and that there is an evidential basis for the Committee to reach a decision.***

### **Adult Entertainment**

7.17 The potential for the provision of adult entertainment to impact on the licensing objectives is recognised in the prescribed application form and all applicants are required by the prescribed application form to indicate in their operating schedules whether they intend to provide any such entertainment which may give rise to concerns in respect of children.

7.18 The Policing and Crime Act 2009 potentially provides an additional licensing requirement for operators who provide “sexual entertainment venues” to licence them as sex establishments under the Local Government (Miscellaneous Provisions) Act 1982. These are essentially premises which provide live entertainment or performances to a live audience which either involve nudity (such as lap or pole dancing establishments) or which are for the purpose of sexually stimulating a member of the audience. The licensing provisions are adoptive and do not necessarily apply in every Licensing Authority’s district. North East Derbyshire District Council has however adopted those provisions.

- 7.19 Where a business wishes to operate as a sexual entertainment venue it may still need to be licensed under the Licensing Act for the sale of alcohol and the provision of regulated entertainment. The provision of sexual entertainment will however be regulated solely under the terms of any sex establishment licence which may be granted under the 1982 Act. The Licensing Act licence will then continue to regulate the other licensable activities.
- 7.20 Certain forms of adult entertainment are excluded from requiring sex establishment licences under the Local Government (Miscellaneous Provisions) Act 1982, and these will still be regulated under the terms of the Licensing Act 2003.
- 7.21 The provision of adult entertainment on premises may mean that access by children will not be permitted during periods when such entertainment is taking place. Where such entertainment is to be provided under the terms of the premises licence or club premises certificate the Authority expects applicants to include arrangements for restricting children from viewing any adult entertainment in their Operating Schedule. The Authority expects licensees to ensure that any age restrictions for shows or entertainment of an adult or sexual nature are properly complied with. In addition it may be appropriate to impose age restrictions for persons working in the premises, and applicants are advised to also consider the wider crime and disorder issues which can be associated with such forms of entertainment such as issues relating to drugs and prostitution.
- 7.22 Responsible authorities are likely to continue to consider all applications involving adult entertainment very carefully with regard to the promotion of the licensing objectives within the vicinity in which the premises are located.

### **Licence Suspensions**

- 7.23 The Licensing Act 2003 requires Licensing Authorities to suspend a premises licence or club premises certificate if the annual fee is not paid when it is due unless an administrative error or dispute has been notified to the Licensing Authority. In such cases there will be a grace period of 21 days to allow the matter to be resolved. If the matter is not resolved within grace period the licence must be suspended.

- 7.24 Where such a suspension takes place the Licensing Authority must give a minimum of two days' notice and may inform the police and other responsible authorities of the suspension. All licensable activities must cease when the suspension takes effect. The suspension will only cease on payment of the outstanding fee irrespective of any transfer or hearing which may take place.

## **Reviews**

- 7.25 At any stage following the grant of a premises licence or club premises certificate a Responsible Authority, any person or business, may ask for a review. Evidence will however be required to show that a specific concern exists relating to one or more of the licensing objectives. Where a review Hearing is held the Licensing Authority has a variety of options it may take ranging from taking no action at all, to varying conditions or suspending or revoking the licence. The Guidance reminds the Authority that the powers of review are to be used in the interests of the wider community and not that of the individual licence/certificate holder. Whilst the financial circumstances of the licence/certificate holder will be a consideration for the Licensing Authority the promotion of the licensing objectives will be the Authority's primary concern. In some circumstances e.g. the use of premises for the purchase and consumption of alcohol by minors, revocation may be considered an appropriate course of action even in the first instance.
- 7.26 The Licensing Authority encourage and support a proactive approach by licensees to tackling the problem of illegal drugs and unidentified substances in licensed premises. There is a strong link between illegal recreational drugs and the night time economy. Should the licence holder fail to take appropriate steps to mitigate a drug problem then the premises licence could be taken for review. Where reviews arise and the Licensing Authority determines that the crime prevention objective is being undermined through the premises being used to further crime then revocation of the licence will be seriously considered.

## **Early Morning Restriction Orders (EMROs)**

- 7.27 The legislation gives licensing authorities discretion to restrict sales of alcohol by introducing an EMRO to restrict the sale or supply of alcohol to tackle high levels of alcohol related crime and disorder, nuisance and anti-social behaviour. The order may be applied to the whole or part of the licensing authority area and if relevant on specific days and at specific times. The licensing authority must be satisfied that such an order would be appropriate to promote the licensing objectives.
- 7.28 The only exemptions relating to EMROs are New Years Eve and the provision of alcohol to residents in premises with overnight accommodation by means of mini bars and room service.
- 7.29 The decision to implement an EMRO should be evidence based and may include consideration of the potential burden imposed as well as the potential benefits.

## **Personal Licences**

- 7.30 Individuals applying for a personal licence must be entitled to work in the UK. The Immigration Act 2016 amended the Licensing Act 2003, with effect from April 6 2017. Applications made on or after this date by someone who is not entitled to work in the UK must be rejected. The Licensing Authority must be satisfied that the applicant has a right to work in the UK, and will require applicants to submit copies of identification documentation.
- 7.31 Where an applicant for a personal licence has relevant convictions, a licence will still be granted unless the Chief Officer of Police lodges an objection within the prescribed period that he is satisfied that the granting of the licence would undermine the Licensing Objectives. In such circumstances the application will be considered at a Hearing of the Licensing Panel.

## **Policy 4**

In determining initial and renewal applications for personal licences where the Chief Officer of Police has lodged an objection notice the Authority will take the following matters into consideration:

- (i) The circumstances in which the offences were committed;
- (ii) The period that has elapsed since the offence(s) were committed;
- (iii) Whether the offences reveal a pattern of offending or were a one off occurrence; and
- (iv) Any mitigating circumstances.

The Authority will reject the application unless the applicant can show that it is unnecessary to do so in order to promote the Crime Prevention Objective.

***REASON: Prevention of crime is both an objective of the Licensing Act 2003 and an important responsibility of the Authority under the Crime and Disorder Act 1998. Granting a licence to a person with relevant convictions will in many cases undermine rather than promote the crime prevention objective.***

7.32 The Policing and Crime Act 2017 gives Licensing Authorities a discretionary power to revoke or suspend personal licences, with effect from 6 April 2017.

When a Licensing Authority has granted a personal licence and becomes aware that the licence holder has been convicted of a relevant offence or foreign offence or been required to pay an immigration penalty, a licensing authority may revoke the licence or suspend it for a period of up to six months.

Only magistrates' courts can order the forfeiture or suspension of a personal licence for convictions received prior to 6 April 2017. The process which must be undertaken by the licensing authority to suspend or revoke a personal licence is set out at section 132A of the 2003 Act and is contained within the Home Office Guidance.

## **Temporary Event Notices**

7.33 There are two types of Temporary Event Notice,

- a standard TEN (given at least 10 working days before the event)

- a late TEN (given at least five working days before the event)

- 7.34 A standard TEN must be served no later than ten working days before the event to which it relates and this does not include the day it is given or the day of the event, and a late TEN is served not before nine and not less than five working days before the event to which it relates.
- 7.35 Where a Temporary Event Notice is served on the Authority with less than five working days' notice, the Council has no alternative but to reject the notice, and does not have the power to permit the licensable activities. Undertaking the licensable activities without approval from the Council will be an offence under the Act.
- 7.36 Whilst the Council recognises that a Temporary Event Notice may be served at least ten clear working days prior to the commencement of a Permitted Temporary Activity (the event), the current Guidance issued under the Act encourages a locally established preferred period of notice. There is a case for not serving such Notices too early as this could make it difficult for a sensible assessment to be made of the implications of such an event on the Crime and Disorder and Prevention of Public Nuisance objective's. The Council considers that a reasonable period of notice for the service of a Temporary Event Notice is 28 days.
- 7.37 Persons serving Temporary Event Notices must also serve a copy notice on the police and the responsible authority for Environmental Health functions i.e. the Councils Environmental Health section.
- 7.38 Further information regarding Temporary Event Notice's is contained on the Councils web pages.

## **8. CHILDREN**

- 8.1 Where there are concerns over the potential for harm to children from licensable activities the Authority recognises the following bodies as competent to advise on matters relating to the protection of children from harm:

☐ ☐ The Derbyshire Safeguarding Children Board.

- Trading Standards

Applications should therefore be copied to these bodies in their capacity as responsible authorities.

8.2 Examples which may give rise to concerns in respect of children include those:

- ☐ ☐ Where there have been convictions for serving alcohol to minors
- ☐ Where there is a reputation for underage drinking
- ☐ ☐ Where there is a known association for drug taking or dealing
- ☐ ☐ Where there is a strong element of gambling on the premises
- ☐ ☐ Where entertainment of an adult or sexual nature is provided

8.3 Where premises are used for film exhibitions, the Authority will impose the mandatory condition restricting access only to persons who meet the required age limit in line with any certificate granted by the British Board of Film Classification or the Authority itself.

8.4 The Authority expects applicants to include any arrangements for restricting under-age children from viewing age-restricted films in their Operating Schedule. The Authority expects that licensees will ensure that any age restrictions for cinema exhibitions are properly complied with.

## **Policy 5**

**Where representations have raised concerns in respect of individual premises and it is felt that access of children should be restricted, the Authority will consider imposing conditions which may include the following:**

- (i) Limitations on the hours when children may be present.**
- (ii) Age limitations for persons under 18.**
- (iii) Limitations or exclusion when certain activities are taking place.**
- (iv) Full exclusion of persons under 18 when certain licensable activities are taking place.**
- (v) Limitations of access to certain parts of the premises for persons under 18.**
- (vi) A requirement for adults to be present.**

***REASON: To protect children from harm.***

## **9. EQUALITY AND DIVERSITY**

- 9.1 Delivery of the licensing regime will be in accordance with the Corporate Equality and Inclusion Policy. The use of an Impact Needs Assessment process will inform service delivery and will be subject to on-going monitoring and customer/stakeholder consultation during the life of this Policy. Relevant matters that come to light as a result of monitoring and consultation may result in changes to service delivery and where necessary may result in changes to the Council's licensing policy.
- 9.2 North East Derbyshire District Council is committed to implementing and upholding equality and diversity in everything it does. The Council strives to be an effective service provider, community leader and corporate body, and in doing so, recognises the importance of meeting the needs of the diverse mix of communities represented amongst its residents, service users and workforce. In meeting those needs the Council will develop and harness a safe and sustainable community inclusive to all.
- 9.3 To affirm its commitment and to ensure continuous improvement, the Council is working to the guidance and criteria of the Equality Framework for Local Government.
- 9.4 Advice and guidance will be made available in English which is the most common language of customers and stakeholders. On request the Council will signpost customers to providers of guidance and information relating to translation services.

## **10. GENERAL ENFORCEMENT STATEMENT**

- 10.1 All decisions, determinations, inspections and enforcement action taken by the Authority will have regard to the relevant provisions of the Licensing Act 2003, national guidance, relevant codes of practice and the enforcement policies of the Council which are produced to the principles of the Enforcement Concordat and the Regulators Compliance Code
- 10.2 The Authority has established and maintains enforcement protocols with the local police and other relevant enforcement agencies.



## **11. MONITORING AND REVIEW OF THIS STATEMENT OF POLICY**

- 11.1 This Statement of Policy will be reviewed within legislative timescales and as and when appropriate. In preparing the succeeding Statement of Policy regard will be had to data and information collated over the operating period of the current policy together with trends and the outcome of related initiatives from both local sources and nationally issued data and guidance.

## **12. DELEGATIONS**

- 12.1 The Council recognises many of the decisions and functions under the Act are purely administrative in nature. In the interests of speed, efficiency and cost-effectiveness the Council will implement the suggested delegation of functions as outlined in the guidance where possible and in accordance with the Councils Scheme of Delegation as set out in the Constitution.

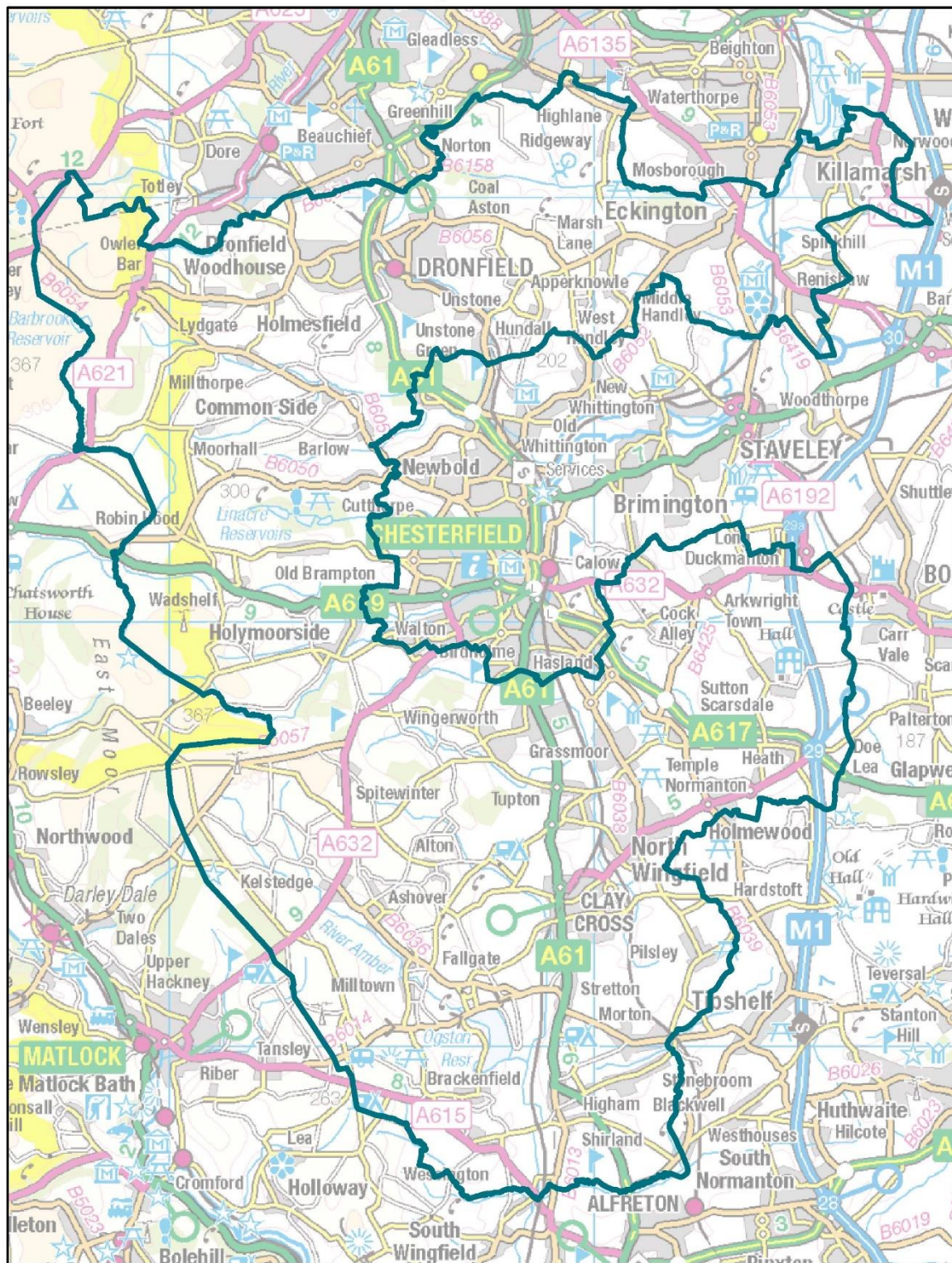
## **13. CONTACTS**

The Councils Environmental Health Service is joint with North East Derbyshire District Council.

The points of contact for any licensing issues or enquiries are; Licensing Section, Joint Environmental Health Service NEDDC and Bolsover District Council, District Council Offices, 2013 Mill Lane, Wingerworth, Chesterfield, S42 6NG or telephone 01246 217228, or email [licensing@neddc.gov.uk](mailto:licensing@neddc.gov.uk) A copy of this Statement of Licensing Policy is available at [www.neddc.gov.uk](http://www.neddc.gov.uk)

Appendix 1 - A map showing the administrative boundaries of the district

# North East Derbyshire District Council



0 1.25 2.5 5 Miles

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**Licensing Act - Statement of Policy 2019-2024**

**CONSULTATION FEEDBACK**

<b><i>RECEIVED FROM</i></b>	<b><i>COMMENTS</i></b>	<b><i>OFFICER RESPONSE</i></b>
Derbyshire County Council Trading Standards	Concerned that only Derbyshire Safeguarding Board named on page 28	Amendment to include Trading standards as a responsible authority – page 28
Derbyshire Adult Safeguarding Board	"I think a link in all documents to the Derbyshire Safeguarding Adults Board would be helpful as well."	A link to the DSAB website is possible from the draft policy. This will be inserted at the point the draft is uploaded to the council website.
British Institute of Innkeepers	Request for removal from our mailing list	No amendments needed