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CABINET – 14 SEPTEMBER 2021

LICENSING ACT 2003 - REVIEW OF CUMULATIVE IMPACT ASSESSMENT

REPORT OF THE EXECUTIVE DIRECTOR OF NEIGHBOURHOODS

1.0 PURPOSE OF THE REPORT

1.1 To inform Cabinet of the legal requirement of the Council, in its capacity of a Licensing Authority, to undertake a review of the Council's Cumulative Impact Assessment (CIA), under the Licensing Act 2003, ("the Act").

2.0 DESCRIPTION OF RECOMMENDATION

2.1 To recommend to Council that the existing CIA should cease as from 19 September 2021, and that a CIA be further considered in the next 6-12 months subject to the availability of all relevant data at that time.

3.0 BACKGROUND

3.1 Section 5 of the Act requires all Licensing Authorities to prepare and publish, every 5 years, a Statement of Licensing Policy that they propose to apply in exercising their functions under the Act.

3.2 The Council's current Licensing Policy was agreed by Council at its Meeting of the 18 November, 2020 as an intermediate position to allow the then existing policy to roll over as set out, due to the existing difficulties created as a result of the Coronavirus Pandemic. The Licensing Policy was subsequently published and took effect as from and including 7 January 2021 for the 5 year period to 6 January 2026, although it was agreed that the Licensing Policy would undergo a comprehensive review in due course, when the hospitality sector returns to normal operation.

3.3 Since the implementation of the Licensing Act, Councils have commonly exercised Cumulative Impact Policies as a means of placing restrictions on the grant of new licences and on applications for variations of existing licences within their areas. The Policing and Crime Act 2017 amended Licensing Act 2003 so as to give the concept of "cumulative impact" a statutory footing with effect from 6 April 2018. The way in which this has been achieved is to give Licensing Authorities the discretion to publish documents, separate to their Licensing Policy Statements, which are termed "Cumulative Impact Assessments" (CIAs). Cumulative Impact Assessments were introduced as a tool for licensing authorities to limit the growth of licensed premises, both on and off trade, in problem areas.

3.4 Many of Sunderland's alcohol related outcomes remain significantly worse than the England average. Specifically, alcohol related hospital admission rates are significantly worse than the rest of England. Addressing alcohol harms is a complex issue and no single approach will be successful in isolation, therefore it requires commitment and contributions from a range of partners across the City. Alcohol remains one of the key drivers of health inequalities and is the key cause of premature death, placing a significant burden across the whole system: NHS, adult social care, the wider economy, notably local businesses.

3.5 A licensing authority may publish a CIA. It is not a statutory requirement to do so. A CIA is a statement 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 CIA is such that it is likely that it would be inconsistent with the authority's duty, (the duty to carry out its functions with a view to promoting the licensing objectives), to grant any further relevant authorisations in respect of premises in that part, or those parts of its area.

3.6 In some areas where the number, type, or density of licensed premises, such as those selling alcohol or providing late night refreshment, is high, or exceptional, serious problems of nuisance and disorder may arise outside or some distance from those premises. Such problems generally occur as a result of large numbers of drinkers being concentrated in an area. For example, when leaving premises at peak times, or when queuing at fast food outlets, or for public transport.

3.7 A CIA may relate to all relevant authorisations, or only to relevant authorisations of a particular type described in the Assessment. For example, for certain parts of the area, the licensing authority may, having regard to the levels of crime and disorder and public health data, consider it appropriate to implement a CIA to cover only "off" licensed premises and to not include in the Assessment premises licensed for the sale of alcohol for consumption on the premises, such as pubs, bars and restaurants.

3.8 The existing Sunderland CIA was adopted on 19 September 2018 following a prescribed statutory consultation process. A copy of the CIA is attached at Appendix 1. Under the Act, CIAs must be reviewed every 3 years, so the current Assessment is due for a review prior to 18 September 2021.

4.0 EFFECT OF CUMULATIVE IMPACT ASSESSMENTS

4.1 When publishing a CIA, a licensing authority is required to set out evidence of problems that are being caused or exacerbated by the cumulative impact of licensed premises in the area described. The evidence is used to justify the statement in the CIA that it is likely that granting further licences in that area would be inconsistent with the authority's duty to promote the licensing objectives.

4.2 In publishing a CIA a licensing authority is setting down a strong statement of intent about its approach to considering applications for the grant, or variation of premises licences. It is therefore expected that, in respect of each of relevant application in the area concerned, the licensing authority, along with other Responsible Authorities, (eg. the Police, Public Health and Environmental Health),will be considering whether it is appropriate to make a representation.

4.3 The CIA does not however change the fundamental way that licensing decisions are made. If no representations are made on an application where the premises are located within the CIA area, the application will be granted routinely on the terms set out in the application in the same way that all other applications are dealt with. In cases where representations are made, it is open to the Licensing Sub-Committee to grant an application where it considers it is appropriate and where the applicant can demonstrate in the operating schedule, (part of the legally prescribed application form), that they would not be adding to the cumulative impact. The Guidance states that applicants for licences in areas covered by a special policy should give consideration to potential cumulative impact issues when setting out in their operating schedules the steps that they will take to promote the licensing objectives.

5.0 CURRENT CIA ARRANGEMENTS

5.1 Existing areas subject to the CIA restrictions include, :-

- The City Centre and East End, ie. parts of the Hendon, Millfield and St Michael's Wards;
- Millfield and Pallion, ie. parts of these Ward;
- Hendon, ie. parts of the Hendon and St Michael's Wards;
- Southwick;
- Shiney Row;
- Washington North; and
- Hetton, ie. parts of the Copt Hill and Hetton Wards.

5.2 However, since the implementation of the CIA in Sunderland no new applications for licences, or applications to vary existing licences have been refused in the above areas, following no representations having been made on the grounds of cumulative impact.

5.3 Guidance sets out the steps that an authority should follow in considering whether to adopt a special policy. These are, :-

- To identify concern about crime and disorder, public safety, public nuisance or the protection of children from harm in a particular location;
- Consider whether there is good evidence that crime and disorder or nuisance are occurring, or whether there are activities which pose a threat to public safety or the protection of children form harm;
- If such problems are occurring, identify whether these problems are being caused by the customers of licensed premises, or that a risk of cumulative impact is imminent;
- Identify the boundaries of the area(s) where problems are occurring; and
- To consult the statutory consultees (as prescribed by the Act) and, subject to the outcome of the consultation, include and publish details of the special policy in the Licensing Policy.

5.4 Under the Act, any decision to introduce a CIA, or to cease continuing to implement a CIA must be made by full Council.

6.0 CURRENT POSITION

6.1 The current CIA is due to expire on 18 September 2021 and consideration needs to be given to the arrangements for its review.

6.2 The principle of cumulative impact is to identify which areas are saturated with a significant number, type of composition of licensed premises, causing the benefits provided by alcohol outlets to be outweighed by public nuisance, crime, disorder and other costs of excessive alcohol consumption.

6.3 In recent months, a number of local authorities have, following a review of their CIA, decided that it is no longer necessary to implement a CIA due to the changing environment and local circumstances.

6.4 Statutory guidance issued relating to the use and application of special policies has been diluted since first introduced. In many cases, the presumption of refusal of an application in a particular area has been determined to be inappropriate. Appropriate and carefully considered licence conditions proposed by responsible authorities can offer adequate protections in accordance with the licensing objectives.

6.5 The Covid pandemic has had a significant detrimental impact on the hospitality sector and any restrictions imposed on the variation and grant of new premises applications may be considered to be an additional threat to recovering high streets. In addition, lockdown periods have affected recorded levels of crime and disorder within commercial centres. Any study to support a special policy focusing on the cumulative impact of licensed premises on the promotion of the licensing objectives will be impacted by the pandemic. Also, all special policies proposed must be based on accurate and robust data and evidence, as they are often subject to national and local challenge.

6.6 It should be noted, in respect of the existing City Centre and East End CIA area, that at the time of adoption the Council resolved to encourage the development of new, high quality leisure venues and retail outlets whose operations would have a positive impact upon the economic vitality of the City Centre. It was therefore proposed that an amendment to the licensing policy include the following statement, :-

"The Council intends that the City Centre should remain as an area where we would encourage businesses to set up and expand. We recognise that a dynamic trading environment will feature applications for new or amended licences. We consider that the operations of well-run, high quality licensed premises should not have a negative impact upon the licensing objectives. We, therefore, would welcome the submission of applications for new or amended licences by businesses whose operations would significantly enhance the economic vitality of the City Centre."

In essence the provision of the above amendment created significant weakness in relation to adoption of the policy in the city centre. Any subsequent special policy may require more robust composition to withstand scrutiny.

6.7 Regardless of its view on the future of a CIA for the area, the Council is required to comply with a statutory procedure for a review of the existing CIA.
Under the Act, after publishing a CIA the licensing authority must, within three years, consider whether it remains of the opinion set out in the assessment. In order to decide whether it remains of this opinion it must again consult with a prescribed list of consultees. These are, :-

- Northumbria Police;
- Tyne and Wear Fire and Rescue Service;
- Local Authority Director of Public Health;
- Representatives of the licensed trade and members' clubs;
- Local businesses and their representatives; and
- Local residents and their representatives.

6.8 If having consulted with the statutory list of persons, the licensing authority decides that it Is no longer of the opinion set out in the CIA, it must publish a statement to that effect. The statement must make clear that any reference to CIA in its licensing policy statement no longer applies. The licensing authority should remove any reference to the CIA within its licensing policy statement at the earliest opportunity.

6.9 If having consulted the licensing authority decides that it remains of the opinion set out in the assessment, it must revise the CIA to include a statement to that effect and set out evidence as to why it remains of that opinion. It will be important for any evidence included in the revised CIA to be robust and relevant to the current problems described. This is likely to involve the collation of fresh, or updated evidence of the kind described in Paragraph 5.3 above. The licensing authority must also at this stage publish any other material change in the assessment. For example, if the types of premises or area described in the assessment have changed due to a shift in the nature of the problems being experienced or where there is evidence of the emergence of new type of problem.

7.0 PROPOSAL FOR REVIEW OF CIA

7.1 Since March 2020, the Coronavirus Pandemic has had a significant impact on hospitality businesses resulting in periods of full lockdown, or in some periods trading authorised subject to various restrictions. The impact of the pandemic has also caused issues as to the accuracy of the relevant data that may be available to justify a CIA at this time.

7.2 In view of these circumstances along with the instability still currently being experienced by the hospitality sector, it is not considered appropriate to continue with the implementation of a CIA beyond 18 September 2021. Although, it is intended that Officers will instigate an appropriately timed CIA within the next 6-12 months. It is hoped that this will provide sufficient time for the collection of robust data that may be used to consider whether a new CIA should be proposed for implementation. It is envisaged that a future review of the CIA will also coincide with a comprehensive review of the Statement of Licensing Policy, with both processes being subject to widespread consultation.

7.3 At its meeting held on 2 August 2021, the Licensing and Regulatory Committee considered a report concerning a review of the CIA, and approved recommendations as follows, :-

(a) A period of consultation is commenced with the relevant stakeholders as set out in Paragraph 6.7 of this Report to obtain comments on the proposal that the existing Cumulative Impact Assessment (CIA) should cease as from 19 September 2021;
(b) The period of consultation commences on 3 August, 2021 until 5pm on 20 August 2021; and
(c) Recommend to Council that the existing CIA should cease as from 19 September 2021, and that a CIA be further considered in the next 6-12 months, subject to the availability of all relevant data at that time.

7.4 In its consideration of the above recommendations, the Licensing and Regulatory Committee was also informed that prior to that meeting, Officers had considered it appropriate to seek the views of three of the statutory consultees, the Director of Public Health and Commissioning, Northumbria Police and Tyne and Wear Fire and Rescue Service on such proposals. The Members were informed that the above consultees had all confirmed that they were in agreement with the proposal that the CIA should cease as from 19 September 2021. The Licensing and Regulatory Committee will receive confirmation of the outcome of the consultation at its Meeting of the 6 September 2021 in the terms set out at paragraph 7.5 below.

7.5 Following the statutory consultation on the proposal that the CIA should cease as from 19 September 2021, no responses were received.

8.0 REASONS FOR DECISION

8.1 To facilitate compliance with the requirements of the Licensing Act 2003 that the Council undertakes a review of its CIA within three years of implementation.

9.0 ALTERNATIVE OPTIONS

9.1 There are no alternative options available to the Council which are considered to be appropriate. The existing CIA is required to be reviewed within the statutory timescale. In the absence of relevant current data, there are insufficient grounds to exercise a CIA beyond 18 September 2021, and therefore the proposal to cease with a CIA as set out in the Report is the only appropriate option available at this time.

10.0 IMPACT ANALYSIS

10.1 **Equalities –** No impact
10.2 **Privacy Impact Assessment** - No impact
10.3 **Sustainability -** No Impact
10.4 **Reduction of Crime and Disorder** – No Impact, the Licensing Act allows representations by responsible authorities including the Police irrespective of the presence of a CIA.

11.0 OTHER RELEVANT CONSIDERATIONS/CONSULTATIONS

11.1 **Financial Implications** – There are no direct financial implications arising from the recommendation to Council to cease the existing CIA.

11.2 **Legal Implications -** The Assistant Director of Law and Governance advises that the Council is legally required to review its CIA within 3 years of publication of the previous Statement.

11.3 **The Public/External Bodies** - Statutory consultees have been consulted.

12.0 LIST OF APPENDICES

12.1 Appendix 1: The Council's current CIA for the period to 18 September 2021.

13.0 BACKGROUND PAPERS

13.1 None.