

**REPORT TO:** LICENSING COMMITTEE

**DATE:** 7 SEPTEMBER 2021

**TITLE:** STREET DRINKING AND LICENSING CONTROLS

**LEAD OFFICER:** MICHAEL PITT, ENVIRONMENT AND LICENSING MANAGER  
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**RECOMMENDED that:**

- A** The Licensing Committee note and approve short term measures to address concerns about street drinking set out under Proposals at paragraphs 22 and 23 of the report.
- B** Example licence conditions to address issues discussed in this report to be adapted to individual premises by future Licensing Sub Committees be drafted by the Licensing Team in consultation with the Chair of the Committee
- C** Following consultation with Responsible Authorities, the Council's Community Safety team and relevant agencies a report to a future licensing Committee be presented on options for a more extensive voluntary scheme to mitigate the harms of street drinking through a responsible approach to alcohol sales.

**BACKGROUND**

1. Street drinking may cause an adverse effect on the sense of security and wellbeing of users of public spaces which may in turn impact the viability of business seeking to trade in such spaces.
2. Harlow Council is a licensing authority for the purposes of the Licensing Act 2003 (the Act) which regulates the supply of alcoholic beverages, and in this capacity may have an influence on the availability of alcohol to people engaging in street drinking.
3. Street drinking is a complex issue often connected with social exclusion which spans many disciplines, and which is thus unlikely to be resolved in its entirety by regulatory intervention. Public Health interventions in some cases, and other controlling measures affecting public space, now chiefly Public Space Protection Orders, may be relevant if not directly within the Committee's remit. However, measures intended to reduce the impact of street drinking on users of public spaces may lie within the remit of the Licensing Authority.

## ISSUES/PROPOSALS

### Formal measures under the Licensing Act 2003

4. In implementing its functions under the Act, the Council must of course act within the legislation, and in accord with section 4 of the Act must have regard to statutory guidance issued under section 182 by the Secretary of State (the Guidance).’
5. The legislation establishes four licensing objectives:
  - a) The prevention of crime and disorder
  - b) Public safety
  - c) The prevention of public nuisance
  - d) The protection of children from harm
6. The Act defines Responsible Authorities who are expected to consider licences and applications in relation to the objectives and where appropriate make representations.
7. Some of the concerns that may arise from street drinking clearly fall within one or more of these objectives.
8. As set out in the Guidance, where an application for a premises licence or club premises certificate has been made lawfully and there have been no representations from responsible authorities or other persons, the licensing authority must grant the application, subject only to conditions that are consistent with the operating schedule and relevant mandatory conditions.
9. The Guidance directs that licence conditions, amongst other stipulations.
  - a) must be appropriate for the promotion of the licensing objectives
  - b) must be tailored to the individual type, location and characteristics of the premises and events concerned
  - c) should not be standardised and may be unlawful when it cannot be demonstrated that they are appropriate for the promotion of the licensing objectives in an individual case
  - d) should be proportionate, justifiable and be capable of being met; and
  - e) cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff, but may impact on the behaviour of customers in the immediate vicinity of the premises or as they enter or leave
10. All licences are subject to certain mandatory conditions. In other respect each licence must be considered on its own merits, and “standardised conditions should be avoided and indeed may be unlawful where they cannot be shown to be appropriate for the promotion of the licensing objectives in an individual case” (the Guidance). Some of the concerns that may arise from street drinking clearly fall within one or more of these objectives.

11. Once granted a licence remains in force as issued unless surrendered, revoked, or modified on review. A licence may be reviewed on the application of a Responsible Authority or an interested party.
12. The conclusion that may be drawn in relation to addressing street drinking through formal licensing powers is that it may well be lawful to do so where it can be shown to be appropriate, but the case would have to be made for appropriate conditions in relation to each premises individually; that different conditions could not be applied to existing licences in the absence of a formal review; and that no “blanket” policy ought to be adopted.
13. It may however be helpful to provide to future Licensing Sub Committees examples of workable conditions that might be tailored to individual circumstances and applied in appropriate circumstances where concern arises conditions.
14. It will also be helpful to ensure that licensees and their staff are aware of the mandatory condition regarding alcohol pricing: alcoholic beverages may not be sold at below the rate of duty and VAT that is payable.
15. Further, it should be noted that it is an offence to knowingly sell alcohol to a person who is drunk. As this is in its own right an offence, it is not an issue to which conditions should be applied; and unfortunately, it is a matter which it is notoriously difficult to prove. However, any conviction would of course put at a licence at risk of review.

### **Discretionary Approach to Voluntary Cooperation**

16. A number of licensing authorities have sought to gain the cooperation of licensees in ensuring the responsible sale of alcoholic drinks through voluntary schemes.
17. The Local Government Association (LGA) have provided support to licensing authorities in the form of their “Reduce the Strength” guidance, aimed at ensuring that certain types of low cost high alcohol content beverages associated with alcohol misuse are not available in areas where issues have been identified. A copy of the LGA’s guidance is set out in Appendix A to the report.
18. The core objective of case-study schemes in the LGA’s guidance is voluntary agreement to ending sales of beers lagers and ciders with over 6.5 per cent alcohol by volume (ABV).
19. Measures that may support or form part of such a campaign include
  - a) Ensuring that containers sold are individually marked to identify the premises from which they come
  - b) Ending sales of alcohol in smaller volumes – e.g. of single cans of cider/beer
20. The LGA however in its guidance makes clear that schemes that are likely to be successful are developed
  - a) After fact finding

- b) In collaboration with agencies having a range of insights
  - c) With the cooperation of the majority of businesses affected
21. Clearly a scheme of this nature could not be delivered by the licensing team alone, as contributions from businesses, the relevant Responsible Authorities, and others would be critical to success. However, where schemes have been carefully planned and broadly based it appears that they have had positive results.
22. It is proposed that Officers from the Licensing Team liaise with Essex Police and the Council's Community Safety team to identify any premises connected with perceived street drinking issues.
23. These premises will be visited by officers in the short term to
- a) Raise the issues
  - b) Reiterate that it is an offence to sell to people who are drunk
  - c) Reiterate and check on minimum pricing requirements
  - d) Propose voluntary measures including:
    - i) ceasing "single can" sales
    - ii) marking containers to show where they were bought
24. It is proposed that example licence conditions to address issues discussed in this report to be adapted to individual premises by future Licensing Sub Committees be drafted by the Licensing Team in consultation with the Chair of the Committee.
25. It is proposed that the Licensing Team consult with Responsible Authorities, the Community Safety team and relevant agencies on options for a more extensive voluntary scheme such as those described in the LGA's "reducing the strength guidance", and report to a future Licensing Committee on the outcome

## **IMPLICATIONS**

### **Environment and Planning (Includes Sustainability)**

The short term steps to address the issues raised lie within the remit of the Licensing team. A more comprehensive approach as illustrated by the LGA would require involvement of stakeholders within and external to the Council.

**Author: Andrew Bramidge, Head of Environment and Planning**

### **Finance (Includes ICT, and Property and Facilities)**

None specific.

**Author: Simon Freeman, Head of Finance and Deputy to the Chief Executive**

### **Housing**

None specific.

**Author: Andrew Murray, Head of Housing**

### **Community Wellbeing (Includes Equalities and Social Inclusion)**

These proposals will help ensure that the council does all that it can to reduce street drinking in the town, which can have a negative impact on the wider community.

**Author: Jane Greer, Head of Community Wellbeing**

### **Governance (Includes HR)**

Any additional conditions imposed would be subject to consultation as part of the application process. Any breach of conditions would be considered as part of a site specific under existing review processes.

**Author: Simon Hill, Head of Governance**

### **Appendices**

Appendix A - Reducing the strength – Guidance for councils considering setting up a scheme: Local Government Association

### **Background Papers**

Licensing Act 2003: Parliament <https://www.legislation.gov.uk/ukpga/2003/17/contents>

Amended Guidance issued under section 182 of the Licensing Act 2003: Home Office <https://www.gov.uk/government/publications/section-182-of-the-licensing-act-2003-amended-guidance>

### **Glossary of terms/abbreviations used**

ABV - Alcohol By Volume

LGA - Local Government Association