

Committee: Licensing Committee

Date: 9 June 2020

Wards: All

Subject: Draft Statement of Licensing Policy 2021-2026, including proposed Cumulative Impact Assessment

Lead officer: Chris Lee, Director, Environment and Regeneration

Lead member: Councillor Nick Draper, Chair, Licensing Committee

Contact officer: Helen Clark, Commercial Services Manager, London Boroughs of Merton, Richmond upon Thames and Wandsworth Joint Regulatory Services Partnership and Guy Bishop, Senior Lawyer Litigation and Planning Team.

Recommendations:

- A. The Licensing Committee to approve, for consultation, the draft Statement of Licensing Policy 2021-2026 as previously approved by the Licensing Committee on the 6th February 2020, attached at Appendix A .
 - B. The Licensing Committee to consider the proposed Cumulative Impact Assessment, attached at Appendix B, and approve it for consultation
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1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1 There is a statutory requirement under section 5 (1) of the Licensing Act 2003 (as amended) for the Council to review and re-publish its Statement of Licensing Policy every five years. The next Statement of Licensing Policy is due to take effect from the 6th January 2021.
- 1.2 As of the 6th April 2018, Cumulative Impact Assessments (CIA) were introduced into legislation by the Policing and Crime Act 2017. The Act sets out what a licensing authority must do in order to introduce a Cumulative Impact Policy, including collecting, publishing and consulting on the evidential basis for its policy and the requirement to review the CIA (including public consultation) every three years. A Cumulative Impact Assessment must be included as part of the Authority's Licensing Policy. A review of the evidential base for the existing Cumulative Impact Zones for Mitcham Town Centre, Wimbledon Town Centre and Wimbledon Village has been carried out, together with an evaluation of whether there is evidence to introduce a special policy in any other area of the borough.
- 1.3 From the data and evidence gathered from a number of data sources it is considered that consultation should revolve around the proposition that:
 - There is sufficient evidence available to support the retention of two of the existing cumulative impact areas, Wimbledon Town Centre and Mitcham Town Centre:
 - There is insufficient evidence to retain the existing zone, Wimbledon Village, as there is not a concentration of licensed premises in the area and there is no evidence to support the view that the number of licenced premises is

such that it is likely that it would be inconsistent with the authority's duty to uphold the licensing objectives to grant any further authorisations in that area.

- It is not appropriate at this time to include any other area of the borough in the Cumulative Impact Assessment.

2. DETAILS.

2.1 Review of the Statements of Licensing Policy for the London Borough of Merton.

There is a statutory requirement under the Licensing Act 2003 for the Council to review and re-publish its Statement of Licensing Policy every five years. The requirement to review and re-publish the Council's Statement of Licensing Policy was extended from three to five years by an amendment to the Licensing Act 2003 brought about by the Police Reform and Social Responsibility Act 2011. The current Statement of Licensing Policy will expire on 6th January 2021

Attached at Appendix A is the draft proposed Licensing Policy Statement 2021-2026 for members to consider. The Policy Statement is unchanged from the Statement approved by this Committee on the 6th February 2020.

It was hoped to carry out a preliminary consultation with Responsible Authorities on the Policy prior to this Committee. However, in light of the current coronavirus pandemic and the changes to the way of working of all the parties concerned this has not been possible.

Instead, if agreed, the draft Statement of Licensing Policy and the proposed draft Cumulative Impact Assessment will be published for consultation, including to Responsible Authorities, starting on the 15th June 2020. It is recommended that the public consultation period should last for a minimum period of twelve weeks (three months).

Following the end of the public consultation period, officers of the Licensing Authority will collate comments received. Details of the comments received and any suggested changes to the draft Statement of Licensing Policy, including the insertion of the Council's Cumulative Impact Assessment at Appendix 3 to the Policy, will be made available to members for discussion at a meeting of the Licensing Committee on a date later this year. Following this meeting, if Committee members agree to the proposed amendments to the draft Statement of Licensing Policy, the Licensing Committee shall recommend adoption by Full Council.

2.2 Cumulative Impact Assessment (CIA)

Cumulative Impact Assessments were introduced into legislation by the Policing and Crime Act 2017 and came into effect on the 6th April 2018. The Secretary of State's Guidance describes a Cumulative Impact Assessment as a special policy consideration and must form part of the borough's Licensing

Policy. Cumulative Impact is described as meaning ‘the potential impact on the promotion of the licensing objectives of a significant number of licensed premises concentrated in one area’.

A cumulative impact assessment must set out the evidence for the authority's opinion. The evidential basis must show that there is a link between the issues of concern in an area and the concentration of a number of licensed premises or licensable activities in that area.

Cumulative impact assessments may relate to all relevant authorisations or only to authorisations of a kind described in the assessment e.g. for premises selling alcohol for consumption off the premises only. An Authority must consult on its assessment and must review it every three years. The evidence underpinning the publication of the CIA must be suitable as a basis for a decision to refuse an application and must be sufficiently robust to withstand any appeal against the decision of the Licensing Committee by a licence applicant to a court.

Prior to 2018 a Licensing Authority was able to adopt a Cumulative Impact Policy although there was no explicit legislative provision to do so. At that time the adoption of such a Policy created a ‘rebuttable presumption’ that applications for new or variation premises licences or club premises certificates (for premises within the cumulative impact area) would be refused unless the applicant could demonstrate that the granting of the application would not have a negative cumulative impact on one or more of the licensing objectives. However, the Policing and Crime Act 2017 does not stipulate how the cumulative impact assessment should be used once published. Consequently, the requirements for determining new or variation applications are the same in areas with a cumulative impact assessment as they are elsewhere. But the licensing authority, responsible authorities and others can have regard to the CIA when deciding whether to make a representation to the Licensing Committee.

There are currently 3 Cumulative Impact Areas or Zones (CIZ) in the borough: Mitcham Town Centre, Wimbledon Town Centre and Wimbledon Village. The CIZ’s for Wimbledon Town Centre and Wimbledon Village were first adopted in 2005. The CIZ for Mitcham Town Centre was introduced in 2016 and relates to the sale of alcohol for consumption off the premises only. Maps showing the extent of the CIZ’s are included in the report at Appendix B.

At its meeting on the 6th February 2020, the Licensing Committee agreed the data sets that should be explored in order to indicate which, if any, areas should be included in any future special policy on cumulative impact. This information is contained in Appendix B to this report.

Having considered the information contained in the report at Appendix B it is considered that:

- evidence is available to support the retention of two of the existing cumulative impact areas, Wimbledon Town Centre and Mitcham Town Centre:

- there is insufficient evidence to support the retention of a special policy for Wimbledon Village.
- It is not appropriate at this time to include any other area of the borough in the Cumulative Impact Assessment.

The removal of an area to which a Cumulative Impact Policy applies does present a risk of business seeking to apply for licences or variations to existing licences in that area as they will no longer have the expectation of receiving a representation from a Responsible Authority. However, the absence of a special policy does not prevent any responsible authority or other person making representation on an application on the grounds that the granting of the licence will result in a negative impact on one or more of the licensing objectives.

The inclusion of new cumulative impact areas into the Assessment could result in responsible new businesses deciding not to move into an area and negatively impact on regeneration plans for currently struggling high streets.

3. Consultation undertaken or proposed.

3.1 It is proposed that a minimum twelve week (three month) public consultation be undertaken on the proposed Statement of Licensing Policy and proposed Cumulative Impact Assessment

4. Timetable.

4.1 Draft Statement of Licensing Policy and proposed Cumulative Impact Assessment to be brought before the Licensing Committee meeting on 9th June 2020 for approval for consultation.

4.2 Public consultation to start on 15th June 2020. Public consultation to last for a minimum of twelve weeks.

4.3 Comments received during the public consultation period and the final draft of the Statement of Licensing Policy to be submitted before the Licensing Committee on 15 October 2020.

4.4 Statement of Licensing Policy to go to Full Council meeting for adoption on 18 November 2020.

5. Financial, resource and property implications.

5.1 None for the purposes of this report.

6. Legal and statutory implications.

6.1 As set out in the report the licensing authority is required by section 5 the Licensing Act 2003 to determine and publish a Statement of Licensing Policy at intervals of not less than five years. The Licensing Authority is required to

undertake a consultation process prior to determining its Statement of Licensing Policy.

Section 141 of the Policing and Crime Act 2017 amended section 5 of the Licensing Act 2003 placing the requirement of a cumulative impact assessment (“CIA”) on a statutory footing, instead of the adoption of Cumulative Impact Zones and Policies, as part of the licensing authority’s Statement of Licensing Policy.

Section 5A(1) of the Licensing Act 2003 (as amended) states:

“A licensing authority may publish a document (“a cumulative impact assessment” stating that the licensing authority considers that the number of relevant authorisations in respect of premises in one or more parts of its area described in the assessment is such that it is likely that it would be inconsistent with the authority’s duty under section 4(1) to grant any further relevant authorisations in respect of premises in that part or those parts.”

A cumulative impact assessment must set out the evidence for the authority’s opinion as set out in the assessment in accordance with subsection (1) above and must be summarised in the Statement of Licensing Policy.

Before introducing a Cumulative Impact Assessment the Licensing Authority is required to undertake a formal public consultation process and a CIA can only be introduced where it is supported by evidence. Paragraphs 14.29 to 14.33 of the Home Office Guidance issued under section 182 of the Licensing Act 2003 sets out what evidence and other matters the Licensing Authority may wish to consider.

7. Human rights, equalities and community cohesion implications.

7.1 These are statutory functions and are applied globally.

8. Crime and Disorder Implications.

8.1 The service has a statutory duty to contribute to the reduction of crime and disorder within the London Borough of Merton under Section 17 Crime and Disorder Act 1988. The prevention of crime and disorder is also one of the licensing objectives as defined in the Licensing Act 2003 and in the Council’s current Statement of Licensing Policy.

By examining issues raised such as the possible adoption of a Cumulative Impact Assessment covering specific areas of the borough the licensing authority is contributing to that commitment.

9. Risk management and health and safety implications.

9.1 All risk and health and safety implications have been considered when compiling this report. None are apparent.

10. Appendices – the following documents are to be published with this report and form part of the report.

10.1 Appendix “A” Draft Statement of Licensing Policy 2021-2026

10.2 Appendix “B” Cumulative Impact Assessment.

11. Background Papers – the following documents have been relied on in drawing up this report but do not form part of the report.

11.1 The Licensing Act 2003

<http://www.legislation.gov.uk/ukpga/2003/17/contents>; and

11.2 Revised guidance issued under section 182 of the Licensing Act 2003

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/705588/Revised_guidance_issued_under_section_182_of_the_Licensing_Act_2003__April_2018_.pdf