

Wirral MBC
Licensing Authority

12 September 2022

Dear Sir/Madam

REVIEW OF CUMULATIVE IMPACT POLICY (CIP)

Thank you for the opportunity to comment on the above.

I am a Licensing Consultant, based in St Helens, and have been involved in licensing for over 30 years now. I have been providing licensing consultancy services under the business name of JL Licence and services for around 10 years and mainly deal with applications and matters relating to the Licensing Act 2003. Many of my clients are based in Wirral and I regularly submit various applications across the Wirral region.

Prior to becoming a consultant, I was employed by Knowsley Borough Council for numerous years in their Licensing Team as Principal Licensing Officer. I was responsible for the running and day to day management of the licensing service, including all matters relating to the Licensing Act 2003 such as the implementation of the Statement of Licensing Policy.

I haven't submitted a new or variation application within this area for several years, although I have submitted several new applications over the last couple of years in other areas of Merseyside which at the time had a CIP in place.

My concern is that new licence applications in respect of CIP areas are just routinely objected to, and then refused. I feel that there could possibly be a 'blanket ban' / 'iron curtain' on new licences being granted in this area and I'll explain my reasons for this view.

A CIP, applied correctly and appropriately, can of course provide a good filter in respect of sub-standard applications for new licences and variation applications. However, there are negatives and I am concerned that these negatives may be occurring here and/or they could occur should the CIP continue.

For example;

- Stagnation - a CIP can preserve a bad status quo, locking in the existing operators with, in some cases, minimal or no licence conditions and possibly poor operating regimes;
- Deterrence - a CIP can also deter new and responsible applicants/operators from applying for new licences.

I am aware that for many years some responsible authorities and interested parties will always just object to new licence applications based on the fact that the site happens to be located within a CIP. There seems to be a general view amongst some responsible authorities, in particular Merseyside Police and the Licensing Authority (as a Responsible Authority), that they must object to an application within a CIP - clearly this should not be the case.

This has certainly been the case in the Liverpool City Council and St Helens areas over previous years when they previously had CIPs in place. It also appears to happen in Wirral.

I have previously carried out a pre-application consultation with the Police and Licensing Authority (as a Responsible Authority) on a new licence application that fell within the Wirral CIP – and the response was that there would be a representation *'as it's in the CIP'*.

I am currently in the process of working with a client about a new application for a premises licence for a site (a shop) which is within the Wirral CIP. The shop would be a convenience store and would also like to offer some alcohol sales for consumption off the premises.

I recently contacted Merseyside Police in advance of submitting an application to get their views and was advised that they would be ok with a licence being approved for this shop with hours of 7am to 11pm. Several days later, I was advised by Merseyside Police that they hadn't realised that this shop was within the CIP and so they would be objecting outright to any such application. I have no problem with the oversight, my concern is the rationale for objecting outright – *'it's in the CIP'*.

Merseyside Police also mentioned the *'rebuttable presumption'* to refuse new applications in a CIP area when representations are received - I refer to *'rebuttable presumption'* further on in my letter.

In my experience, it appears that little consideration, if any, is given by some responsible authorities on the merits of an individual application when the application is for a site within a CIP area.

In Wirral, it appears that the Police, and maybe the Licensing Authority (as a responsible authority) and possibly some of the other responsible authorities, believe that they are expected to make a representation just because an application relates to a CIP area, and it's in the Policy. It's as if they feel that, regardless of the proposals put forward, that they must object and then let the Licensing Sub Committee determine the application.

This is not how it should work. Regardless of whether the application is within a CIP area or not, each application must be considered on its merits.

I have also previously submitted a new licence application in Wirral on behalf of a shop that was just outside the CIP area – really close to the specified streets but not actually within the identified CIP streets. No representations were received from the Police, the Licensing Authority nor from any of the other authorities. Yet, if an identical application was submitted in one of the nearby CIP streets, there would certainly be representations from the Police, the Licensing Authority, etc.

Poorly managed licensed premises in all areas, regardless of a CIP being in place or not, should of course be targeted and dealt with as appropriate. Regular compliance checks should be made on licensed premises in the area and appropriate action taken. The good operators will welcome this.

Evidenced problems with individual premises should be dealt with via intervention and enforcement, and ultimately a licence review if appropriate. Enforcement is crucial and is highlighted in your Policy at section 12.

When was the last Police and/or Licensing Authority enforcement exercise in this area carried out? What was the outcome? It would be useful to see the results of any such exercises over the last year or so.

Surely, the Council want to attract responsible operators to trade in these areas to raise standards and bring about more investment - this is particularly crucial at the minute. Yet what we may have, or what could happen, is the same shops selling the same goods, and new (and responsible) applicants looking elsewhere as the CIP is a big hurdle to overcome.

I know from experience that new applicants have submitted extremely strong applications in various CIP areas in Merseyside – and the applications always attracted the same representations from the same Authorities.

I am aware that existing licensed businesses in a CIP area actually have an increased price/premium on them – because there is a trade view that there is a blanket ban on new licences. New buyers are either forced to pay the premium, rather than submit their own new application, or find somewhere different.

The current Policy – in terms of cumulative impact – outlines the problems and issues within the area but makes no reference to anything positive such as what an experienced, well-prepared operator with a comprehensive operating schedule has to offer which could improve the area. The CIP does not seek to provide any help or guidance to applicants.

In 2018, the Journal of Licensing published an article by Professor Roy Light (Counsel) on CIPs. It stated that as of March 2018, across the UK, 107 Local Authorities had put in place 223 CIPs. Within those 223 CIP areas, in the year ending March 2017, a total of 1,124 applications for new premises licences were made. Of those, 94% were granted. This means that, nationally, just 6% of new applications in a CIP area were refused. These figures were provided by Licensing Authorities across the UK in their annual returns on various matters.

These national figures (albeit from 2018) suggest that Licensing Authorities are granting new premises licences that are conditioned appropriately and robustly so as not to **add** to any pre-existing cumulative impact within their particular areas. However, in my experience, the local position across the Merseyside CIPs appears to be a bit different.

Is there any such information available for this CIP since it was introduced and then reviewed?

Have any further new and or variation applications (for off sales) been submitted to the Council since the CIP was first introduced in July 2017?

If so, were any representations received? By whom?

What was the outcome?

It would be interesting and useful information to be made aware of - please let me know.

Not long before the Wirral CIP was first introduced in this area, I acted for a new applicant who applied for a new premises licence in Grange Road West. The application was approved in December 2016 and the shop is still operating as a convenience store selling a wide range of goods including some alcohol for consumption off the premises. As I say above, please provide the details of new and full variation applications which have been considered since July 2017.

Since Covid, and the devastating and negative impact on business, in particular the hospitality trade, many Licensing Authorities have taken the decision to not renew or indeed review their CIP's/CIA's. This includes Councils such as Nottingham, Birmingham, Leicester, Hammersmith and Fulham, Trafford, Hereford and Wigan. I appreciate that there may be others that have renewed them.

Locally, the position is as follows;

Liverpool City Council did not renew their CIPs (including for off licences) in December 2020;

St Helens – their CIA (off licensed premises) covering the Town Centre ward expired in Jan 2022 and there doesn't appear to have been any move to reconsider or review it to date;

Sefton, Knowsley (and Halton) do not have any CIPs in place and no plans (as far as I am aware) to do so. The only CIP currently in place in Merseyside is this area of Wirral.

Your Statement of Licensing Policy (paragraphs 10.7 and 10.8) refers to partnership working and the other mechanisms for 'addressing issues when individuals behave badly away from licensed premises'. These other mechanisms include Police enforcement of normal law regarding disorder and ASB including the issue of fixed penalties, designation of areas where alcohol cannot be consumed, confiscation of alcohol from persons drinking alcohol in a designated area, etc.

It is important that the various mechanisms and powers are being used as appropriate and as required.

Street drinking is very often referred to in respect of many new licence applications, especially within a CIP. This can be a difficult and challenging issue for the authorities, and also for local businesses selling alcohol. Street drinking was referred to when the CIP was first introduced and also when the CIP was reviewed in 2019. Paragraph 14.8 of the Policy states that 'evidence was provided by Merseyside Police that street drinking continues to be prevalent in the area'.

One of the other mechanisms and an effective way of dealing with street drinking, if applied and enforced appropriately, is a Public Spaces Protection Order (PSPO). This would give the Police and other Authorised Officers the powers to tackle street drinking and any associated issues. This is referred to in the Policy as a designated area and is one of the other mechanisms that can be used to address local issues.

A PSPO is a provision created by the Anti-Social Behaviour Crime and Policing Act 2014 and, briefly, it is intended to deal with particular nuisances or problems in a defined area that are considered to be detrimental to the local community's quality of life.

There is a current consultation underway on a new PSPO covering the Woodchurch area and the draft PSPO includes the following terms;

'No person shall drink or attempt to drink alcohol in any public space within the Restricted area following receipt of a requirement not to do so given to them by a Police Officer or an authorised officer.'

Where a Police Officer or an authorised officer reasonably believes that a person has been consuming alcohol, or that a person intends to consume alcohol in circumstances in which doing so may lead to a breach of this prohibition, the Police Officer or authorised officer may require that person:

(i) Not to consume, in breach of the prohibition, alcohol or anything which the Police Officer or authorised person reasonably believes to be alcohol.

(ii) To surrender anything in that person's possession which is, or which the Police Officer or authorised person reasonably believes to be, alcohol or a container for alcohol.

A Police Officer or authorised person may dispose of anything surrendered to them as a result of a requirement imposed by him or her in whatever way he or she thinks appropriate.

A Police Officer or an authorised person who imposes a requirement pursuant to this prohibition must tell the person that failing without reasonable excuse to comply with the requirement is an offence.

I am aware that there are several PSPO's in place in Wirral yet there doesn't appear to be one in place in this CIP area? Surely this would assist.

It begs the question that if street drinking and other associated issues are so problematic then why isn't there a PSPO in place for the area? (Note - if there is a PSPO in place please let me know and accept my apologies).

The Policy, at paragraph 12, refers to staff training and awareness of local issues, and this is important. Paragraph 11.2 refers to 'Custodians' training which several of my clients have previously attended – is this still available?

The phrase '*rebuttable presumption*' is regularly used in sections 13 and 14 of your Policy (dealing with cumulative impact) and is also used by responsible authorities when applications in a CIP area are submitted and then considered by a Licensing Sub Committee.

Paragraph 14.10 states, in respect of premises selling or wishing to sell alcohol for consumption off the premises, that there is '*a presumption against granting any application for a Premises Licence or a variation that is likely to add to the existing cumulative impact*'.

The term '*rebuttable presumption*' was contained within the previous Guidance. However, this term was removed from the updated Guidance, issued in 2018. The presumption to refuse is no longer within the Guidance.

Summary

There is a potential with a CIP that if they are used to absolutely refuse all new applications, that this will stifle and restrict development and prevent new and potentially better operators and investors from coming into the areas

New and variation applications can be submitted and they can still of course be properly scrutinised and considered on their merits by the responsible authorities.

I believe that the presence of a CIA would continue to be used by responsible authorities to routinely object to applications. It has happened like that before and my concern is that it would be likely to continue.

There are various other mechanisms and powers to tackle with any local ASB and disorder issues. These should be fully utilised.

For all of the reasons outlined in this letter, my view is that the CIP should not be 'renewed'.

If you have any queries please let me know and I'd be grateful to be kept informed in this matter.

Yours sincerely

Ian Rushton

JL Licence and Retail

Tel; 07909 511953

Email - ijrushy@hotmail.com