

DERBYSHIRE CONSTABULARY SUPPORTS DERBY CITY PUBWATCH



14th March 2023

Dear Licencing Department,

Please see the below representation against the renewal of the CIP.

A special meeting of Derby City Pubwatch was arranged and held on Wednesday, 8th March 2023, for members to understand and discuss the implications of the current Cumulative Impact policy in Derby City Centre.

Members were made aware that the Licensing Act 2003 made the licensing authority responsible for the licensing system and established that it would be the licensing authority's role to promote the four licensing objectives.

The Licensing Act and other related legislation provide numerous powers to the Licencing Authority and other responsible authorities such as the police, primarily for crime and disorder, fire service for public safety, and environmental health to deal with public nuisance along with other partners that protect the welfare and safeguarding of children. These powers within the Act give the responsible authorities abilities to prosecute individuals for offences committed and the power to review a licence to premises or venues giving rise to concerns.

It was explained to the members that tackling problems arising from the combined effect of having many premises operating in the City Centre in close proximity to each other in the past was problematic and gave way to crime and disorder.

Guidance to the licensing Act 2003 issued by the Department of Culture Media and Sport in 2005 made it possible for the Licensing Authority to consider introducing a special policy in certain problematic areas. The guidance states that where the licensing authority has enough evidence to show that a policy would be necessary, it can, following consultation in the local area, introduce a policy that no further licenses will be granted to similar premises unless the applicant can show that the licensing of the new premises will not add to the problems that have already been evidenced. The licensing policy for Derby City goes further and adds a restriction to vary any existing premises licence unless the applicant can prove the same.

In October 2011, a Cumulative Impact assessment was made, and from the evidence mainly submitted by the Derbyshire Constabulary was approved by the licensing authority and included as part of Derby City Councils' second statement of licensing policy and as mentioned by Ms Walker in her submission been included in all subsequent statements.

Derby City Pubwatch and its members have had meetings during previous consultation periods to discuss as an interested party the implications of a Cumulative Impact Zone in the City. Until now have always supported the findings of the licensing authority and agreed with the necessity of having such a policy in the licensing plan.

Since the initial CIZ was implemented, a lot has changed in licensing terms, not only within the Derby City area but throughout the country. Licensees have had to contend with a series of unprecedented issues never experienced in the trade before. "Brexit" had an impact followed closely by the lockdowns during the COVID pandemic. More recently, we find ourselves in a cost-

of-living crisis; all have devastated licensed businesses in Derby, particularly the City Centre and the night-time economy.

It is apparent that if the Cumulative Impact Policy is not dealt with carefully and regularly assessed for necessity, it can negatively impact the overall quality and future development of the entertainment sector in Derby.

There is a fine line as to whether the Cumulative Impact Policy protects the existing economy's status quo or stifles the introduction of new operators into Derby and injects much-needed inward investment into an ailing hospitality sector.

Operators are bypassing Derby and instead opting for other closely competitive city centres. Nottingham, Birmingham and Leicester are just a few of the Cities in the Midlands that have recently decided, after consultation, to remove the cumulative impact policy to help attract more investment.

The lack of new premises means that as a consequence the existing operators are not threatened by competition, they can rest on their laurels and have no need to further invest in their own establishments, over the next few years these premises will become tired and will not attract enough footfall to sustain a viable business.

Premises are closing weekly, some never to reopen, others are closing during the week only to open at weekends, and other so-called vertical drinking venues have closed and reopened as café bars or eateries.

This is acknowledged by the members of Pubwatch, who, instead of shying away from new competition, relish the challenge; they understand the benefit of opening up the Cities night time and hospitality economy to growth and diversification; this can only benefit workers, the public and the economy of the City at large, particularly now, as Derby is investing so much time and money in the regeneration of the area.

The Policing and Crime Act 2017 put Cumulative impact policies on the statutory footing and brought in evidential requirements, which must be proven before such a policy can be adopted.

The police have made representation and have submitted statistics over the last three years. It may be useful to compare the statistics six years ago, which were used to evidence the need for a CIZ for inclusion in the last licensing policy.

Statistics can be read and interpreted in many ways; the statistics presented do not give a true representation of the effect of the CIZ in the City Centre, there is no evidence to substantiate the need to keep the CIZ in its current form, and where any evidence to suggest that it continues to be relevant today. It is agreed that in the past, the CIZ has been instrumental in helping manage incidents of violence in the City centre, but it's the opinion of Pubwatch members that the effectiveness has now run its course.

There is little doubt that incidents will occur if alcohol is made available as part of the entertainment offered. All licenced premises at any given location will, at some stage, experience "incidents" it is the type and severity of the incident that counts and how effectively these incidents are dealt with.

The statistics also identify crimes recorded; It is presumed that the crime was also initially recorded as an incident, unintentionally inflating the numbers. The representation shows that the crime statistics and the incidents are recorded on different systems. For instance, an incident of assault in the City would be recorded on "InnKeeper" as an "incident". If a crime is then generated from the same incident, it is recorded on a different system; when both of the systems are trawled for details for the report, it would indicate two statistics for one occurrence.

It is also noted in previous representations that the statistics submitted were taken from 23:00 and not 21:00 again; this would muddy the waters by inflating the numbers that are not necessarily related to alcohol-related incidents in the night-time economy.

However, looking at these statistics positively, there are less than two occurrences a day for the entire premises within the CIZ. That equates to an extremely low recorded incident/crime count for any given premises of the 253 listed on the report. This is surely something to be optimistic about and a credit to the licensees and managers working in difficult circumstances to keep everybody safe and the economy moving.

If premises within the City were causing issues to the level of disruption as experienced and evidenced in the past, it would be expected to see high arrest rates for serious crimes or incidents recorded on the report submitted; no arrest statistics for offenders have been included, suggesting that the majority of the incidents are of a minor in nature.

When the CIZ was first introduced, it was apparent that crime and disorder were major issues in the City centre. There was a consensus by all parties showing an interest in the need to implement a policy to curtail the issues being caused by irresponsible operators and help change the demographic of the City in terms of licensed premises.

Numerous joint operations were undertaken to visit problematic premises and take, when necessary, a proactive stance. It may be prudent for the licencing authority, before making any decision on this matter, to ascertain figures between 2011 and 2019 relating to how many premises have closed due in part to action being taken by the responsible authorities, either by way of prosecutions, or reviews either section 51 or 53a.

Barracuda, Players, No No 8, The Sun Lounge, The Bell Hotel, Flamin Monkey, Ten, Shakespear, MD Lounge, Di Gios, DEEZ, Jimmys Bar, Josephines, Coyote Wylde, Saddlers, Curzon's, Bespoke and RED, Gate House, are. Still, a few premises come to mind that caused concern within the City, and action was deemed necessary as a last resort.

Due to this intervention by the police and other responsible authorities, some of these and their respective premises licenses changed hands and became better well-managed venues, without doubt, helped reduce the issues experienced on a weekly basis within the City Centre.

Some premises have never reopened, and their licenses no longer exist; this has left a void in the night-time economy that cannot ever be replaced and, as a consequence, removes the choice and diversity available to the general public wanting to go out and enjoy life in Derby City Centre.

Other premises in the City do have premises licenses but remain closed; they do not offer an attractive proposition to prospective new operators due to the restraints already embedded within the existing licence. With the CIZ in place, it is extremely difficult to apply for a variation to extend the licensing hours and remove previously added restrictive conditions; as mentioned previously, the onus remains on the applicant to prove that further cumulative impact will not occur. These premises will remain redundant until the restrictions are lifted. Operators could be confident that a presumption to grant the variation would be given unless the responsible authorities could prove that the licensing objectives would somehow be undermined. An example of such a building is the "Tram Sheds" on the Strand, a large property that has been restored to a fantastic standard. It has a preliminary licence granted, allowing licensable activities until 01:00; the owners of the building have struggled for two years to lease the property because potential investors do not think that the 01:00 licence will allow any business an equal footing in a competitive market, particularly with other venues locally closing at 04:00. To circumvent the CIZ takes time and money with no guarantee that the outcome would favour the applicant. With the presumption that the application will be refused if opposed, there is very little incentive for operators to consider this property in Derby a viable option.

So with most of the perceived problematic premises now being closed and no apparent proceedings of any type being taken against any of the remaining licensed premises by any responsible authority in the last three years, there has to be a presumption that things are decidedly better, no premises have been forced to close due to undermining the licensing objectives no Premises Licence Holder, DPS or manager of a venue, as far as the Pubwatch membership are aware have been prosecuted for offences under the licensing Act.

Other evidence to consider when concluding would be that members perceive fewer police are actively patrolling the night-time economy than in the past. Previously, due to excessive crime and disorder, each weekend, a police officer of at least the rank of inspector would authorise the use of powers under section 35 of the Anti-social Behaviour, Crime and Policing act 2014. These dispersal powers were once commonplace and were authorised on the majority of weekends for Derby City Centre; such was the amount of crime and disorder being experienced in the night-time economy. This police power is extremely effective, enabling police officers to rid the City of revellers committing alcohol-fuelled anti-social behaviour for up to 48hrs. This specific power has seldom been authorised and utilised over the past few years; it may have been used on a handful of occasions when intelligence pointed to a possible upsurge in disorder, particularly around Bank Holidays or high-risk football matches.

For obvious reasons, the police are best placed to provide the licensing authority with any data regarding this. Surely the removal of the use of this power on a regular basis contradicts the police representation regarding the need for a CIZ due to excessive anti-social behaviour in the City Centre. If the situation was as bad as it once was and continues to be an issue, police would be utilising these powers to control the problems complained of on a regular basis. If the Licensing Authority choose to remove the CIZ and incidents rise, this power could be considered by police to help ease the situation in the future.

The representation submitted by the local authority regarding the CIA states, "It does not create a blanket ban on such applications, as the fundamental way that decisions are made under the Licensing Act 2003 is not changed. Each decision within the area covered by the CIA will be determined on a case-by-case basis, with a view to promoting the licensing objectives. Therefore, a CIA does not remove the Licensing Authority's discretion to grant new licences or to vary existing ones."

Out of the 19 new applications received by the authority, 17 were approved, and two late-night takeaways were refused.

If this is the case, and the majority of the applications are granted, the question needs to be asked as to why a CIZ is required, and normal powers already afforded by the Licensing Act are not utilised instead.

Again, the submitted statistics are misleading; they do not give any relevant details that help the licensing authority make an informed decision. Of the five applications granted as per the original application, how many applicants requested operating times up until 03:00 -04:00 am? Of the 12 granted with modified conditions, the same question needs to be asked, if an applicant requests hours up until 04:00 am, have they been accepted, or have they been negotiated to a time that better suits the CIZ between Midnight and 01:00 am?

Full variations have also been accepted, but the report is unclear as to whether the operating times have been extended, nor does it specify the type of venue the variations relate to. Table 3 of the submission clearly illustrates that ten new licence applications were granted to "On and Off Licence". This type of license is granted to the majority of venues. It includes cafes, restaurants, social clubs, pubs, nightclubs, open spaces, theatres and other recreational areas that want to supply alcohol. It would be more transparent to know what type of venue applied for the variation and what the specifics of the variation were.

To use the submission to justify that application can still be made in the area of the CIZ is to some degree true, but the type of venues being granted applications are limited to bars, cafes and restaurants not opening any later than 01:00; this is not helping to stimulate what was once a vibrant night-time economy.

What is not mentioned in any report and, to be fair, is not covered within the remit of the CIZ are Temporary Event Notices. Vertical drinking bars regularly apply for TENs within the City to extend the hours of operation. So long as the conditions are transferred over from the existing premises licence to the TEN, members state that, on the whole, they are granted, and the hours are extended without challenge. If the premises or venue giving notice of a TEN had somehow been undermining the licensing objectives, or there was going to be an adverse effect on cumulative impact within the City and evidence supporting the claim, the TEN would be rejected by the responsible authorities. There is little evidence to suggest that many TEN have been rejected, therefore supporting the fact that crime and disorder and the cumulative impact are not affected by the extension of hours. Why, then, is there still the necessity for a CIZ within the licensing policy, which makes it difficult for a variation to operating times for existing premises licences?

There is no doubt that the CIZ has been successful and has served the purpose that it was initially devised for; the landscape in the City has changed, and there are abundant cafes and restaurants throughout the City and plenty of variety and choice for people to eat and drink during the day. Whilst there is evidence that these types of establishments have increased in numbers, there has been a definite decrease in what is classed as vertical drinking bars. It was never the intention of the CIZ to reduce the number of traditional pubs and clubs in the City, and it was implemented to help manage the status quo and prevent a disproportional increase to that of other types of venues.

Helen Faulconbridge, the City Centre Manager for Derby City Council, states in her representation;

"Historically, in Derby, the early evening and night-time economy were dominated by venues which, to become profitable, were required to sell copious amounts of alcohol. This led to high levels of alcohol-related crime and disorder and little diversity. The introduction of the CIZ was a significant factor in resolving this problem and improving the City in both perception and reality with respect to safety and a place to visit."

This statement is true; historically, these venues did exist and were causing the issue. As mentioned in this representation, those venues were dealt with proactively and are no longer causing the issues on the scale previously experienced; as Helen states, "the CIZ was a significant factor in resolving this problem and improving the City".

The Licensing Act is clear that once the CIZ has achieved the objectives that it was devised for, consideration should be given by the Licensing Authority to remove it from the licensing policy at the earliest opportunity.

Suppose the Licensing authority decides to remove the need for a CIZ from the licensing policy in Derby. In that case, it will effectively remove a (rebuttable) presumption to refuse applications for a new premises licence or material variations to existing licences (such as the extension of hours) where relevant objections are received; this would remove additional hurdles facing applicants enabling more investment in the City.

However, dropping the CIZ does not open the City up for free for all; the absence of a CIZ does not prevent the responsible authorities or any residents from making representations on the grounds that premises may give rise to a negative cumulative impact in the City. Still, the onus would rely on the responsible authority or resident to provide evidence for such submissions. If

removing the CIZ causes a negative impact, it can always be revisited at a later time and reintroduced if the evidence supports the need.

On behalf of Derby City Pubwatch and its members, we request that the licensing authority remove a Cumulative Impact Policy from within its Statement of Licensing Policy.

Kind Regards

Jason Dickins
Derby City Pubwatch Chairman

