

Committee: Licensing Committee

Date: 17th October 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 consider the proposed Cumulative Impact Assessment, attached at Appendix A, and approve it for consultation.
 - B. That the Licensing Committee consider the proposed changes made to Appendix 3 of the existing Statement of Licensing Policy, produced as appendix B to this report.
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1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1 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 Wimbledon Town Centre and Mitcham Town Centre has been carried out.
- 1.2 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.
- It is not appropriate at this time to include any other area of the borough in the Cumulative Impact Assessment.

2. DETAILS

2.1 Cumulative Impact Policy and Assessments

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.

2.2 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.

2.3 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 SoLP is attached at appendix C. The existing Cumulative Impact Policy is produced at appendix 3 of the SoLP.

2.4 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.

- 2.5 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 as stated above. 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 Sub Committee by a licence applicant to a court.
- 2.6 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
- 2.7 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.
- 2.8 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.
- 2.9 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.
- 2.10 There are currently 2 Cumulative Impact Areas or Zones (CIZ) in the borough: Wimbledon Town Centre and Mitcham Town Centre. The CIZ's 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. Maps showing the extent of the CIZ's are included in the report at Appendix A.

2.11 At its meeting on the 28th June 2023, 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 A.

2.12 Having considered the information contained in the report at Appendix A 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:
- It is not appropriate at this time to include any other area of the borough in the Cumulative Impact Assessment.

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.

3.0 CONSULTATION UNDERTAKEN OR PROPOSED

3.1 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.

3.2 It is proposed that a minimum twelve week (three month) public consultation be undertaken on the proposed Cumulative Impact Assessment

5.0 TIMETABLE

5.1 Public consultation to start in on 23rd October 2023. Public consultation to last for a twelve week period.

5.2 Public consultation to start on 23rd October 2023. Public consultation to last for a minimum of twelve weeks.

- 5.3 Comments received during the public consultation period and the final draft of the Cumulative Impact Assessment to be submitted before the Licensing Committee on 13th February 2024.
- 5.4 Revised Cumulative Impact Policy will included in the Statement of Licensing Policy to go to Full Council meeting for adoption in 2024.

6.0 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

- 6.1 None for the purposes of this report.

7.0 LEGAL AND STATUTORY IMPLICATIONS

- 7.1 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.

- 7.2 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.”

- 7.3 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.

- 7.4 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.

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 – Information extracted from Appendix 3 of the existing Statement of Licensing Policy.

11.3 Appendix C – 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 20th 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>

12.4 Merton Council Statement of Licensing Policy

<https://www.merton.gov.uk/system/files?file=licensing20policy202021-2026.pdf>