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Review of Cumulative Impact Policy 2022  
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Dear Sir/Madam

### **Review of Cumulative Impact Policy 2022**

Thank you for including us in the consultation of the review of the cumulative impact policy for Derby which we have reviewed.

This letter of representation is written by us as a Licensing Team and not on behalf of any client. Its intention is to ensure that the Council have a different perspective when considering the application made by the Police to renew the Cumulative Impact Policy (CIP).

We are writing in our capacity as specialist Licensing Solicitors based in Derby but operating throughout Great Britain. We hope therefore that we can give a little bit of a perspective of not only the needs of the city but on what is going on elsewhere in the country, specifically the East Midlands.

We are concerned by the proposal to renew the CIP and think that before doing so the Council needs to commission further evidence.

Our principal concerns relate to the following.

1. The need for regeneration within Derby city centre.
2. The anti-competitive nature of CIPs which have the effect of reducing consumer choice.
3. 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 recent years.



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The need for regeneration within the city centre, along with many city centres, is no secret. At a time when the appetite by the retail trade to take on "voids" has seriously diminished then at least some properties could be occupied by hospitality businesses if the environment within the city were more welcoming towards them. As specialised Licensing Solicitors operating within the city, we are not infrequently consulted by operators who would like to consider opening new premises. Often their requirement for doing so is that they can obtain licensing hours of 02.00, 03.00 or 04.00 in the morning. The fact that they are unable to do so is an immediate disincentive to any application. Any conversation which we have with such operators invariably starts on a negative footing because we have to point out to them the effect of the policy, their more limited prospects of success at any licensing hearing and the quite possible requirement thereafter to take the matter on appeal to the magistrates' Court with the consequent uncertainties and costs. As the Council will be aware we have in the past acted for premises where it was unfortunately necessary to appeal the Council's decision.

The result of this is that there will, we are sure, be premises within the city that lie vacant because it has not been possible to attract an operator because the policy acts as a sufficient disincentive.

The policy of course, not only impacts on potential future entrants to the trade but also impacts on consumers. Derby has a large population which needs to be supported by a vibrant night time economy. It is after all not that difficult for people to travel to Nottingham. Importantly of course it is a University city with a University which has grown considerably in size over the years and for which an active and vibrant night time economy will be important in attracting students to the city. Making the barriers to entry for new entrants so high as we have already said acts as a deterrent to new operators and by result inevitably leads to a reduction in consumer choice. It is also a disincentive for existing operators to invest in their own premises if they know that there are in effect barriers to entry to any competition.

It is again no secret that the hospitality industry has been battered by the effects of COVID and rising energy costs. Elsewhere in the country we have acted for operators who have sought to extend their hours simply to make their business more viable. One such recent application was granted in an area where the CIP has recently been abandoned and as such would not have been granted had it been made earlier. This particular application was granted and enabled a significant extension of terminal hours but was granted to an applicant who had a long track record of running premises successfully including this particular site which had a troubled history before the current operator's tenure. The extension of hours which will undoubtedly support his business going forward was, we are sure, in some part granted without opposition from the Police or Licensing as a reward for the sound management which had been demonstrated. Whilst the Police did not object and nor did Licensing the fact of the CIP would previously, in our experience, almost certainly have led to the rejection of the application and possible closure of the business.

We have reviewed the Police evidence which has been submitted in connection with this application but frankly think it is entirely inappropriate for any statistics to be adduced for the periods of 2020, 2021 and 2022 because of the effects of COVID and COVID recovery. We believe they are simply meaningless and no meaningful trends can be discerned. Given this, our view would be that at the very least the Council if possible should postpone any decision on the review of this policy until such time as data is available for appropriate comparisons with the last proper year of trading in 2019. If the Council is minded to continue with its consideration of the renew of the CIP at this point then we believe that it would be well worth commissioning an independent report to review and consider the Police evidence and such a report should in our view be commissioned from somebody who can look at matters afresh. The Committee will know from their own experiences of dealing with hearings that the Police evidence can be frequently subject to challenge. In the context of licensing hearings and applications quite often parties will commission evidence to challenge Police statistics, with such evidence often being provided from retired Police licensing officers from other areas. Such an approach was indeed adopted by ourselves in the appeal to the Magistrates to which we refer above.

The City Council in our view needs to be mindful of what is happening elsewhere within the region. In the Midlands generally Councils in Leicester, Birmingham and Nottingham have already opted to remove their CIPs due to a lack of evidence available to support the scheme and their understanding that the hospitality industry is in need of revival. One of the most recent removals of the scheme was actually in Melton Mowbray who in December of last year determined to remove their CIP stating that *"Cumulative Impact Zones may no longer be suitable in the rapidly changing hospitality sector ... rather than improving the area they can lead to a lack of choice for customers and add extra bureaucracy to new businesses looking to establish there. The pandemic effectively shut down large parts of the hospitality sector for many months so many local authorities no longer have the evidence to support cumulative impact policies and so have removed it."*

We support that statement wholeheartedly as being a sensible overview of frankly where we are. Those comments could equally apply in the city of Derby.

We do note that the Licensing Authority have themselves put in a representation which gives statistics relating to the number of applications granted and rejected and gives the impression that on the whole applications into the city are granted. That we are sure is correct. What we do not know is how many applicants have been deterred from applying because of the effect of the policy, as we say, we have some evidence of this ourselves, but we are far from the only licensing practitioners around and indeed the City Council Licensing team may well have received some enquiries themselves direct. What the report also does not show is a comparison between the number of premises which are actively trading in 2023 compared to those that were actively trading at the time when this policy was last reviewed. Such a comparison would be useful.

We thank you for your consideration.

Yours faithfully



**Licensing Team**  
**Flint Bishop LLP**

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