

**Committee: Licensing Committee**

**Date: 28 June 2023**

Wards: All

**Subject: Three yearly review of the Council's Cumulative Impact Assessment as required under the Licensing Act 2003**

**Lead officer:** Dan Jones, Executive Director of Environment, Civic Pride and Climate

**Lead member:** Councillor Edith Macauley, Chair of the Licensing Committee

**Forward Plan reference number:** N/A

**Contact Officer:** Caroline Sharkey, Licensing Manager, London Boroughs of Merton, Richmond upon Thames and Wandsworth Joint Regulatory Services Partnership and Guy Bishop Senior Lawyer Litigation and Planning Team.

**Recommendations:**

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- A. That the Licensing Committee approves the review of the Cumulative Impact Assessment.
  - B. That the Licensing Committee approves the data streams to be explored to establish a robust evidence base for adoption of a Cumulative Impact Assessment for the Borough.
  - C. That the Licensing Committee approve proposed revised exceptions to Merton's Cumulative Impact Policy for applications that meet the criteria set out in paragraphs 3.2 and 3.4.
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## **1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY**

- 1.1 Cumulative Impact Assessments (CIAs) were introduced under section 5A of the Licensing Act 2003 ("the Act") by section 141 of the Policing and Crime Act 2017. The Act sets out what a licensing authority must do in order to introduce a Cumulative Impact Policy (CIP), 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.
- 1.2 A Cumulative Impact Assessment must be included as part of the Authority's Statement of Licensing Policy. Where the Authority has published a Cumulative Impact Assessment, it must review that assessment every 3 years, and decide whether it is still required. It is therefore, proposed to carry

out a full review of the evidential base for the existing Cumulative Impact Zones for Mitcham Town Centre and Wimbledon Town Centre, set out at appendix A. The proposed data streams that will be used as a basis for the Cumulative Impact Assessment is laid out in the body of the report at paragraph 2.14.

- 1.3 It is also proposed that as part of the review, the Cumulative Impact Policy include exceptions for applications that meet the criteria set out in paragraphs 3.2 and 3.4.

## **2. DETAILS**

### **2.1 Cumulative Impact Policy and Assessments**

Merton's Statement of Licensing Policy (SoLP) has contained a Cumulative Impact Policy (CIP) since the Act first came into force in 2005 and has been reviewed at the required intervals since then. Prior to the introduction of Section 5A of the Act (referred to in Section 1 above), the Cumulative Impact Policy review would have been incorporated in the reviews of the whole Statement of Licensing Policy. With the introduction of Section 5A of the Act, which requires Authorities to carry out a specific Cumulative Impact Assessment, this part of the Licensing Policy is now required to be reviewed more frequently than the whole Licensing Policy, and every 3 years as opposed to every 5 years. The current Statement of Licensing Policy is attached at appendix B. The Cumulative Impact Policy is produced at appendix 3 of the SoLP.

- 2.2 Since 2005 various changes have been made to the CIP based on consultation feedback and evidence available, which has included adding a new area for Mitcham Town Centre and removing an area for Wimbledon Village.

- 2.3 Cumulative impact refers to the potential impact on the promotion of the licensing objectives due to the number of licensed premises concentrated in one area. This cumulative impact may be caused despite the best efforts of responsible licence holders and is not an indication of badly managed premises. It is instead the combined effect of multiple premises in close proximity, and the overall numbers of customers being attracted to an area. Initially there was no statutory basis for a Council to introduce a cumulative impact policy, instead relying on Government Guidance which stated that a significant number of licensed premises concentrated in one area was a proper matter for the Licensing Authority to take into account when developing its policy statement. This allowed an Authority to adopt a specific 'cumulative impact' policy for particular areas of their borough if they considered that the number, type or density of licensed premises in one area was high or exceptional and serious problems of nuisance or disorder could occur outside or some distance from premises.

- 2.4 Cumulative impact assessments may relate to all relevant authorisations under the Licensing Act 2003 or only to authorisations of a kind described in the assessment e.g. for premises selling alcohol for consumption off the premises only.

- 2.5 As a Licensing Authority, the council is required to ensure that any decision relating to premises licence applications for the sale of alcohol, regulated entertainment or late-night refreshments is appropriate for the promotion of the four licensing objectives:
- the prevention of crime and disorder
  - public safety
  - the prevention of public nuisance
  - the protection of children from harm
- 2.6 Each licence application must be considered on its own merits; however, it is recognised that in some areas the cumulative effects of multiple premises in a specific area or locality may have the potential to undermine one or more of the licensing objectives. Where this is the case, the council may introduce a cumulative impact policy.
- 2.7 A cumulative impact assessment (CIA) or CIP introduces a presumption against the granting of new (or full variations to existing) premises licences or club premises certificates to sell alcohol from bars, pubs, clubs or shops in a designated area where there is evidence that the number, type or density of premises gives rise to a harmful impact on the promotion of the licensing objectives, specifically problems of nuisance and disorder which may arise outside of premises or even some distance from them, unless the applicant can demonstrate in the operating schedule that there will be no negative cumulative impact on one or more of the licensing objectives.
- 2.8 The cumulative impact policy to refuse an application can only be invoked if the Licensing Authority receives representations from residents, any persons or responsible authorities under the Licensing Act 2003 regarding the granting of a new premises licence application or variation of an existing licence. If there are no representations, the Licensing Authority must grant the application in terms that are consistent with the operating schedule submitted.
- 2.9 The Act sets out what a licensing authority must do in order to publish a cumulative impact assessment, including publishing the evidential basis for its opinion, the requirement to consult and with whom and the need to review the cumulative impact assessments (including public consultation) every three years. The evidence underpinning the publication of the CIA must be suitable as a basis for a decision to refuse an application or impose conditions.
- 2.10 The evidence of cumulative impact on the promotion of the licensing objectives needs to relate to the particular problems identified in the specific area to be covered by the CIA. The Secretary of State's Guidance provides a list of Information which licensing authorities may be able to draw on when considering whether to publish a CIA including:
- local crime and disorder statistics, including statistics on specific types of crime and crime hotspots;

- statistics on local anti-social behaviour offences;
- health-related statistics such as alcohol-related emergency attendances and hospital admissions;
- environmental health complaints, particularly in relation to litter and noise;
- complaints recorded by the local authority, which may include complaints raised by local residents or residents' associations;
- residents' questionnaires;
- evidence from local and parish councillors;
- evidence obtained through local consultation;
- trends in licence applications by types and terminal hours;
- Capacities of licensed premises
- Underage drinking statistics.

2.11 The Licensing Authority is required to consult on its proposed CIA with the following:

- the chief officer of police for the area;
- the fire and rescue authority for the area;
- each local authority's Director of Public Health in England (DPH);
- persons/bodies representative of local premises licence holders;
- persons/bodies representative of local club premises certificate holders; persons/bodies representative of local personal licence holders; and persons/bodies representative of businesses and residents in its area

2.12 There are currently 2 Cumulative Impact Areas or Zones (CIZs) in the borough: Mitcham Town Centre and Wimbledon Town Centre. The CIZ for Wimbledon Town Centre was 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. The current CIAs for Mitcham Town Centre and Wimbledon Town Centre were last reviewed in 2020. Maps showing the extent of the CIAs are attached at Appendix A.

2.13 As previously stated, the CIA must be revised every three years to ensure that it reflects current trends in respect of the effects of licensed premises density within the designated cumulative impact zone. There must be robust evidential basis for the decision to publish a CIA and this evidential basis must be open to scrutiny as part of the consultation process. Areas where a CIA is applied but is unsupported by evidence are liable to challenge by licence holders or applicants where decisions are refused on the basis of cumulative impact and such decisions are less likely to be upheld. The current CIAs were last reviewed in 2020. It is now time for the Licensing Authority to review the CIAs in line with legislation.

2.14 It is proposed that the review of the current CIAs will include a call for evidence from Responsible Authorities, seeking evidence from them on matters of crime and disorder, anti-social behaviour, health impacts including alcohol related emergency attendances and hospital admissions and environmental health

complaints (particularly in relation to litter and noise). It is proposed that the following data sets be explored where possible:

- Licensed Premises Data: Where they are and what they are licensed for  
Source: Merton Council records
- Violence against person (VAP) Data: Distribution of VAP Offences in Merton  
Source: Police data extracted from CRIS and mapped
- Ambulance data – assaults and alcohol related call outs  
Data: where an ambulance was required - looking at high demand locations in Merton and the time when ambulance was required. Source: SafeStats data and mapped.
- Rowdy or Inconsiderate Behaviour Data: Alcohol related ASB calls to police  
Source: calls received by Police for Rowdy & Inconsiderate Behaviour
- Relationship between deprivation and alcohol related mortality rates  
Data: Rates of alcohol related mortality rates and levels of deprivation  
Source: Multiple deprivation for Merton by Lower Super Output Area (LSOA).
- Environmental Health Noise Complaints Data: Environmental health noise complaints regarding licensed premises  
Source: Merton Council
- Complaints about licensed premises Data: Source: Merton Council, Metropolitan Police
- Underage sale data Source: Merton Council
- Annual residents survey and Community Safety Survey
- Children and Young Persons Survey
- Data on Women's Safety at night in LB Merton
- Information from Ward Councillors

### **3.0 POSSIBLE EXCEPTIONS TO THE CUMULATIVE IMPACT POLICY**

#### **Wimbledon Town Centre**

- 3.1 The current Cumulative Impact Assessment for Wimbledon Town Centre contains some limited exceptions to the Policy (i.e. applications that might not be considered to add to Cumulative Impact). These exceptions are:

Premises that are not alcohol led and

- i. support the people visiting the area during the day; and/or
- ii. support the wider cultural offering in the area

- 3.2 It is proposed to expand the exceptions to be:
- a. Premises that are not alcohol led and
    - i. support the people visiting the area during the day; and/or
    - ii. support the wider cultural offering in the area
  - b. Small premises that only intend to operate during daytime hours, e.g. those with a capacity of fifty persons or less who only intend to operate until 11pm.
  - c. Premises intending to open at night after 11pm, where:
    - i. A comprehensive operating schedule is offered to demonstrate that there will be no negative cumulative impact and which offers a positive contribution to the Night Time Economy, which may include:
      - i. Providing safe spaces for people late at night
      - ii. Providing a robust Dispersal Policy to ensure minimum disruption to residents, using staff and door security outside the premises, directing customers in an orderly manner away from the premises and remaining outside until all customers have left the vicinity.
      - iii. A strong commitment to preventing violence against women and promoting women's safety at night, with steps to include and sufficient numbers of appropriately trained staff, and
      - iv. Robust steps are proposed to prevent vertical drinking with restaurant style conditions to restrict alcohol to be ancillary to the service of meals.
  - d. Instances where the applicant is applying for a new licence on substantially similar terms to a licence they have recently surrendered for a premises of comparable size in the cumulative impact policy area
- 3.3 Examples of factors we will not consider as exceptional include but are not limited to:
- a) that the premises will be well managed and run
  - b) that the premises will be constructed to a high standard
  - c) that the applicant operates similar premises elsewhere without
  - d) complaint

### **Mitcham Town Centre**

- 3.4 The current Cumulative Impact Assessment for Mitcham Town Centre only applies to applications for the off sales of alcohol and does not contain any exceptions. It does not apply to any other type of licensing activity. It is not proposed to change this, but some limited exceptions are proposed as follows:
- a) Applications with comprehensive operating schedules that meet all the following criteria may be able to demonstrate that there will be no negative cumulative impact on one or more of the licensing objectives:
    - i. Specialist premises selling alcohol ancillary to main activity of business e.g., florist providing champagne with flowers, cheese shop selling wine to accompany cheese.
    - ii. Premises that can demonstrate that the risk of alcohol purchased from the premises being consumed on the street is minimal due to the

nature and type of alcohol being sold, which could include the following:

- i. conditions restricting the sale of high strength alcohol, single cans and miniatures.
- ii. conditions that no beer, lager, cider, ale or spirit mixers with an Alcohol By Volume (ABV) content of above 5.5% will be sold or offered for sale.
- iii. Instances where the applicant is applying for a new licence on substantially similar terms to a licence, they have recently surrendered for a premises of comparable size in the cumulative impact policy area

3.5 Examples of factors we will not consider as exceptional include but are not limited to:

- a) that the premises will be well managed and run
- b) that the premises will be constructed to a high standard
- c) that the applicant operates similar premises elsewhere without complaint

#### **4.0 CONSULTATION UNDERTAKEN OR PROPOSED**

4.1 It is proposed that a further report be brought before the Licensing Committee in September 2023 with the proposed Cumulative Impact Assessment. A twelve week (three month) public consultation will then be undertaken on the proposed Cumulative Impact Assessment

#### **5.0 TIMETABLE**

5.1 Proposed Cumulative Impact Assessment for public consultation to be brought before the Licensing Committee meeting in September 2023

5.2 Public consultation to start in September 2023. Public consultation to last for a twelve week period.

#### **6.0 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS**

6.1 None for the purposes of this report.

#### **7.0 LEGAL AND STATUTORY IMPLICATIONS**

7.1 None for the purposes of this report.

#### **8.0 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS**

8.1 These are statutory functions and are applied globally.

#### **9.0 CRIME AND DISORDER IMPLICATIONS**

9.1 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.

## **10.0 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS**

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

## **11.0 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT**

11.1 Appendix A - Maps showing the current Cumulative Impact Zones.

11.2 Appendix B – Statement of Licensing Policy

## **12.0 BACKGROUND PAPERS - THE FOLLOWING DOCUMENTS HAVE BEEN RELIED ON IN DRAWING UP THIS REPORT BUT DO NOT FORM PART OF THE REPORT**

12.1 The Licensing Act 2003

<https://www.legislation.gov.uk/ukpga/2003/17/contents>

12.2 Revised guidance issued under section 182 of the Licensing Act 2003, effective from 20<sup>th</sup> December 2022.

<https://www.gov.uk/government/publications/explanatory-memorandum-revised-guidance-issued-under-s-182-of-licensing-act-2003>

12.3 House of Commons Library Briefing Paper: Alcohol Licensing, Cumulative Impact assessments

<https://researchbriefings.files.parliament.uk/documents/CBP-7269/CBP-7269.pdf>