

ITEM NO:5 – APPENDIX 2

16. Draft Amendments to the Statement of Licensing Policy in respect of Cumulative Impact

Cumulative Impact

- 16.1 In some areas concentrated “pockets” of licensed premises / activities can exist which lead to serious problems of nuisance and disorder arising in the area, and even some distance away from the premises / activity. In such circumstances the impact of those premises / activities when taken as a whole can be far greater than that arising from individual premises / activities. It may not be possible to distinguish individual premises / activities as being the sole cause, or even a major contributing factor, of a particular problem. It is the cumulative combined impact of all of the premises / activities, which causes problems for a wider area and potentially undermines the Licensing Objectives.
- 16.2 The potential impact on the promotion of the Licensing Objectives by a significant number of licensed premises concentrated in one area is often referred to as “cumulative impact”. This should not be confused with the issue of “need” which relates to the commercial demand for licensed premises and cannot be taken into account when determining licensing applications. In addressing cumulative impact the Authority cannot impose quotas of premises or licenses, nor can it adopt the principle of fixing predetermined hours of operation for a particular area (“zoning”).
- 16.3 For several years the Authority has been aware of views being expressed that some parts of the city may be suffering from Cumulative Impact. On the basis of this information the Authority made further inquiries and received further comments and evidence, particularly from the police, suggesting that it is both necessary and proportionate to adopt the approach to this issue set out in this Policy Statement. This evidence is summarised in the attached Appendices and forms the basis for the policy outlined below. This policy was also subject to a consultation exercise with the trade, the public and other bodies likely to be impacted.

Stress Area

- 16.4 In some circumstances an area may have such numbers of licensed premises / activities that it becomes a focal point for large groups of people to congregate and eventually leave. This can create exceptional problems of disorder, noise and other nuisance.
- 16.5 Stricter controls will generally be expected and may be imposed, if necessary and proportionate, with regard to noise controls in areas which have denser residential accommodation.

Policy: CIP1

- 16.6 The Licensing Authority believes that three areas identified in Appendix ... are suffering from Cumulative Impact and are designated as the “Bedford Place Stress Area”, the “Above Bar Street Stress Area”, and the “Bevois Valley Stress Area”.

***Reason:** Evidence indicates that these areas already suffer from cumulative impact and that it is appropriate, proportionate and necessary for special policies to address that issue.*

Policy: CIP2

- 16.7 Where representations are received in respect of applications for either new premises or variations to existing premises in the three Stress Areas a rebuttable presumption will apply

that such applications shall be refused. However, this policy only applies to applications of the types listed below namely:-

- New premises licences
- New club premises certificates
- Provisional statements, including those for material variations to existing premises licences or club premises certificates (i.e. where the modifications are directly relevant to the issue of cumulative impact (e.g. those which significantly increase the capacity of the premises)
- Substantial variations to existing premises or club premises licences (e.g. length of opening hours or increase in period licensable activities may take place). Whether a variation is “substantial” for the purposes of this policy shall be determined by the Licensing Authority in any instance of doubt

Reason: *To ensure that those applications which will add to the cumulative impact already being experienced are refused.*

- 16.8 This policy creates a rebuttable presumption that certain types of applications will normally be refused. Because of the short life of activities covered by a Temporary Event Notice these will not be taken into account when considering cumulative impact other than in relation to the crime and disorder objective. The onus shall be upon applicants to demonstrate through their Operating Schedule and, where appropriate, supporting evidence such as risk assessments, that the operation of the premises will not add to the cumulative impact already being experienced. The standard of proof for the consideration by the Licensing Committee of any application or matter relating to cumulative impact shall be on the balance of probabilities. This policy, however, does not relieve Responsible Authorities or Interested Parties of the need to make representations raising cumulative impact as an issue before such applications are considered in light of the policy. If no representations are received then the application must be granted in terms consistent with the submitted Operating Schedule.
- 16.9 Applications for Provisional Statements may be made where new premises are proposed but have not yet been built or where a substantial variation is proposed to existing premises. Potential licensees may make such an application in order to have a degree of assurance that a licence would be granted before committing themselves to the necessary investment. Where a Provisional Statement has been issued by the Authority to the effect that an application would be granted and the schedule of works accompanying the application for the Provisional Statement is completed satisfactorily then any subsequent application for a premises licence must be granted and any objection raised at that stage which could have been raised at the Provisional Statement stage must be disregarded (unless there has been a material change in circumstances). It is important therefore that if there is potential for new or altered premises to contribute to or cause cumulative impact in any given area that the issue is addressed as soon as possible in the licensing process and that Responsible Authorities recognise the continuing requirement to make representations based on cumulative impact if appropriate. For this reason the Provisional Statement procedure is included in the policy.
- 16.10 The Authority may choose to review this Statement of Policy in the future with a view to designating other Stress Areas to which policy CIP2 or a similar policy may be applied. In such circumstances the Authority will consult widely to ensure that such a designation and the application of such a policy would be justified. The application of policy CIP2 and any similar policy will be the subject of regular review to assess its impact.
- 16.11 Responsible Authorities and Interested Parties may make representations on specific applications concerning cumulative impact even though those applications are not for

premises in designated Stress Areas (and therefore not covered by this policy). In such circumstances the application may be refused (though there will be no presumption that this will be the case) and the Authority may then choose to review this policy statement and consult as to whether the particular area should be formally designated as a Stress Area to which policy CIP2 (or one similar) should apply. To be clear, nothing within this policy shall prevent the consideration of cumulative impact issues simply because a premises (or proposed premises) is not situated within a designated Stress Area.

Policy: CIP3

- 16.12 Should a relevant representation in turn lead to a hearing to determine an application for a premises located within a designated Stress Area applicants should note that the onus is on the applicant to establish that the proposed licensable activities will not, on the balance of probabilities, lead to an increase in or add to the cumulative impact already experienced within the designated area. It should be stressed that when considering the application the Licensing Committee will consider the effect of the proposals upon the licensing objectives in light of the underlying reasons for the designation of the area as being one for which the special Stress Area policies should apply.
- 16.13 Whilst making any decision the Committee shall not ordinarily consider the following as an exception to the policies applying to Stress Areas or as justification for departure from those policies:
- The quality of management of the premises
 - The character or experience of the applicant
 - That the capacity, size, hours or any increase therein applied for, is not substantial
 - That the applicant has a good understanding of how to reduce the potential for crime on the premises including crime of a racist or homophobic nature

Policy: CIP4

- 16.14 In cases where Responsible Authorities or Interested Parties seek to establish that an application should be refused on the grounds that it would result in or further contribute to a cumulative impact which would undermine one or more of the Licensing Objectives they shall be expected to:
- i. Identify the boundaries of the area from which it is alleged problems are arising (or identify the relevant Stress Area in which case paragraphs 16.15 – 16.18 below shall apply) ;
 - ii. Identify the Licensing Objective(s) which it is alleged will be undermined;
 - iii. Provide full details and evidence with specific regard to the matters listed in Policy CIP1 to 4 to show the manner and extent to which it is alleged that the Licensing Objective(s) are being, or are at risk of being, undermined in the area;
 - iv. Provide evidence to show that the undermining of the objective(s) is caused by the patrons of licensed premises in the area.

Reason: To ensure that representations are neither frivolous nor vexatious and that there is an evidential basis for the Committee to reach a decision.

Representations in Respect of Applications in Stress Areas

- 16.15 Where a representation seeks to establish that the grant or variation of a premises licence within an existing designated Stress Areas would undermine one or more of the Licensing Objectives and add to the Cumulative Impact paragraphs 6.16 to 6.18 below will apply.
- 16.16 In cases where those making representations seek to establish that an application should be refused on the grounds that it would result in (or further contribute to) a Cumulative Impact, which would undermine one or more of the Licensing Objectives, the person or body making the representation shall be expected to:
- i. provide full details and evidence as to the extent and seriousness of the nuisance and disorder caused in the area (also drawing reference, where appropriate, to evidence relied upon in the formulation of the Cumulative Impact Policy or Stress Area);
 - ii. identify the Licensing Objective(s) which it is alleged will be undermined with specific regard to:
 - the nature of the licensed activity to be carried on at the premises; and
 - its patrons.
- 16.17 In considering such representation, the Licensing Committee will have regard to matters that appear to be relevant including (but not limited to):
- the occupancy figure of existing premises in the area concerned and of the proposed premises;
 - the nature of the licensed activities in the area and those to be carried on at the premises concerned;
 - the numbers of people who may attend the activities in the area and at the premises concerned in any given period;
 - the times during which the licensable activities do or will ordinarily take place in the area and premises concerned; and
 - other activities of a like nature to those that will be provided under the application and that are available in the area.

Policy: CIP5

- 16.18 In considering applications and representations relating to cumulative impact the Authority will, in addition to the matters listed in policy CIP3 above, have particular regard to:-
- The proximity of the application premises to others in the area concerned which are licensed or subject to a Provisional Statement for similar activities;
 - The occupancy figures of existing licensed premises and those subject to a Provisional Statement, in the area concerned;
 - The operational hours of existing licensed premises and those subject to a Provisional Statement, in the area;
 - The nature of licensed activities in the area;
 - Whether the proposed premises will act as a direct replacement for others no longer licensed in the area;
 - Whether, if the grant of the application would result in or further contribute to a cumulative impact, conditions would be effective in addressing the issue.
 - the proposed management arrangements outlined in the applicant's Operational Plan;
 - the proposed hours of operation of the licensed activities;
 - transport provision for the area.

REASON: *To ensure that regard is had to all relevant considerations relating to the area.*

16.19 The Council will seek to identify mechanisms outside of the licensing regime that are available for addressing the impact of anti-social behaviour and nuisance once patrons leave the vicinity of licensed premises or in respect of the management or operation of licensed premises, and that may lead to the declaration / removal of an area. Regard will be had to the Secretary of State's Guidance in this respect and the following mechanisms which may be, or have been already, employed:

- Planning controls - positive measures to create a safe and clean town centre environment in partnership with local businesses, transport operators and other departments of the local authority.
- Powers of local authorities to designate parts of the local authority area as places where alcohol may not be consumed publicly.
- Police enforcement of the normal law concerning disorder and antisocial behaviour, including the issuing of fixed penalty notices.
- The prosecution of any personal licence holder or member of staff at such premises who is selling alcohol to people who are drunk.
- The confiscation of alcohol from adults and children in designated areas.
- Police powers to close down instantly for up to 24 hours any licensed premises or temporary events on grounds of disorder, the likelihood of disorder or excessive noise emanating from the premises.
- The power of the police, other responsible authorities or a local resident or business to seek a review of the licence or certificate in question.
- Any other local initiatives that similarly address these problems.

16.20 The fact that particular premises are in a Stress Area cannot be used as a justification for removing an existing licence. If a representation is received that an existing licensed premises / activity is having an impact that undermines the Licensing Objectives, then Responsible Authorities and Interested Parties may request a review of that specific licence. Action may be considered by the Council under other parts of the policy.