

Report of the Cabinet Member for Enterprise, Regeneration & Development

Council – 26 January 2017

REVIEW OF THE CITY CENTRE CUMULATIVE IMPACT POLICY

Purpose:	To consider the responses to the consultation on the review of the Cumulative Impact Policy/Special Policy (CIP) contained within the Council's Statement of Policy for Licensing.
Policy Framework:	The Council's Statement of Policy for Licensing (July 2013)
Reason for Decision:	To seek agreement on the proposed amendments to the CIP and to comply with the requirements of the Licensing Act 2003.
Consultation:	Extensive consultation on the proposed amendments to the CIP has been undertaken involving existing licence holders, representatives of persons carrying on licensed premises, statutory bodies, representatives of other persons and City and County of Swansea Members. Legal, Finance, Access to Services have also been consulted in respect of this report.
Recommendation:	It is recommended that Council considers the responses to the consultation on the proposed amendments to CIP and that the proposed amendments are approved and the revised policy attached at Appendix A is adopted
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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 existing CIP is reviewed with a view to clarifying types of premises that due to their nature will not add to existing cumulative impact and therefore will be considered to be exempt from the CIP.

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 the CIP was reviewed and the proposed changes seek to clarify types of premises that due to their nature will not add to existing cumulative impact and will be considered to be exempt from the CIP. These changes were reported to Cabinet on 21st April 2016 to seek agreement for the draft of the revised CIP to be issued for consultation. 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.

5.0 The Consultation

- 5.1 Extensive consultation on the proposed amendments to the CIP was subsequently undertaken, involving existing licence holders, representatives of persons carrying on licensed businesses, statutory bodies, representatives of other persons and City and County of Swansea Members.
- 5.2 The consultation period ended on the 29th July 2016 and three responses were received. These were from Castle Leisure Limited, Principal Officer for Safeguarding and Performance, Child and Family Services, Social Services and TLT Solicitors on behalf of S A Brain, Cardiff. Copies of the responses received are attached at Appendix B, C and D respectively.

6.0 The responses

- 6.1 The response received from Castle Leisure Limited refers to paragraph 6.22 of the draft revised policy, which relates to the proposed exemptions from the special policy. The response states that the proposed list of exempt licensable activities should be extended to include a Bingo Club, where the main purpose of the premises is to play Bingo games and to make available gaming machines.
- 6.2 The response from the Principal Officer for Social Services refers to paragraph 6.7 of the draft revised policy which relates to the steps that will be followed in considering whether to adopt a special policy, in particular bullet points 1 and 2 which relate to the four licensing objectives listed in paragraph 2.3 above. The response suggests that consideration should be given to adding a reference about 'adult at risk of harm' to both bullet points.
- 6.3 The response from TLT Solicitors acting on behalf of S A Brain (Brains') initially outlines some background information regarding the company and their licensing experience. It then goes on to explain their concerns in respect of certain parts of the revised policy. A summary of these concerns are detailed below:
- 6.3.1 Firstly the response confirms that the company fully support the view that all premises should be well run and promote the four licensing objectives, they do not, however, support the view that those premises should be subject to a potential further administrative burden from ad-hoc local requirements contained in licensing policies.
- 6.3.2 The response states that justification for maintaining the Cumulative Impact Policy (CIP) has not been disclosed therefore they cannot comment on whether retaining the CIP in its present geographical scope is justified. They however welcome the

amendments which clarify what is expected of applicants or reflects changes in guidance.

6.3.3 The response recognises that control mechanisms such as CIPs provide useful tools to the licensing authority and useful guidance to potential applicants however the categories set out in paragraph reference 6.22 of the revised policy, which relates to the proposed exemptions from the special policy give rise to concern, in particular the bullet points relating to *non-alcohol led premises*; and *premises where the sale/supply of alcohol is by waiter/waitress service only*. The concern is whether all applications that fall within the categories should be exempted and specific mention is made of the proposed cut off time for exemptions of 1am and the potential for applicants to look to define their application as exempt when this may not be the intention of the policy.

6.3.4 Comment is made about possible legislative changes likely to give cumulative impact a statutory footing and the need for reviewed interpretation of policies if that is the case. The response also suggests that any changes proposed should ensure that there is clarity in what will be considered caught by the policy, in particular an exemption for non-alcohol led premises may give rise to additional problems where any legislative changes are made.

6.3.5 The response also states for clarity that the company do not support any expansion of the geographical area of the CIP.

7.0 Officer Observations

7.1 The information contained within the three responses received has been considered by officers and the following observations are made.

7.2 In respect of the comments made by Castle Leisure Limited, referred to in paragraph 6.1 of the report, no changes are required to the revised policy as bingo is not a licensable activity under the Licensing Act 2003. Bingo is an activity licensed under the Gambling Act 2005 and where premises hold a bingo licence, bingo would be considered the main activity and the premises would be regarded as non-alcohol led and would be exempt from the special policy, provided that alcohol is not sold after 01.00.

7.3 In respect of the comments made by the Principal Officer for Safeguarding and Performance, Child and Family Services, Social Services, referred to in paragraph 6.2 of the report, no changes are required to the policy as the protection of 'adults at risk of harm' is not a licensing objective under the Licensing Act 2003, therefore cannot be included.

7.4 The comments made by TLT solicitors refer to a number of items within the proposed changes to the policy. The following points correspond with the comments contained within points 6.3.1 to 6.3.6 of the report:

7.4.1 In respect of the comment in paragraph 6.3.1 of the report, current legislative provisions allow licensing authorities to introduce local requirements that aim to address local issues. A number of licensing authorities across the UK have introduced CIPs to address local circumstances.

7.4.2 In respect of the comments in paragraph 6.3.2 of the report. The purpose of the current review is not to determine whether or not to maintain the existing CIP but to clarify types of premises that due to their nature will not add to existing cumulative impact and therefore will be considered to be exempt from the CIP. The current Policy was published in July 2013 and a full review will be carried out and published by July 2018, in accordance with the requirements of the Act detailed in paragraphs 1.1 and 1.2 of the report. Gathering the relevant data to inform the full review will start in 2017.

The current review also provided the opportunity to include other minor changes that reflect the current Guidance, changes in legislation and also to provide clarification on specific matters. These changes are welcomed by the respondent in paragraph 6.3.2 of the report.

7.4.3 In respect of the comments in 6.3.3 of the report, it is accepted that the definitions specifically referred to in the comments provided may be open to interpretation however no change to the draft of the revised policy is recommended as whether or not an application falls within the exemptions listed will be determined with reference to the detailed proposals for the premises in question.

It is important to note that any application, whether it is considered to be exempt from the CIP requirements or not, does not prevent any responsible authority or other person from making relevant representations where they consider that the proposed operation of a premises will undermine one or more of the licensing objectives referred to in paragraph 2.3 of the report. Where relevant representations are received and not subsequently withdrawn, the matter must be referred to the Statutory Licensing Committee for decision. Any decision of the Committee can also be appealed to the Magistrates Court by the applicant or any of the parties who made representations.

7.4.4 In respect of the comments made in paragraph 6.3.4 of the report. Where relevant legislative changes are introduced any application would be dealt with having regard to the legislation and statutory

guidance in force at the time as this will take precedence over the licensing policy. A review of the policy would also be undertaken and relevant changes made.

8.0 The Proposed Changes

8.1 To address the concerns of Members identified in paragraph 4.1 of the report, the section of the policy that relates to the CIP was reviewed as detailed in paragraph 4.2. Proposed changes were made to the policy and these were issued for consultation following approval by Cabinet. Comments were received but these do not require any further changes to be made to the policy.

8.2 It is therefore recommended that the proposed changes to the extract of the policy that relates to the CIP that were approved by Cabinet to be issued for consultation, are adopted for inclusion in the Council's Statement of Policy for Licensing. The proposed changes are 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.

8.3 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 **between the hours of 10am and 1am**, 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.

9.0 Equality and Engagement Implications

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

10.0 Legal Implications

- 10.1 The following points are in addition to the legal implications set out in the report.
- 10.2 A special policy represents a restrictive approach to the granting of licences. A special policy cannot be rigidly applied and each application must be dealt with on its own merits.
- 10.3 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.
- 10.4 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.
- 10.5 A special policy has to be reviewed regularly to assess whether it is needed any longer or there is a need to expand or reduce the CIP area.

10.6 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.

11.0 Financial Implications

11.1 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

Appendices:

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

Appendix B – Response received from Castle Leisure Limited.

Appendix C – Response received from Principal Officer for Safeguarding and Performance (Child and Family Services), Social Services

Appendix D – Response received from TLT Solicitors on behalf of S A Brain, Cardiff.