

# Report of the Cabinet Member for Enterprise Development & Regeneration

Cabinet - 21 April 2016

## REVIEW OF THE CITY CENTRE CUMULATIVE IMPACT POLICY

<b>Purpose:</b>	To seek agreement for the draft of the revised Cumulative Impact Policy/Special Policy (CIP) contained within the Council's Statement of Policy for Licensing to be issued for consultation
<b>Policy Framework:</b>	The Council's Statement of Policy for Licensing (July 2013)
<b>Reason for Decision:</b>	To enable the Authority to consult on the proposed amendments to the CIP and to comply with the requirements of the Licensing Act 2003.
<b>Consultation:</b>	Legal, Finance, Access to Services
<b>Recommendation:</b>	It is recommended that:  The proposed amendments to CIP are agreed to be issued for consultation
<b>Report Author:</b>	Lynda Anthony
<b>Finance Officer:</b>	Aimee Dyer
<b>Legal Officer:</b>	Lyndsay Thomas
<b>Access to Services Officer:</b>	Phil Couch

### 1.0 Background

- 1.1 Under the Licensing Act 2003 (The Act) a Licensing Authority must produce and publish a statement of its licensing policy (the Policy) at least once every 5 years and the Policy must be published before it carries out any of its licensing functions.
- 1.2 During the five year period the Policy must be kept under review and subject to the requirements of the legislation, the Council can make any appropriate revisions. Any revisions to the Policy must be issued for consultation before they can be introduced.
- 1.3 The Policy was last reviewed in 2013 and as permitted under the provisions of the statutory guidance issued by the Home Office under

Section 182 of the Act (the Guidance) the Council resolved to adopt a Cumulative Impact Policy/Special Policy (CIP) for the city centre to be included in the Policy.

- 1.4 This was based on evidence provided by South Wales Police on the levels of crime and disorder in the area together with evidence from departments within the authority, including complaints relating to public nuisance. There are currently 3 areas covered by the CIP and these are:
- Wind street and the surrounding area
  - Kingsway and surrounding area
  - High Street and College Street
- 1.5 Members have requested that the CIP is now reviewed.

## **2.0 Cumulative Impact**

- 2.1 Cumulative Impact is not mentioned specifically in the Act but it is referred to in the Guidance and is considered to be a proper matter for a licensing authority to consider in developing its licensing policy statement.
- 2.2 In the Guidance cumulative impact means *“the potential impact on the promotion of the licensing objectives of a significant number of licensed premises concentrated in one area”*. Cumulative impact can occur where there is a significant number, type or density of licensed premises in an area which are causing serious problems of nuisance or disorder outside or some distance from the premises
- 2.3 The licensing objectives referred to in paragraph 2.2 are the four licensing objectives contained in the Act and these are:
- The prevention of crime and disorder;
  - Public Safety;
  - The prevention of public nuisance; and
  - The protection of children from harm

## **3.0 Effect of a Cumulative Impact Policy**

- 3.1 The effect of a CIP is that in respect of premises located in the area covered by the CIP there is a presumption that applications for the grant or variation of premises licences or club premises certificates, which are likely to add to the existing cumulative impact, will normally be refused or will be subject to certain limitations, if relevant representations are received.
- 3.2 Refusal is normally the case unless the applicant can demonstrate that there will be no negative cumulative impact on one or more of the licensing objectives as a result of their application and the Authority would therefore be justified in departing from their policy in light of the individual circumstances of the case.

- 3.3 A CIP does not mean that applications will automatically be refused and “responsible authorities”, which includes the Police, Environmental Health, Fire Service, Trading Standards and the Licensing Authority or “other persons”, which includes Ward Members and members of the public, need to make relevant representations. If there are no relevant representations the licence must be granted.
- 3.4 In summary where a CIP has been adopted, for a licence to be granted, the onus is on the applicant to demonstrate that their application will not add to the existing cumulative impact in an area. Where a CIP has not been introduced/exemptions apply, a licence must be granted unless there is evidence provided by a responsible authority or other person that supports a decision to refuse the application.

#### **4.0 Review of the CIP**

- 4.1 Concern has been expressed that due to the presumption that licences will be refused in the CIP area, reputable operators of well- run licensed premises, which potentially could have a positive effect on the area, will not be attracted to the city or could be prevented from obtaining a licence due to the process involved .
- 4.2 As a result of these concerns a review of the city centre CIP was requested.
- 4.3 The review has now been completed. Officers have considered the differing impacts different types of premises could potentially have on the surrounding area and have also identified types of premises/activities that could be exempt from the CIP.

#### **5.0 The Proposed Changes**

- 5.1 To reflect the review undertaken changes have been made to the section of the policy that relates to the CIP. The review has also provided the opportunity to include other minor changes that reflect the current Guidance, changes in legislation and also to provide clarification in respect of specific matters.
- 5.2 A draft of the proposed changes to the extract of the policy that relates to the CIP is attached at Appendix A to this report. The proposed changes are identified in bold italic type and where it is proposed to remove information, this is shown by striking through the text. The reason for the change is also indicated in brackets.
- 5.3 The proposed changes to the policy are detailed below:
- A paragraph has been added at 6.1 detailing the premises the CIP may relate to;
  - Paragraph 6.3.1 has been removed and the information included in paragraph 6.3;

- Paragraph 6.6 has been amended to replace the term “interested parties” with the term “other persons”;
- Paragraph 6.7 has been amended to include details of the four licensing objectives and to provide clarification in respect of the steps to be followed when considering the adoption of a CIP.
- Paragraph 6.8 has been amended to clarify that applications will normally be refused where a special policy is in place;
- Paragraph 6.13 has been amended to include reference to all licensing objectives;
- An additional paragraph has been added at paragraph 6.22 to include details of the premises and activities that are exempt from the CIP, these are:
  - Non- alcohol led premises;
  - Theatres, where the main purpose of the premises is the performance of plays;
  - Cinemas, where the main purpose of the premises is the exhibition of films;
  - Premises where the main purpose is the provision of substantial table meals;
  - Premises where the sale/supply of alcohol is by waiter or waitress service only.
- The existing paragraph 6.22 is renumbered to 6.23 and information has been added to clarify the effect of the special policy on applications that fall within the exemptions of the CIP;
- The existing paragraph 6.23 has been renumbered to 6.24 and clarifies the procedure to be followed where relevant representations are made.
- The existing paragraph 6.24 has been renumbered to 6.25 and minor amendments have been made to clarify boundaries of the special policy areas.

## **6.0 Equality and Engagement Implications**

- 6.1 An Equality Impact Assessment Screening form has been completed with the agreed outcome that a full Equalities Impact Assessment report is not required.

## **7.0 Legal Implications**

- 7.1 The following are in addition to the legal implications set out in the report.
- 7.2 A special policy represents a restrictive approach to the granting of licences.

- 7.3 Under a special policy the presumption is to refuse an application / variation unless an applicant can demonstrate in the operating schedule that there will be no negative cumulative impact on one or more of the Licensing Objectives.
- 7.4 A special policy cannot be rigidly applied and each application must be dealt with on its own merits.
- 7.5 It is not sufficient simply that there is a heavy concentration of licensed premises in the area, there needs to be an evidential basis demonstrating the cumulative impact of the concentration. An authority needs to consider the evidence and be satisfied that the inclusion of a special policy is both appropriate and necessary.
- 7.6 A special policy has to be reviewed regularly to assess whether it is needed any longer or there is a need to expand .Special policies can create a stagnant pool of premises which remain largely unchanged and which are immune from competition.
- 7.7 Deficiencies in the consultation process and /or the adoption of a special policy can be challenged by way of Judicial Review. Any refusal of application pursuant to a special policy can be appealed to the Magistrates Court.

## **8.0 Financial Implications**

- 8.1 There are no financial implications.

**Background Papers:** Council's Statement of Licensing Policy;  
Home Office Revised Guidance issued under section 182 of the Licensing Act 2003 – March 2015

**Appendix A:** Proposed amendments to the extract of the Statement of Policy for Licensing in respect of the CIP