

# APPENDIX 5

## **The Little Shop**

### **Cumulative Impact Policy Response**

In 2019 Sunderland City Council amended its Statement of Licensing Policy ("SOLP"). Part of this amended policy included the imposition of Cumulative Impact Areas ("CIA's") within the City, briefly explained at section 7, page 11 (As an Addendum Note to Section 7), and more fully developed at Appendix 3, from page 57 onwards.

The council, on 19<sup>th</sup> September 2018, *"resolved to publish a cumulative impact assessment which indicates that we consider that the numbers of relevant authorisations in respect of premises in certain parts of the City are such that it is likely that it would be inconsistent with our duty to carry out our functions under the Act with a view to promoting the licensing objectives to grant any further relevant authorisations in those areas."*

The SOLP recognised 7 areas, in which the new CIA relates. Those areas of the City were:

- the City Centre and East End (parts of Hendon, Millfield and St Michael's wards);
- Millfield and Pallion (parts of each ward);
- Hendon (parts of Hendon and St Michael's wards);
- Southwick;
- Shiney Row;
- Washington North; and
- Hetton (parts of Copt Hill and Hetton wards).

The applicant's premises falls within the City Centre CIA, and falls within the definition as a result of applying for an "off licence" to sell alcohol.

It is important to point out that the existence of the CIA does not change the way in which any application should be approached. Applications should be judged on their own merits (SOLP, para 5.1, p9), and that applicants are expecting to incorporate into their operating plans steps to promote the licensing objectives, such as those agreed with Northumbria Police.

However, whilst the SOLP describes the Licensing Act 2003 at being 'permissive' (SOLP, Para 1.17, p3), if representations are received then a licence will not be granted unless those representations can be mediated or the application is granted before the Licensing Committee. In the context of the councils CIA, granting applications would also be against the backdrop of the current CIA's, where that is engaged.

It seems from Para 7.1 that the intention of the CIA was that it would be applied whenever the council receive a relevant representation from a responsible authority or another person. However, the Addendum at para 7(a) removes this section, so we are not clear as to how and when this CIA policy is to be applied, and whether it is qualified in any way, and whether it might only be instigated when it is called upon? An example of that might be objecting on the basis of Cumulative Impact. Appendix 3 assume it is automatically engaged although para 7 is not clear on that point.

### **The Little Shop**

It appears that any assessment for Cumulative Impact in respect of this application is only triggered by an application for the off sale of alcohol. So, initially, for the sake of this application, it appears that the existing inoffensive characteristics of the premises are incidental. Meaning, operating a café until 23:00 is not an issue, and it is only the sale of alcohol which changes things.

Interestingly, para 8.1 of the SOLP lists other factors which recognise that there are other 'mechanisms for controlling cumulative effect', that the council might use. We would suggest the implementation of some of those 'mechanisms' by the applicant has assisted in reducing any potential impact of the premises on the licensing objectives and the CIA, thus rebutting the presumption in terms of refusal. The applicant has committed to the installation of CCTV and they have cooperated with the Police. Further, it is perhaps worth pointing out that the application has received no representations from any of the responsible authorities here, and that must be a factor of significant weight in considering whether to grant this application. Certainly, the S.182 Guidance at para 9.12, which states that:

"Each responsible authority will be an expert in their respective field, and in some cases it is likely that a particular responsible authority will be the licensing authority's main source of advice in relation to a particular licensing objective. For example, the police have a key role in managing the night-time economy and should have good working relationships with those operating in their local area<sup>5</sup>. The police should usually therefore be the licensing authority's main source of advice on matters relating to the promotion of the crime and disorder licensing objective...."

### **Size of premises**

This premises, is by comparison to larger licensed premises offering off sales, very small. This premises could fit multiple times within the alcohol aisle of all of the major supermarkets in Sunderland, and only a small proportion of this business would be given over to alcohol sales. Its impact by comparison would also be similarly tiny. Certainly this is a factor mentioned as one of the bullet points in para 5.2 of the SOLP, being "the use of the premises and the numbers of people likely to attend". Clearly, the size of the premises dictates the number of people likely to attend.

The size of the premises, is small so any impact would be inconsequential, by comparison to much larger off sale type premises. Combined with its capacity and range of products this limits its potential clientele, which is a lot more selective than your standard 'lager drinker'. Customers identified so far, with the premises trial run, and connoisseurs of finer products for which they are prepared to pay a premium. So the price of the products is also a factor drawing customers away from binge drinking or possibly buy larger quantities of alcohol than they perhaps need. That makes for more informed purchasing decisions.

### **Availability of alcohol**

Whilst we would accept that there is evidence in other countries to suggest that decreasing the availability of alcohol decreases consumption, these are not like for like comparisons. How could they be, since we have different laws and cultures. Taking Canada as an example, alcohol sales are in most territories controlled by the government, with some private retail in limited circumstances, such as locally produced beers etc. Drinking ages also differ and consumption in public areas is generally forbidden. In these circumstances the government can therefore directly control availability, since they are in control of supply. Therefore, such a comparison seems erroneous when talking about Sunderland.

However, if the council were to identify certain products sold from 'off licences' then such a control might be possible in terms of conditions on our premises licence possibly relating to product types or premises characteristics. Such control might be achieved for example by more tightly controlling how we operate if that were felt necessary. Operating style conditions are used in other local authority areas, such as Durham, Middlesbrough and Newcastle. A condition to control the operating style might be as follows:

*"The premises will trade as a café offering off sales only in respect of select products. Those products will be beers, lagers, ciders, wines and spirits not typically available in a retail environment, outside of speciality premises such as this. For example, this would include local craft ales, English wine and locally produced gins. It would not include large scale commercially produced products available nationally in large supermarkets, such as Fosters, Stella Artois, Woodpecker Cider, or Blue Nun. If the premises are no longer ran in this 'operating style' it must consult with the licensing authority as to whether a variation of the premises licence, or a new premises licence application, is required and the premises licence holder will comply with that direction"* [NB: This is provided only as an example, although the applicant would be open to something similar].

### **Alcohol Price**

Para 1.16 of the Councils SOLP talks about price in the context of MUP and regulating alcohol harm reduction. It is perhaps worth mentioning that the products on offer at the premises have been, and will be premium products and not the cheap cider/perry/lager often associated with street drinking and consumption by those leading a chaotic lifestyle. For that reason, we were happy to agree condition 7 with the Police as a means of placing a form of control over the stronger types of products on sale, which are often the stronger and cheaper alcohol products. This also fits in with the council's SOLP at Para 24.1, since it encourages responsible drinking. Our client would also be happy to sign up to the council's voluntary code of good practice in respect of the products it sells, but given some of the specialist products it will sell could not agree a per unit price.

It would make far more sense that the individual applicant premises be considered as a whole, and in light of all factors, not just one part.

This application could fall outside of the CIA criteria, if it were considered to be unlikely to add to the existing cumulative impact upon the licensing objectives. There is a form of assessment carried out for the CIA areas, contained from pages 58 to 84 of the SOLP. It makes a number of comments, which we feel would draw attention and concern away from this type of premises. Those are:

1. We can emphatically say that the products on offer at the premises will not impact upon hospital admissions for under 18's, since our products are not attractive to that age range.
2. The premises will not be selling alcohol for immediate consumption on the premises, so is extremely unlikely to be adding to perceived problems in the City connected with on sales (referred to on page 59 at para 1.6), assaults in on-licensed premises and hospital admissions.
3. The premises hours are limited in the application, with sales only taking place between 11:00 and 23:00 so in terms of its impact it is narrowed. So one would expect that this premises will not have the level of impact expected of premises "operating late at night and in the early hours of the morning [which] can cause a range of nuisances." (para 12.2 SOLP, p14). Chapter 13 of the SOLP deals with Licensing Hours, but focuses mostly on 'on licensed' premises. Where it does refer to off sales, it states at para 13.4:

*"The Council will generally consider licensing shops to sell alcohol for consumption off the premises at any times they are open for shopping. However, we may restrict those hours, e.g. where the Police or local residents make representations in respect of disorder and disturbance, in order to prevent a breach of the licensing objectives."*

We believe that this is saying applications will be granted during operating hours, but may be restricted where representations are received. However, in referring to those representations it mentions the premises effect, which we understand to mean 'with evidence'. There is simple no evidence here of that impact from this premises when it has operated.

In having considered the comments above, it should also be kept in mind that the existence of a CIP does not absolve parties from the need to make a relevant representation. That means that there must be sufficient reason to raise a representation for the CIA to then kick into place (p57, para 2). There must be a factor, or factors, which give rise to the identified concern. It is therefore a logical conclusion, drawn by the council, that "Those applications which are considered to be unlikely to add to the existing cumulative impact upon the licensing objectives may be granted" (Page 57, para 3). Indeed, in such circumstances you

may find that those premises are different from other premises or are in some way exceptional enough to be granted a premises licence.

### **A Dynamic Business**

We believe that this application fits the description provided by the council at para 4 of page 57, as being the type of business that would "significantly enhance the economic vitality of the City Centre", because it has already proved itself to be a "dynamic business" which is "Well run [and] high quality". Of great assistance in assessing the potential impact of this application must be the period of trading with off sales of alcohol from the premises under temporary events notices. This was carried out with the cooperation of the Police and the Licensing Authority. The necessary risk assessment and evaluation of the trading style has in fact allowed conditions to be agreed with the Police during the application period.

In such areas where these policies exist, applications which receive representations will have to satisfy the Licensing Committee that they will not add to the cumulative impact, already felt to be in existence, before they can be granted. which was implemented in the City Centre following consultation with various stakeholders and partners.

### **Conclusion**

So, the imposition of CIA's in Sunderland is not a bar at all on new applications or applications which significantly change the character or capacity of a premises. The revised SOLP is designed to have more detailed application criteria, and act as a gate keeper; something to make sure that the City is not simply adding to existing problems caused by certain types of premises. Unfortunately, the Policy doesn't sufficiently identify the types of premises it is looking to target. That is unfortunate, because in taking such a broad brush approach to all premises, there is no obvious differentiators which might make decisions a little clearer. Here for example, all off licences are treated the same, when clearly this premises differentiates itself significantly from others. The same might be said for example of micro pubs or much more generally in terms of restaurants. I give these examples since these are all premises where typically there are fewer issues.

In terms of this application specifically; it does not present as the type of premises which would cause the issues, which in turn delivers the statistics quoted and presented in pictorial format within the policy. Put short: it will not add to the cumulative impact felt in the City Centre. It will enhance the area further.

We would say that this is an application which should be "considered to be unlikely to add to the existing cumulative impact upon the licensing objectives [and therefore] may be granted' (SOLP, Appendix 3.3). This is echoed at Para 1.6 where it states ".....We may, if we consider it appropriate, deviate from the policy but would need good reasons, which we can justify, to do so". We feel that those reasons have been given.

**END.**