



LICENSING COMMITTEE
21 January 2016

ITEM 5

Report of the Strategic Director of Communities
& Place

REVIEW OF CUMULATIVE IMPACT POLICY 2015

SUMMARY

- 1.1 At the last meeting, Committee considered a report about the review of the Council's Licensing Policy.
- 1.2 Committee resolved to defer a decision on the retention of a Cumulative Impact Policy for further information to be obtained.
- 1.3 The report sets out this further information.

RECOMMENDATION

- 2.1 To note the information set out in the report.
- 2.2 To approve the retention of the Cumulative Impact Policy within the Council's Licensing Policy.
- 2.3 To approve the revised Cumulative Impact Policy set out in Appendix 4.

REASONS FOR RECOMMENDATION

- 3.1 The revised Licensing Policy which incorporates the Cumulative Impact Policy needs to be approved by Licensing Committee in January 2016 for publication in early February.

SUPPORTING INFORMATION

- 4.1 At the meeting on 12 November 2015, Committee considered a report that set out the results of a consultation exercise on a review of the Council's Licensing Policy and the recommendations of a Cross Party Working Group. This also included a review of the Council's current Cumulative Impact Policy, which was approved in 2010 following evidence provided by Derbyshire Constabulary and subsequently incorporated in to the main Licensing Policy.

- 4.2 Committee resolved to accept the recommendations/comments of the Cross Party Working Group and endorse the revised Licensing Policy, save for determination of the retention of the Cumulative Impact Policy which was deferred to this meeting for more information to be obtained.
- 4.3 The Cumulative Impact Renewal Report provided by Derbyshire Constabulary during the consultation exercise is attached for information at Appendix 2.
- 4.4 To supplement this, more information has been obtained from responsible authority representatives. This is attached for information at Appendix 3.
- 4.5 Considering the information provided, officers believe that there is sufficient evidence to demonstrate that the number, density and type of premises within the existing defined area are such as to create a significant impact on one or more of the four licensing objectives.
- 4.6 In light of this evidence, officers believe there is a need to retain a Cumulative Impact Policy for a defined area of the city contained within the Derby inner ring road.
- 4.7 The proposed revised Cumulative Impact Policy and associated information for insertion in to the Council's Licensing Policy is set out at Appendix 4.

OTHER OPTIONS CONSIDERED

- 5.1 No other options are available as the process and requirement to revise the Licensing Policy is set out in statutory guidance from Central Government via the Home Office.

This report has been approved by the following officers:

Legal officer Financial officer Human Resources officer Service Director(s) Other(s)	Lucie Keeler John Tomlinson
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For more information contact: Background papers: List of appendices:	Michael Kay, Tel.01332 641940, e-mail. michael.kay@derby.gov.uk None Appendix 1 – Implications Appendix 2 – Derbyshire Constabulary Cumulative Impact Renewal Report Appendix 3 – Supplementary Information Appendix 4 – Revised Cumulative Impact Policy and associated information
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IMPLICATIONS

Financial and Value for Money

1.1 None arising from this report.

Legal

2.1 As set out in the report.

Personnel

3.1 None arising from this report.

IT

4.1 None arising from this report.

Equalities Impact

5.1 None arising from this report.

Health and Safety

6.1 None arising from this report.

Environmental Sustainability

7.1 None arising from this report.

Property and Asset Management

8.1 None arising from this report.

Risk Management

9.1 As set out in the report.

Corporate objectives and priorities for change

10.1 The proposals set out in this report will deliver **better outcomes for communities**.

Derbyshire Constabulary Cumulative Impact Renewal Report

See separate paper

Appendix 3

Supplementary Information

Richard Buxton - Derby D Division Licensing and Community Safety Inspector

I can add the following to the report already submitted by PC Dunn.

His report mentions, as examples, several businesses that we have supported in their applications to open within the current CIZ. These are Embers, Sadler Bridge Studios, The Forge, Byron Hamburgers and Turtle Bay.

Embers, situated in Blacksmith's Yard, Sadler Bridge Studios, on Sadler Gate, Byron Hamburgers in the Intu Centre and Turtle Bay, situated on the Warwick were all new applications for a license. The applicants worked closely with the Police, within the framework of the CIZ, on their application and were willing to accept restrictions on their license (principally a requirement for a large percentage of their floor space to be given over to seated service) which enabled their application to integrate successfully with the CIZ. The Forge, on Blacksmith's Yard, occupies premises which already had a license but, again, the applicant worked closely with Police and accepted similar restrictions on their license. All of these premises continue to successfully trade and contribute greatly to the City's night time economy but are emphatically not the source of disorder.

Two further good examples of this are Okra, on Friargate and The Old Bell on Sadlergate. Okra occupies premises which already had a license in force. The former occupant of these premises was a classic example of a "vertical drinking establishment" which was regularly the source of disorder. Again, the new occupant of these premises worked with Police and accepted similar restrictions to those above on their license. This business continues to trade successfully but is not the source of disorder. With regard to The Old Bell, this has, historically become the source of much disorder, including a death. This business had gone into receivership and the Police were considering applying to have the license revoked. However, the receiver negotiated with the Police to retain the license. The current owner also worked closely with the Police and again accepted restrictions on his license. This business is also not a source of disorder.

I believe that without the existence of the CIZ, it would have been very difficult to negotiate successfully with the applicants to get the required conditions in place that ensure their premises are not the source of disorder.

As you can see, the statistics that you have already been sent show that alcohol fuelled disorder continues to be a problem within the city centre. However, I can say from my experience of ten years of policing this area that removal of the CIZ would greatly increase this problem. Experience tells me that disorder tends to be associated with "vertical drinking establishments," not the type of businesses detailed

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above. The absence of the CIZ would see a proliferation of vertical drinking establishments and a concomitant increase in disorder.

Kerry Hodges - Derby City Council Principal Public Health Manager

Evidence demonstrates that the Cumulative Impact Zone has contributed to the significant reduction in alcohol related harm within Derby City. Derby City Public Health would be concerned that the removal of such a cost effective tool could reverse this trend. This would place increasing pressure on our health and social care services which are already stretched and would result in poorer outcomes for our local communities. For this reason we are strongly in favour of retaining the CIZ.

Craig Keen - Derby City Council Community Safety & Public Protection Manager

Cumulative Impact Zones were a mechanism bought in to limit licensed premises within an already recognised problem area. The guidance recognises that the saturation of licensed venues in a particular area can impact on public nuisance and disorder.

Within a CIZ I believe the presumption of grant is reversed unless the proposed venue can show they offer something different or can adequately mitigate their impact on a problem area. A Licensing Policy and CIZ does not provide a blanket ban but does provide a different view on how an application should be viewed if representations are made.

The CIZ has been a positive factor in negotiations with applicants on style of venues, terminal hours and getting venues to take responsibility for their impact around the licensing objectives. I believe the CIZ has been a crucial factor in limiting the opportunity for violent crime and disorder. It's been positive in terms of venue diversity and combined with Purple Flag benefits the city and the population that use it. The CIZ is reactionary to an already identified problem area. Its renewal is proactive to prevent a return to the environment which brought about its introduction. It could be viewed successful implementation and management of a CIZ potentially undermines the need for its renewal at this time. Crime stats will show we have safer city than we did five years ago.

It's extremely difficult to quantify and isolate the exact impact of the CIZ when taken in context with other factors. However, we also know it's impossible to quantify what didn't happen due to the CIZ as is true for other crimes.

Karl Suschitzky - Derby City Council Senior Environmental Health Officer

Since March 2011, the Environmental Protection Team has been in receipt of periodic complaints regarding entertainment noise from city centre pubs and clubs affecting residents in parts of the city some distance to the north of the city centre. This includes affected dwellings from Darley Abbey, Allestree, Chester Green and even Breadsall Village.

Because of the extensive distances between the potential sources of noise and the dwellings being affected, determining the specific premises of concern has proved a

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lengthy and complicated process. Investigations suggest that a number of city centre premises have been responsible, some of which have closed whilst new sources open.

Given the continuously changing circumstances, the existence of a Cumulative Impact Zone (CIZ) is an incredibly useful tool to better manage noise from licensed city centre premises.

The Environmental Protection Team therefore wholly supports the retention of the Derby City Cumulative Impact Zone, in order to assist with the protection of Derby residents from public nuisance.

Appendix 4

Revised Cumulative Impact Policy and associated information

6. CUMULATIVE IMPACT

- 6.1 The Council will not consider commercial demand ('need') when considering an application. 'Need' is a matter for the planning committee and the market and not for the licensing authority or the licensing policy.
- 6.2 The Council does recognise that the 'cumulative impact' of the number, type and density of licensed/club premises may undermine the licensing objectives. However, the Council may not impose conditions on or refuse to grant or vary a premises licence or club premises certificate due to cumulative effect, unless it has received relevant representation from a responsible authority or other person. The policy addresses this by defining areas affected by 'cumulative impact' as 'saturated areas'. Where considered appropriate the Council may adopt a special saturation policy.
- 6.3 Saturated areas are those which experience exceptional problems of disorder and nuisance over and above the impact of an individual premises.
- 6.4 Before being able to consider whether individual new applications relating to a potential saturated area should not be granted on grounds that they will have an adverse effect on the licensing objectives, the Council must adopt a special policy.
- 6.5 Where relevant representations are received from a responsible authority or other person asking for a specific area to be classed as saturated as described in the guidance, they would need to provide suitable evidence.
- 6.6 The Council will need to follow the necessary steps in considering whether to

adopt a special policy. These are:

- Identification of concerns about crime and disorder, public safety, public nuisance, or protection of children from harm
- Consideration of whether there is good evidence that crime and disorder or nuisance are occurring or whether there are activities which pose a threat to public safety or the protection of children from harm
- Where it can be demonstrated that such problems are occurring identify whether the problems are being caused by the customers of licensed premises, or that the risk of cumulative impact is imminent
- Identification of the boundaries of the area where the problems are occurring
- Consultation with those identified in 5(3) of the 2003 Act. Publish details of the special policy in the licensing policy statement.

6.7 A special policy must be reviewed regularly to assess whether it is needed or if any revisions are required. This would normally be at the time the licensing policy is reviewed.

6.8 A special policy would not prevent the Council considering future applications as each application is considered on its own merits. However, where a special policy has been agreed, applications for a licence will normally be refused where relevant representations have been made. The applicant will need to demonstrate how the premises would not add to the cumulative impact on the area concerned.

6.9 Special policies will be restricted to the impact of a concentration of licensed premises selling alcohol for consumption on and off the premises and premises providing late night refreshment.

6.10 The Council will not use a special policy as grounds for revoking an existing licence or certificate. A relevant complaint that could be linked to a particular premises from a responsible authority or other person would allow a review of the licence or certificate to take place.

6.11 The Council regards the adoption of a special saturation policy as exceptional. Other mechanisms exist to address behaviour that causes a public nuisance or is unlawful, for example:

- planning controls
- positive measures to create a safe and clean city centre environment in partnership with local businesses, transport operators and the Council
- the provision of CCTV surveillance in town centres, taxi ranks, provision of public conveniences open late at night, street cleaning

and litter patrols

- powers of the Council to designate parts of the City area as places where alcohol may not be consumed publicly
- the confiscation of alcohol from adults and children in designated areas
- Derbyshire Constabulary's enforcement of the general law concerning disorder and anti-social behaviour, including fixed penalty notices;
- the prosecution of any personal licence holders or member of staff at each premises who is selling or allowing the sale alcohol to people who are drunk
- Derbyshire Constabulary's powers to close down instantly for 24 hours any licensed/club premises or temporary events on grounds of disorder, the likelihood of disorder or excessive noise emanating from the premises
- the power of Derbyshire Constabulary, other responsible authority or other person to seek a review of the licence or certificate in question
- Early Morning Restriction Orders

6.12 Matters in 6.11 may be supplemented by local initiatives to address these problems.

6.13 Quotas which pre-determine the individual merits of any application, for example, restricting numbers of premises or their capacities, will not be used by the Council. This is because quotas have no regard to the individual characteristics of the premises concerned. Proper consideration must be given to the differences in contrasting styles and characteristics of premises and their differing impact they will have on the local community.

6.14 Following a review of the Cumulative Impact Policy and consideration of further information provided by Derbyshire Constabulary in January 2015, the Licensing Authority is of the opinion that there is sufficient evidence to demonstrate that the number, density and type of premises within the Derby inner ring road area (identified on the accompanying plan) are such as to create a significant impact on one or more of the four licensing objectives.

6.15 In light of this evidence, the Licensing Authority has adopted a Cumulative Impact Policy for the area of the city contained within the Derby inner ring road, to be known as the Derby City Cumulative Impact Zone.

6.16 The Council will monitor and review the Cumulative Impact Policy within a time period to coincide with review of the Licensing Policy.

6.17 The principles of the policy are outlined in Appendix 3.

CUMULATIVE IMPACT POLICY

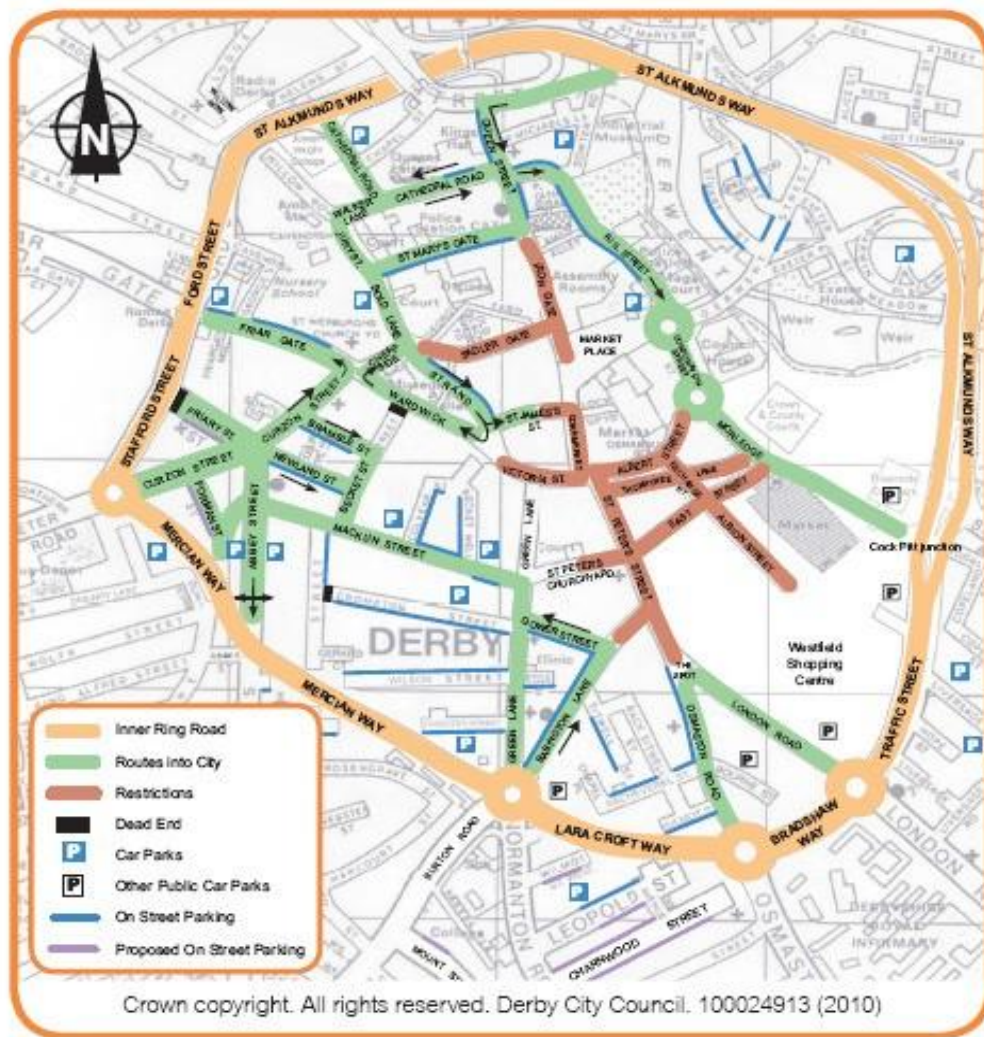
1 BACKGROUND

- 1.1 Derby City Council, as the Licensing Authority, has a duty to comply with its obligations under Section 17 of the Crime and Disorder Act 1998 in respect of crime and disorder and to promote the four licensing objectives of the Licensing Act 2003.

The four licensing objectives are:

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

- 1.2 This Cumulative Impact Policy is written in accordance with the guidance issued under Section 182 of the Licensing Act 2003.
- 1.3 The Licensing Authority is aware of problems that can be created when longer trading hours, large numbers, or the density of premises offering licensable activities are located in close proximity to one another, or where the premises are out of character with the surrounding social infrastructure.
- 1.4 Derbyshire Constabulary provided evidence to support the implementation of a Cumulative Impact Policy within the area edged in beige on the attached plan. The evidence showed a correlation between an increase in alcohol fuelled crime and disorder in the city centre area and the number and density of licensed premises within the identified area.
- 1.5 The statistics showed an increase in crime and disorder offences throughout the evening, peaking around midnight and sustained into the early hours of the morning, until around 4am. Numbers of crimes were higher on Friday and Saturday nights.
- 1.6 The area most significantly affected by the cumulative impact of licensed premises are generally contained within the city centre, which represents 1.2% of the total area of the city of Derby, yet accommodates 73% of all licensed premises within the city.
- 1.7 The Licensing Authority accepts that the grant of new premises licences or club certificates, or the positive variation of existing licences or certificates within this area would undermine the crime prevention objective, and add to the existing cumulative impact of the existing licensed premises.
- 1.8 The Council has adopted a cumulative impact policy for the area contained within the city's inner ring road, shown edged in beige on the plan set out below..



2 EFFECTS OF THE POLICY

- 2.1 There will be a presumption to refuse relevant new applications for premises licences or club certificates, or variation applications to existing licences or certificates, unless the applicant can demonstrate that the premises will not add to the existing cumulative impact of licensed premises within the cumulative impact policy zone. The onus therefore falls on applicants to demonstrate this in their operating schedules.
- 2.2 Variation applications covered under this policy would exclude minor variations.
- 2.3 The policy will only be triggered where relevant representations from responsible authorities or interested parties are received in relation to a specific application. If no representations are received, the Licensing Authority must grant the premises licence or club certificate.
- 2.4 The policy cannot be absolute and the Licensing Authority recognises this and will consider each application on its own merits. Premises with different

operating and/or business styles or characteristics may have different cumulative impacts. Applications relating to premises where the evidence demonstrates that a grant would be unlikely to add to the cumulative impact will be granted.

2.5 The policy will not be used to:

- revoke a licence that is being reviewed following representations received about problems with an existing licensed premises,
- adopt quotas or set terminal hours in a particular area.

2.6 Conditions will not be imposed on premises licences or club certificates for premises within the cumulative impact zone by the Licensing Authority, unless relevant representations from a responsible authority or interested party have been received.

3 REVIEW

3.1 The cumulative impact policy will be reviewed on a regular basis, at the same time as the Council's Licensing Policy, currently every five years.

3.2 A review may involve the boundaries of the existing cumulative impact area being revised, subject to available evidence existing at the time to justify the revision. It may also assess whether the policy is still needed.