



LICENSING COMMITTEE

30 March 2023

Report sponsor: Samantha Dennis, Director of
Public Protection & Streetpride
Report author: Angela Rawson, Service
Manager - Licensing

Cumulative Impact Policy – Response to Consultation

Purpose

- 1.1 Historically the Licensing Authority has dealt with issues of cumulative impact through it's Licensing Policy.
- 1.2 It is now time to review how the City is affected by cumulative impact and to bring policies in line with the relevant legislation by creating a Cumulative Impact Assessment (CIA) setting out a statement of how applications will be approached.

Recommendation(s)

- 2.1 That the Committee consider the content of this report and decide on one of the following options:
 - a) publish a statement that the authority remains of the opinion that a CIZ is still needed,
 - or
 - b) publish a statement that the authority is not of the opinion it is needed
- 2.2 Should the Committee decide to retain the CIZ, that the document at Appendix 6 be approved to take effect from 1 April 2023 and published accordingly,

Reasons

- 3.1 The Cumulative Impact Policy must be revised every three years to ensure it reflects current trends in respect of the effects of licensed premises density within the designated cumulative impact zone. It is now time for the Authority's approach to the issue of cumulative impact be reviewed. The retention of the existing Saturation Zone has been requested, and evidenced, by Derbyshire Police with supporting statements from Ann Walker on behalf of the Licensing Authority and Helen Faulconbridge the City Centre Neighbourhood Manager. Following a report to this Committee on January 23rd, a proposed CIA was released for public consultation for a period of 8 weeks.

Supporting information

- 4.1 Statutory Guidance issued under s182 of the Licensing Act 2003 has always indicated that licensing authorities can deal with issues of Cumulative Impact through their statements of Licensing Policy.
- 4.2 Historically, Derby City Council has had concerns about Cumulative Impact within its area. In 2011, following evidence provided by Derbyshire Constabulary, a Cumulative Impact Policy (CIP) was incorporated into the Licensing Policy. This was subsequently retained within the Licensing Policy review of 2015 (published 2016) and again in 2018 (published 2019). In both cases the Policy created a rebuttable presumption that applications within these areas would be refused unless it could be shown that the offer would not adversely have an effect on the licensing objectives and/or concerns of the stressors of the area.
- 4.3 Following the introduction of section 5A of the Licensing Act, Cumulative Impact has been placed on a statutory footing and, in accordance with the Section 182 Statutory Guidance, the Authority's previous approach and policies have been reviewed.
- 4.4 In accordance with the Act, a licensing authority may publish a document which is now named as a Cumulative Impact Assessment (CIA) to help limit the number and/or types of licence applications where cumulative impact is having an adverse effect and undermining the licensing objectives.
- 4.5 Before publishing a CIA a licensing authority must consult with:
- The chief officer of police for the area;
 - The fire and rescue authority for the area;
 - Each local authority's Director of Public Health in England;
 - Persons/bodies representative of local premises licence holders;
 - Persons/bodies representative of local club premises certificate holders; □
Persons/bodies representative of local personal licence holders;
 - Persons/bodies representative of businesses and residents in its area
- 4.6 In addition to the standard approach usually adopted for consultations there will also be a targeted approach with correspondence being sent to persons / bodies listed in 4.5 above, these additional efforts reduce any vulnerability or possible challenge. If ultimately approved and published approved, the CIA will remain in place for a period of three years following which the document will require reviewing.
- 4.7 The document at Appendix 3 was distributed for consultation for a period of 8 weeks which ended on 20 March 2023. A number of general enquiries were made following receipt of communications sent out asking for clarification on the subject matter and how, or if, it would affect their premises. These were managed by telephone or email responses.

- 4.8 There have been five detailed responses following consultation and these are attached at Appendices 1-5 to this report and are listed in date order and summarised below.
- 4.9 Richard Martin, Assistant Director of Public Health supports the retention of the CIZ and has provided some statistics in relation to Alcohol harm in Derby City. (Appendix 1)
- 4.10 Louise Smith, Health & Safety Manager, Derbion – committed to the CIAs cause and supports the content of it. (Appendix 2)
- 4.11 Derby City Pubwatch – does not support the retention of the CIZ. Their response discusses the changes in the City since the implementation of the CIP and the series of issues the trade have had to contend with since the last renewal in 2018. Pubwatch continues to outline reasoning around the use and impact of the CIZ as is now.
- 4.12 Jason Page, Swithland Hall – Does not support retention of the CIZ quoting the many closures, including his own, and the requirement for more licensed retail premises. The writer also refers to taxation of private and social clubs which is not a matter for the Licensing Authority. (Appendix 4)
- 4.13 Flint Bishop, Licensing solicitors based in Derby – does not support retention of the CIZ concerns around:
- The need for regeneration within the Derby City Centre
 - The anti-competitive nature of CIPs which have the effect of reducing consumer choice
 - The desirability of supporting a hospitality trade which has been severely affected by a number of factors, not least COVID, energy prices and staffing difficulties over the recent years.
- 4.14 It is the opinion of the author of this report that regeneration is taking place in Derby with some of the larger proposed sites including the option of licensed premises despite the imposition of the current CIZ .

Following the introduction of Section 5A of the Licensing Act 2003 the rebuttable presumption has been removed. Each application has been, and continues to be, considered on its merits taking into account the proposals and safeguards offered by the applicant. Applications have been approved in Derby as shown by the statistics of the Licensing Authority supporting the fact that the CIP in Derby does not stifle growth nor it is felt to be a deterrent to operators investing in the City.

- 4.15 At the time of writing, it is correct that several East Midlands Councils, including Nottingham, Birmingham, Melton, Leicester have taken the decision to remove their CIZ. Some of the reasoning behind those decisions are the perception by operators of refusal that a CIZ carries, the barrier to regeneration and the fact that there are numerous other pieces of legislation which can be used to manage the inherent problems associated with alcohol and the night time economy. However, it is not yet apparent as to the effect on the those decisions.

It is also worth highlighting that if a CIZ is removed, and problems recur in an area or type of premises, there is the ability to create a new CIZ if the evidence provides for it.

Public/stakeholder engagement

- 5.1 The Cumulative Impact Assessment was subject to full public consultation on the website and a targeted consultation with those persons listed in 4.5 of this report.
- 5.2 17 general enquiries were made following receipt of communications asking for clarification on the subject matter and how, or if, it would affect their premises. There have also been five specific responses. (Appendix 1-5)

Other options

- 6.1 None - under section 5A (7) of the Licensing Act 2003 where an authority has already published a CIA and it is coming to the end of the relevant period (3 years) it must consider whether it remains of the opinion.

Section 5A (8) states that before it decides whether it remains of the opinion it must consult. Therefore at this stage given that a CIA is already in place the only option was to consult. Now the consultation is complete, there are two choices open to members, either to publish a statement that the authority remains of the opinion that a CIZ is still needed or publish a statement that it is not of the opinion it is needed.

Financial and value for money issues

- 7.1 The statutory fees levied for the regime are intended to cover the cost of the creation and consultation of a Cumulative Impact Assessment.

Legal implications

8.1 As indicated elsewhere in the body of the report the issue of Cumulative Impact now has a statutory basis. Section 5A of the Act now allows an Authority to publish a CIA “stating that the licensing authority considers that the number of relevant authorisations in respect of premises in one or more parts of its area described in the assessment is such that it is likely that it would be inconsistent with the authority’s duty under section 4(1) to grant any further relevant authorisations in respect of premises in those parts”. Where a CIA is in place the licensing authority must consider whether it remains of the same opinion and consult before making such decision. This must take place three years from the publication or revision of the CIA, the deadline for this revision is 1st April 2023.

8.2 The statutory Guidance has also been revised and indicates that:

- Cumulative Impact is the potential impact on the promotion of the licensing objectives of a number of licensed premises concentrated in one area;
- A CIA may be published to help an authority to limit the number or types of licence applications granted in areas where there is evidence to show that the number or density of licensed premises in the area is having a cumulative impact and leading to problems which are undermining the licensing objectives;
- A CIA must be summarised in the Statement of Licensing Policy;
- The CIA must include a statement saying that the licensing authority considers that the number of relevant authorisations in respect of premises in one or more parts of its area described in the assessment is such that it is likely that it would be inconsistent with the authority’s duty to promote the licensing objectives;
- The licensing authority must set out the evidential basis for its opinion;
- Evidence of cumulative impact on the promotion of the licensing objectives needs to relate to the relevant problems identified in the specific area(s) to be covered by the CIA;
- The CIA should also be considered alongside local planning policy and other relevant factors which may assist in mitigating cumulative impact of licensed premises;

8.3 The steps to be followed in considering whether to publish a CIA include:

- Identifying concern about crime and disorder; public safety; public nuisance or protection of children from harm in a particular location;
- Considering whether there is good evidence that crime and disorder or nuisance are occurring, or whether there are activities which pose a threat to public safety or the protection of children from harm.
- If there is evidence that such problems are occurring, identifying whether these problems are being caused by the customers of licensed premises, or that cumulative impact is imminent
- Identifying the boundaries of the area where problems are occurring (this can involve mapping where the problems occur and identifying specific streets or localities where such problems arise).

8.4 The Guidance also indicates that through the use of CIAs the licensing authority is setting down “a strong statement of intent” about its approach to considering applications for the grant or variation of premises licences or club premises certificates in the area however, while the evidence underpinning a CIA should generally be suitable as the basis for a decision to refuse an application or impose conditions it does not change the fundamental way that decisions are made under the Act.

8.5 A CIA has been prepared and undergone a period of public consultation before it may be approved and published. Under the terms of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 and the Licensing Act 2003 the consideration and publication of CIAs is a matter which is in the remit of the Licensing Committee.

Other significant implications

9.1 None.

This report has been approved by the following people:

Role	Name	Date of sign-off
Legal	Lionel Desa	21/03/2023
Finance		
Service Director(s)	Samantha Dennis	06/03/2023
Report sponsor		
Other(s)		

Background papers:	Licensing Act 2003 Section 182 Guidance Policing & Crime Act 2017
List of appendices:	Appendices 1 - 5 – Responses to consultation Appendix 6 – Draft Cumulative Impact Assessment