

REPORT TO:	Licensing Committee 9 December 2020
AGENDA ITEM:	8
SUBJECT:	Licensing Act 2003 – Review of Cumulative Impact Zones/Policies within London Borough of Croydon Statement of Licensing Policy & Creation of Cumulative Impact Assessment
LEAD OFFICER:	Executive Director, Place Department
CABINET MEMBER:	Councillor David Wood Cabinet Member for Communities, Safety & Resilience
WARDS:	All
CORPORATE PRIORITY/POLICY CONTEXT:	
<p>This report is specific to a statutory requirement under the Licensing Act 2003 and statutory guidance and supports the effective delivery of among other policies the Community Strategy 2016-21 priorities of a Place to learn, work and Live; a Place of opportunity for everyone and a Place with a vibrant and connected community and voluntary sector and the Corporate Plan 2018-22 priorities that everyone feels safer in their street, neighbourhood and home.</p>	
FINANCIAL SUMMARY:	
<p>There are no financial implications associated with this report, save for those set out in the body of the report with regard to decision making by the Licensing Sub-Committee, the substantive licensing committee and full Council.</p> <p>The costs of administering the functions associated with this report will be met from existing resources.</p>	
FORWARD PLAN KEY DECISION REFERENCE NO.: N/A	

For general release

<p>1. RECOMMENDATIONS</p> <p>The Committee is asked to:</p> <p>1.1. Consider the proposal to commence consultation on the proposal to maintain Cumulative Impact Areas as currently set out in the Licensing Statement of Policy 2018 and the reasons for this and</p> <p>1.2. Agree that consultation be commenced regarding Cumulative Impact Areas as detailed in paragraph 3.6</p> <p>1.3. Note that the outcome of the consultation exercise will be reported back to Committee for further consideration and, if necessary, onward recommendation to Full Council.</p>

2. EXECUTIVE SUMMARY

2.1 The Licensing Act 2003 made local authorities, as licensing authorities, responsible for the administration of licences and certificates for:

- The sale/supply of alcohol
- The provision of regulated entertainment and
- The provision of late night refreshment

There are four licensing objectives which underpin the legislation and these are:

- The prevention of crime and disorder
- The prevention of public nuisance
- Public safety
- The protection of children from harm

All decisions under the Act must be taken with a view to promoting these licensing objectives.

2.2 In addition to processing applications, the Act requires each licensing authority to determine and publish a policy setting out how it will exercise its functions under the Act. The first London Borough of Croydon Licensing Policy was published on 1 December 2004. The Act requires the Council to review & re publish its policy every 5 years but it may also review it at any time within that 5 year period should it see fit. The policy was last reviewed in 2017 and re published in February 2018 and is therefore due to be reviewed in 2022. A copy of the current policy is attached at Appendix 1.

2.3 Since the Licensing Act 2003 was enacted, the Government has produced statutory guidance to accompany it and the concept of 'cumulative impact' has always been detailed in this statutory guidance. Cumulative impact is the potential impact on the promotion of the licensing objectives (listed at 2.1 above) of a number of licensed premises concentrated in one area. This Council had one cumulative impact zone in its policy from first publication in 2004 and introduced a further four 'cumulative impact zones' (CIZ's) into its licensing policy when it was reviewed in 2013. When the policy was last reviewed, the original one from 2004, that concerned 'On' licensed premises was removed but the four later ones that that relate to 'Off' licensed premises were retained.

2.4 Subsequent to the publication of the current Licensing Statement of Policy, the statutory guidance was updated in April 2018 to reflect an amendment to the Licensing Act 2003 which placed cumulative impact on a statutory footing.

3. DETAIL

3.1 All four current CIZ's relate specifically to premises that are permitted to sell alcohol for consumption 'Off' the premises – Off Licenses. In April 2018, just after the Council published its current policy, the Government gave cumulative impact a statutory footing by incorporating it into the legislation (not just the guidance) and the term Cumulative Impact Assessment (CIA) was introduced.

It is the same concept as CIZ's though, in that any decision to introduce a CIA must be evidence based and a licensing authority is required to set out evidence of problems that are being caused or exacerbated by the cumulative impact of licensed premises in the area(s) described. That evidence is then used to justify the statement that it is likely that granting further premises licenses in that area (in this case for 'Off' sales of alcohol) would be inconsistent with the authority's duty to promote the licensing objectives.

- 3.2 A cumulative impact zone or a cumulative impact assessment does not however change the fundamental way that licensing decisions are made and it is open to the licensing authority to grant an application where it considers that the applicant has demonstrated that their application supports the licensing objectives and that they would not be adding to the cumulative impact if their application was granted. Members will be aware that it is only when an application has drawn relevant representations and been referred to the licensing sub-committee as a result of those representations, that cumulative impact can be considered. Where no relevant representations have been received, the Sub-Committees ability to consider the matter is not engaged.
- 3.3 When Cumulative Impact Assessments were given statutory status on 6 April 2018, there were no transitional or grandfather provisions applying to cumulative impact zones already in existence which had been introduced in line with the then Statutory Guidance. They remained in place as part of the Council's Statement of Licensing Policy but it was recommended in current guidance that they be reviewed within a maximum of three years following the legislative change or when the licensing policy was next reviewed, whichever was the sooner. The requirement to consider and review any Cumulative Impact Areas in place also forms part of the statutory requirements on the Council. Therefore the Council must, as it stands, review its existing cumulative impact policy (zones) before 6 April 2021 and if the evidence base exists, produce a Cumulative Impact Assessment.
- 3.4 Ordinarily, with the aim of reviewing cumulative impact, through the course of this year (2020) the Council would have been gathering evidence which would either indicate there is the continued need for a cumulative impact assessment in the areas currently covered, whether there was a need for a cumulative impact area in places not currently covered or indicate that there were no longer any issues with cumulative impact in the borough. However, covid-19 appeared at the beginning of the year, which started to change people's behaviour and then the first national 'lockdown' started at the end of March and continued for some four months. Life returned to a semblance of normal over the summer months but virus transmission rates started to rise again in September, leading to the introduction of the tier system and then ultimately the second 'lockdown'. Throughout 2020, business activity and people's movements have been restricted and disrupted and this has also had an effect on the nature and locality of criminal and anti-social behaviour (because for large parts of the year people simply haven't been on the streets as they usually would be or been making use of businesses and services in the way they historically had) and any cumulative impact which may ordinarily have been present. As a result, it is considered that any assessment of such matters will not provide accurate or robust enough data on which to determine whether cumulative impact is still an issue or had become an issue in other areas in the

borough – and any decision to maintain or remove the concept of cumulative impact in a given area, in addition to not being based on firm evidence, could also face challenge.

- 3.5 The licensing authority must meet its statutory obligations and review its existing cumulative impact zones however, not least because the Government advise that there is insufficient time to alter the legislation in light of Covid-19, and permit a postponement of the statutory deadline for review of cumulative impact deadline. The Government have however suggested that licensing authorities may also take a pragmatic approach and effectively retain the status quo until times allow a more reliable evidence base to be assessed. Other local authorities have lobbied Government requesting a 'rolling forward' of the existing arrangements and the Government have indicated such a pragmatic approach is acceptable.
- 3.6 It is therefore proposed that the Council, as licensing authority undertakes a six week consultation, with the proposal that we 'roll forward' our current cumulative impact policy in its current form on the understanding that a comprehensive review will be undertaken at a later stage when there is a more balanced picture of whether or not cumulative impact remains an issue or has become an issue in other areas of the Borough and consider any representations we receive in response. The Council must review its overarching Statement of Licensing policy in 2022. It could, at the same time review the cumulative impact areas within it and produce a Cumulative Impact Assessment or it could gather evidence and review the existing cumulative impacts separately, before that.
- 3.7 Section 5(3) of the Licensing Act 2003 specifies which parties must be consulted with as part of any review of cumulative impacts and these are –
- the chief officer of police for the licensing authority's area
 - the fire and rescue authority for that area
 - each Local Health Board for an area any part of which is in the licensing authority's area
 - each local authority in England whose public health functions within the meaning of the National Health Service Act 2006 are exercisable in respect of an area any part of which is in the licensing authority's area
 - such persons as the licensing authority considers to be representative of holders of premises licences issued by that authority,
 - such persons as the licensing authority considers to be representative of holders of club premises certificates issued by that authority,
 - such persons as the licensing authority considers to be representative of holders of personal licences issued by that authority, and
 - such other persons as the licensing authority considers to be representative of businesses and residents in its area.

4. CONSULTATION

- 4.1 The timetable leading up to the Licensing Policy being re published is as follows:

DATE	ACTION
09.12.20	Licensing Committee
TBC	Commence consultation
TBC	Deadline for consultation responses
TBC	Licensing Committee

5. FINANCIAL CONSIDERATIONS

1 Revenue and Capital consequences of report recommendations

There are no direct financial implications associated with this report, subject to the risks at 2 & 3 below. This matter is being processed as part of normal duties and therefore the work associated with it is contained within the departmental budget.

2 The Effect of the Decision

Decisions of the Licensing Sub Committee, the substantive licensing committee and full Council may be subject to appeal and/or Judicial Review

3 Risks

An appeal against a decision of the Licensing Sub-Committee or a Judicial Review of the application and/or policy making processes may present financial risks to the Council with regard to any award of costs against it.

4 Options

There are no other options available to the Council

5 Savings/Future Efficiencies

None identified

Approved by: Felicia Wright, Head of Finance – Place Department

6. COMMENTS OF THE SOLICITOR TO THE COUNCIL

- 6.1 The Solicitor to the Council comments that the Statement of Licensing Policy provides the framework under which the licensing function is administered and the Council's approach under the Licensing Act 2003. Cumulative Impact areas and arrangements form part of the Council's Statement of Licensing Policy.
- 6.2 The Licensing Act 2003 (the "Act") requires that a review of the Cumulative Impact Assessment is undertaken within a three year period either following the introduction of the statutory provisions pertaining to cumulative impact, which came into force on 6 April 2018 or within three years of previously introducing a cumulative impact assessment. In undertaking the required review the Licensing Authority must consult the parties identified in Section 5(3) of the Act (as detailed in paragraph 3.2 above) and provide them with the information required in 5A(6) in other words:

- a) the reasons why it is considering publishing a cumulative impact assessment;
 - b) a general indication of the part or parts of its area which it is considering describing in the assessment;
 - c) whether it considers that the assessment will relate to all relevant authorisations or only to relevant authorisations of a particular kind.
- 6.3 If the outcome of the consultation indicates that there needs to be an amendment or update to the Statement of Licensing Policy, this must be referred to Full Council for consideration and determination.
- 6.4 The Licensing Authority must have regard to the statutory guidance issued under section 182 of the Licensing Act 2003 when drafting its policy. The latest version was issued by the Home Office on 6 April 2018.

Approved by: Sandra Herbert Head of Litigation and Corporate Law for and on behalf of Sean Murphy, Director of Law and Governance and Deputy Monitoring Officer

7. HUMAN RESOURCES IMPACT

- 7.1 The workload associated with the review of the Licensing Policy will be undertaken within existing resources.

8. EQUALITIES IMPACT

- 8.1 The recommendations coming from this report will not have any implications on groups that share a protected characteristic.

Approved by: Yvonne Okiyo – Equalities Manager

9. ENVIRONMENTAL IMPACT

- 9.1 The provisions of the Licensing Act 2003 include consideration of the environmental impact of licensed premises.

10. CRIME AND DISORDER REDUCTION IMPACT

- 10.1 Three of the four licensing objectives in the Act relate to the prevention of crime and disorder and public nuisance and the protection of children from harm. The night time economy is a priority issue in the Council's 'crime and disorder reduction strategy' and the licensing policy is a document that the Council, as licensing authority, should have regard to when deciding licence/certificate applications.

11. DATA PROTECTION IMPLICATIONS

- 11.1 WILL THE SUBJECT OF THE REPORT INVOLVE THE PROCESSING OF 'PERSONAL DATA'?**

NO

The Director of Public Realm comments that agreeing the recommendations in this report will not result in the processing of personal data.

Approved by: Steve Iles, Director of Public Realm

CONTACT OFFICER: Michael Goddard, Head of Public Protection and
Licensing
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BACKGROUND DOCUMENTS: None