

CITY OF PLYMOUTH

Subject: Licensing Act 2003 -
12-Month Review of the Cumulative Impact Policy

Committee: Cabinet

Date: 10 November 2009

Cabinet Member: Councillor Brookshaw

CMT Member: Director for Community Services

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Ref: ERS/LIC/

Part: I

Executive Summary:

On the 3rd June 2008 Cabinet resolved, having regard to all the evidence gathered, to recommend to City Council to adopt the recommendations contained in the Majority Scrutiny Report, that a Cumulative Impact Policy be adopted for the following five areas, namely Union St including Derry's Cross, Mutley Plain, North Hill, The Barbican and Stoke Village.

Cabinet further requested that the policy is reviewed by Customers & Communities Overview and Scrutiny Panel on an annual basis and their findings to be reported to Cabinet.

These recommendations were approved by City Council on the 23rd June 2008 and the revised Statement of Policy, including the Cumulative Impact Policy was adopted.

To conform to the resolution to review the Cumulative Impact Policy annually, officers have undertaken a formal public consultation to collect the views of statutory consultees (as defined in the DCMS Guidance issue under S.182 of the Licensing Act 2003 – 9th July 2009) and other interested parties. A review has also been completed by the Customers & Communities Overview and Scrutiny Panel

This report sets out the outcome of this consultation on the Cumulative Impact Policy and its continued use.

Corporate Plan 2009 to 2012:

The report links to the delivery of the corporate improvement priorities. In particular:

- Informing and involving residents.
- Providing more and better culture and leisure activities

**Implications for Medium Term Financial Plan and Resource Implications:
Including finance, human, IT and land**

The cost of the consultation process has been absorbed within existing budgets

Other Implications: e.g. Section 17 Community Safety, Health and Safety, Risk Management, Equalities Impact Assessment etc.

Members should be aware that Section 17 of the Crime and Disorder Act 1998 puts a statutory duty on every Local Authority to exercise its various functions with due regard to the need to do all that it reasonably can do to prevent crime and disorder in its area.

The Cumulative Impact Policy was introduced to assist with the reduction in crime and disorder.

Recommendation & Reasons for recommend action:

That Cabinet consider the report and resolve to note the recommendations of the Customers & Communities Overview and Scrutiny Panel

Alternative options considered and reasons for recommended action:

None

It is a statutory requirement that the Licensing Policy, which contains the Cumulative Impact Policy, is reviewed every 3 years. The next statutory review must be completed by January 2011.

Background papers:

Cabinet Report (C 54 07/08 – 27/11/07) – Statement of Licensing Policy 2008 – 2011 revised 3 June 2008.

DCMS Guidance issued under S.182 of the Licensing Act 2003 (9 July 2009)

Customers & Communities Overview and Scrutiny Panel – 28th September 2009

Sign off: !

Head of Fin	EM DevF 9100 048	Head of Leg	AG 6477/1 2.10.09	Head of HR		Head of AM		Head of IT		Head of Strat Proc	
Originating SMT Member: C Burgoyne											

1.0 BACKGROUND

- 1.1 On the 3rd June 2008 Cabinet resolved, having regard to all the evidence gathered, to recommend to City Council to adopt the recommendations contained in the Majority Scrutiny Report, that a Cumulative Impact Policy be adopted for the following five areas; Union St including Derry's Cross, Mutley Plain, North Hill, The Barbican and Stoke Village. The City Council approved this recommendation on the 23rd June 2008.
- 1.2 On the 23rd July it was also resolved that the policy is reviewed by the Customers and Communities Overview and Scrutiny Panel on an annual basis and their findings be reported to Cabinet.

2.0 CUMULATIVE IMPACT

- 2.1 A Cumulative Impact Policy allows the Licensing Authority to consider the impact on the promotion of the licensing objectives, where a significant number of licensed premises are concentrated in one area and is a proper matter for a Licensing Authority to consider in developing its licensing policy statement. It is possible that the impact on surrounding areas of the behaviour of customers or the activities of all premises taken together will be greater than the impact of customers or activities of individual licensed premises.
- 2.2 A Cumulative Impact Policy does not allow a limit to be set on the number or type of licensed premises within an area, but to consider the cumulative impact that the concentration of premises are having upon surrounding areas, having regard to the impact upon the licensing objectives. For example, concentrations of young drinkers can result in queues at fast food outlets and for public transport. Queuing in turn may be leading to conflict, disorder and anti-social behaviour.
- 2.3 While more flexible licensing hours may reduce this impact by allowing a more gradual dispersal of customers from premises, it is possible that the impact on surrounding areas of behaviour of the customers of all premises taken together will still be greater than the impact of customers of individual premises.
- 2.4 It is usual for cumulative impact to be of particular relevance to the crime and disorder and public nuisance licensing objectives.
- 2.5 A policy should not address "need" for licensed premises in a certain area based on commercial demand. This is an issue that can more properly be addressed through the planning system.

3.0 EFFECT OF AN CUMULATIVE IMPACT POLICY

- 3.1 A cumulative impact policy creates a rebuttable presumption that applications for new premises licences or club premises certificates or variations that are likely to add to the existing cumulative impact, will normally be refused if relevant representations are submitted. Applications will normally only be granted where the applicant can demonstrate in their operating schedule that there will be no negative cumulative impact on one or more of the licensing objectives. For example the application for a small restaurant is very unlikely to add to any cumulative impact and is likely to be granted.

- 3.2 The policy does not relieve the need for responsible authorities or interested parties to make relevant representations. If there are no representations then the license would be granted.
- 3.3 After receiving representations in relation to a new application for or a variation of a licence or certificate, the Licensing Authority must consider whether it would be justified in departing from its policy in the light of the individual circumstances of the case. If the Licensing Authority refuses an application it will still need to show that the grant of the application would undermine the promotion of one of the licensing objectives and that necessary conditions would be ineffective in preventing the problems involved.
- 3.4 The absence of a Cumulative Impact Policy does not prevent any responsible authority or interested party making representations on a new application for the grant, or variation of a licence on the grounds that the premises will give rise to a negative cumulative impact on one or more of the licensing objectives.
- 3.5 The policy may only be applied for new applications or variations. Licenses should not be reviewed due to the presence of a policy. Any review of a license must address issues specifically relating to the operation of that premises. Cumulative Impact Policies must not also seek to introduce set terminal hours within areas.
- 3.6 Since the introduction of this special policy on the 23rd June 2008 approximately 60 applications have been submitted requesting either a new application, variation, cancellation/surrender, temporary event, that have resulted in 13 being considered by Licensing Committee as a result of representations submitted by the police, environmental health or residents. Of these cumulative impact had an influence in five cases and the decisions taken by Committee were to grant three with revised conditions and refuse two.

4.0 PUBLIC CONSULTATION

- 4.1 Officers undertook a public consultation and in accordance with the S. 5(3) Licensing Act 2003 consulted with those specified, including the police, fire service, premises licence holders, club certificate holders and other relevant residents and businesses located within the existing cumulative impact areas.
- 4.2 Officers undertook a 4-week consultation that was launched on the 6th July 2009 with a press release. An information pack was sent to all statutory consultees and interested parties advising them of the consultation process, enclosing an explanatory letter, leaflet and feedback form.
- 4.3 Officers wrote to approximately 170 licensed premises and 50 'interested parties' including local solicitors, British Beer and Pub Association, Campaign for Real Ale, Breweries Federation of Small Businesses, pressure groups and support groups.
- 4.4 All information and documents were posted on the Licensing page of the Council website.

5.0 RESULTS OF THE CONSULTATION PROCESS

- 5.1 Twelve responses were submitted from a variety of people from local residents, residents groups, local licensed premises and the police, the comments and an officer appraisal are set out in Appendix 1.
- 5.2 Based on the limited responses submitted, local residents are in favour of the retention of the policy, as opposed to a local licensee who is against, on the basis that he believes that it should either apply citywide, or be revoked so as to provide a 'level playing field'. It should be noted that this is not an option that is available as it would be contrary to the Act and statutory guidance, in that blanket coverage is considered to be unlawful.
- 5.3 The police have submitted a letter supporting the retention of the cumulative impact policy as stated, supported by a problem profile analysing public space violent crime offences within the areas covered by this special policy, for 1st April 2008 – 31st March 2009.
- 5.4 The Customers & Communities Overview and Scrutiny Panel reviewed the public consultation results and the operation of the cumulative impact policy on the 28th September 2009. The panel having regard to all the evidence put forward during the consultation process recommended to Cabinet that (1) the panel did not accept the conclusions of the consultation process and the existing policy should remain in place; and (2) a full review of the Cumulative Impact Policy should take place together with the three year licensing policy review for 2011.

6.0 CONCLUSIONS

- 6.1 Following the introduction of cumulative impact policy the global economic downturn will have had an impact on the licensing trade as with all other businesses. It is debatable that sufficient time has elapsed to allow a realistic and informed judgement to be made on the effectiveness of the policy.
- 6.2 This special policy allows the Licensing Committee to consider the effects that a new application or variation will have on crime and disorder or public nuisance within the immediate area that is not necessarily attributable to any particular licensed premises.

7.0 RECOMMENDATIONS

- 7.1 That Cabinet consider the report and resolve to note the recommendations of the Customers & Communities Overview and Scrutiny Panel

Appendix 1

Consultation Response Table Cumulative Impact Policy Consultation – July 2009

Table Headings

- | | |
|--------------------------|--|
| 1. Reference Number | Each particular response has been given a unique reference number. |
| 2. Respondent | The individual, company or organisation and address of the respondent. |
| 3. Details of Comments | A copy or précis of the response made referenced to the section of the policy. |
| 4. Appraisal of Comments | Officers response to the representation including whether any changes/variations are proposed as a result. |

General Comments

1	2	3	4
1	Society Group Stoke	<p>Having talked to the residents in the village (and living over the shops) I am told there is still noise with the late hours including the coming and going of taxis. I am also informed that there frequently is a mess on the pavements particularly take-away wrappings and cigarette ends.</p> <p>I do not know how many times the police have been called but I know of one example with pedestrians playing chicken with the traffic.</p> <p>I/we would need considerable reassurances before there is any relaxation of the Impact Policy.</p>	Still supports the policy but concerns are about noise and litter.
2	Licensee City Centre	<p>By definition the word cumulative this should incorporate all the factors towards an impact in any or all of the above districts. Restaurants, off sales, entertainment centres (snooker, bowling, gambling and the like) takeaway / fast food and mobile takeaway / fast food operators. Evidence based remarks are that any or all of the above districts On licence premises are being targeted by this city policy restricting their licence schedule activities, operating schedule and future growth development. Yet consideration must be made to the other many licensed operators who contribute to hospitality leisure throughout the city of Plymouth.</p> <p>This policy if not city wide and all encompassing should be revoked. I have first hand experience on the issues relating to this matter and would be willing to speak openly to the city council panel if the opportunity arose.</p>	Reference numbers 2, 3 and 4 are from the same person who believes the policy should be revoked, if not applied citywide. This is not an option that is open to us as it would be contrary to the Act and S.182 Guidance, in that blanket coverage is not an option. The contributor would be happy to address committee if requested.
3	Licensee Millbay	<p>By definition of the word 'cumulative' this should incorporate all the factors towards an 'impact' in the above areas. Restaurants, off sales, casinos, takeaway / fast food and mobile takeaway / fast food operators. Evidence based remarks, are that any one or all of the above districts on licence premises are being targeted to restrict their licence schedule activities and operating schedules. Yet consideration must. ...made to the other many operators who contribute to hospitality / leisure in any or all of the mentioned districts and further afield.</p>	See above comment

		<p>This policy if not city wide and all encompassing should be revoked. I have first hand experience on the issues relating to this matter and if called I would welcome the opportunity to speak to council panel. If I can be of any further assistance please do not hesitate to contact me.</p>	
4	Licensee Union Street	<p>By Definition of the word 'cumulative' this should incorporate all that factor towards an 'impact' in the above areas. Restaurants, off sales, casinos, take away / fast food and mobile takeaway / fast food operators. Evidence based remarks are that in any one or all of the above districts on licence premises are being targeted to restrict their operations yet a greater a consideration must be made to the other many licensed operators who contribute to the hospitality / leisure in any or all of the mentioned districts. And further afield in the city.</p> <p>This policy if not city wide and all encompassing of all permit licensed premises or activities should be revoked.</p> <p>I have first hand experience on the issues relating to this matter and if called, I would welcome the opportunity to speak to the council panel. If I can be of any assistance in this review, please contact me.</p>	See above comment
5	Resident Greenbank	<p>There has been an increase in reported alcohol fuelled violent assaults in the North Hill and surrounding area. General alcohol fuelled anti-social behaviour and disorder has also increased especially in the Sherwell Arcade area and in streets off North Hill, this has included damage to parked cars and general vandalism.</p> <p>Much of the foregoing has been due to poor policing or more correctly the total absence of police presence.</p>	Believes disorder has increased in the Sherwell Arcade and North Hill areas and puts it down to poor policing.
6	Licensed Premises City Centre	<p>I have no evidence that the licensed establishments at Derry's Cross and Union Street cause any problems to the Theatre Royal or cause any concern to our patrons or staff.</p>	No comment
7	Resident Mannamead	<p>Responded the last time and my response remains the same that I fully support the Cumulative Impact Policy (Mutley Plain).</p>	Supports the continuation of the policy
8	Resident Mutley	<p>Noise continues to be a problem late at night in Sutherland Road (typically 2.00am – 4.00am) when drunken people are returning home. The problem is notably worse on Friday, Saturday and Sunday evenings during university term time.</p> <p>Another related problem that we are still experiencing, once again almost exclusively in university term time, is the dumping of empty beer cans and bottles, empty alcopop bottles and also empty (and sometimes half-empty) spirits bottles on the pavements and walls along the road and in our front garden during the night.</p> <p>I frequently sweep broken glass up outside our property in the early morning to avoid possible injury to passers by.</p> <p>I realise that the policy cannot be applied to shops and</p>	Noise and litter are the residents concerns and believe the empty cans and bottles are down to off-licensed shops.

		<p>that these tins and bottles were obviously purchased in off-licensed shops – but the two problems are related.</p> <p>From my observations of people walking towards Mutley Plain and North Hill in the late evening, many are holding bottles and cans of alcoholic drinks, which they are consuming whilst walking along. Presumably they are already ‘happy’ when they arrive at their venue and it only takes a couple more drinks in a licensed premises for them to no longer have an acceptable level of control over their own behaviour when returning home in the early morning.</p>	
9	Business Mutley Plain	No comment made.	
10	Residents Ass Mutley	<p>Our association represents residents of Hyde Park Road, plus other roads through which drinkers walk on their way home from the licensed premises of Mutley Plain, and our homes and gardens suffer the consequent late night noise, litter and general disturbance.</p> <p>We are therefore grateful to the council for this opportunity to comment on the effect of the past year’s Cumulative Impact Policy on the Mutley area. We trust that your request for ‘evidence based’ comment will not require samples of the unpleasant detritus we often have to remove from the frontage of our properties.</p> <p>The increased visual presence of the police has undoubtedly improved matters, but there are still, we believe, concerns to be addressed. The letter and leaflet, which accompanied the customer feedback form we received, would appear to be limiting, rather than, as we would wish, extending and improving upon the present policy, and even hints that, without sufficient representation from the police, it could become inoperative.</p> <p>Yet the police cannot be aware of every occasion, as are the residents, workers and shoppers of Mutley, when they are subjected to anti-social behaviour arising from the usually high number of licensed premises, which now already exist, on the Plain. For example there is much daytime drinking, and in good weather, rows outside, and barracking from licensed premises, of passers by, affects shoppers and school children who use the Plain on a daily basis.</p> <ul style="list-style-type: none"> • Your Cumulative Impact Policy, by your definition, is concerned exclusively with limiting further extensions of licensing to an already dangerously overcrowded proliferation of licensed premises, yet this is just part of the problem. Mutley Plain, we believe, has a right to special consideration: • It is surrounded by closely packed, densely populated residential accommodation. • It is a valuable shopping and commercial centre. • It is one of the main arteries of the city’s bus service. • School children of all ages walk the area regularly, twice a day. 	<p>Grateful for being given the opportunity to comment. Believes there has been an increased police presence. Talks about social issues in the area and believes the policy which limits further extensions of licensing to an already dangerously overcrowded proliferation of licensed premises is just part of the problem with other issues needing to be addressed.</p>

		<ul style="list-style-type: none"> • Ex-offenders, and sufferers from addictions and psychological problems, have been moved into the area by charities and social services, which have created provision for them in Mutley, despite the undesirability of placing vulnerable people alongside a plethora of licensed premises, amongst heavy traffic and shoppers. An other vulnerable group that cannot profit from such close proximity are our students, who wish to live here because Mutley is so close to the University. Their parents have entrusted them to Plymouth to acquire an education, not a drinking problem. <p>We would therefore suggest that Mutley, Particularly, should be allowed no further extension of licensed premises, and that the present policy should be extended and strengthened.</p> <p>To conclude, as a community group, representing many of the council tax payers who are regularly affected by the heavy drinking that now takes place regularly on Mutley Plain, we would like to express our thanks to those responsible for the implementation of the Cumulative Impact Policy. We would, however, request a wider consideration of the variety of impacts on this area, which we believe should be considered as part of your Cumulative Impact Policy, in order to maintain the sustainability of an area which provides so much of value to this city</p>	
11	Resident Mutley	<p>Chester Place is used by the customers of the Junction as a quiet place to have private arguments. Earlier this week, Thursday 9th July I think, 2 young men thought they were having a private conversation outside our neighbour's house which most of the residents of Chester Place could hear. Fortunately one man calmed the other down and there were no more raised voices or violence. On a previous occasion a couple of years ago a man and woman's altercation descended into violence and, as she was getting hurt, my husband intervened and we called the police, resulting in the male being fined.</p> <p>Such occasions happen a few times a year as we are towards the further end of the street away from the pub. Sometimes it is a person the worse for drink wanting fresh air or somewhere dark and quiet to sleep, throw up, urinate or defecate. Last summer no noise was caused but an individual had obviously entered our garden, defecated, become confused, thrashed around causing several hundreds of pounds worth of damage to valuable plants and probably caused himself injury trying to find a way out.</p> <p>It is clear from the number of drinking glasses found opposite the entrance to the Junction in Chester Place that there is no doorman to control customers outside the premises. Most are outside to smoke, which merely causes the litter of disintegrating cigarette butts in the roadway as I have noticed that the receptacles for them are full to overflowing.</p>	Talks about one particular premises on Mutley Plain and issues associated with it.

		<p>We also suffer the nuisance of delivery lorries to the Junction completely blocking Chester Place. While all their crews know that they are allowed 20 minutes unloading time on double yellow lines, few of them appreciate that they are not allowed to block a public highway for any length of time resulting in frequent altercations and traffic chaos when waiting to enter Chester Place when it is blocked.</p> <p>Finally it is evident that drunken noisy customers are leaving premises at 5am as they are clearly heard across the valley of the railway line west of Mutley Plain. This is especially so in summer when we are more likely to have bedroom windows open. This could be heard twice this week 6th – 12th July.</p>	
12	Devon and Cornwall Police	<p>See APPENDIX 2.</p> <p>The police response to the Cumulative Impact Policy is that over the last twelve months the policy has only been invoked by the police on three occasions as the majority of applications have been of a high enough standard to negate its use.</p> <p>The police consider that the continuation of the Cumulative Impact Policy provides a valuable filter mechanism to ensure that only the highest quality of applications are considered with these key evening and night time economy neighbourhoods.</p> <p>I enclose supporting documentation detailing crime data on the neighbourhoods with Cumulative Impact Areas.</p>	The police believe the policy is a valuable filtering mechanism for applications.