

Report to	Licensing committee	Item
	5 December 2014	
Report of	Head of citywide services	4
Subject	Licensing Act 2003: licensing policy statement – cumulative impact special policy	

Purpose

That members consider the report from Norfolk Constabulary requesting that a defined area of Norwich city centre is the subject of a special cumulative impact policy within Norwich city council's existing statement of licensing policy.

Recommendation

That members:

1. include a *Special cumulative impact policy* within the council's statement of licensing policy;
2. authorise officers to undertake the statutory consultation procedure; and
3. consider the consultation responses at a further meeting of the committee.

Corporate and service priorities

The report helps to meet the corporate priority of a safe and clean city and the service plan priority of protecting the interests of the public through the administration of the licensing function.

Financial implications

The costs of consultation will be met from existing budget.

Ward/s: All wards

Cabinet member: Councillor Harris – Environment, development and transport

Contact officers

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Background documents

Report

Statement of licensing policy

1. Section 5 of the Licensing Act 2003 Act (The Act) requires a licensing authority to prepare and publish a statement of its licensing policy at least every five years. Such a policy must be published before the authority carries out any function in respect of individual applications and notices made under the terms of the 2003 Act. During the five-year period, the policy must be kept under review and the licensing authority may make any revisions to it as it considers appropriate.
2. Before determining its policy, the licensing authority must consult the persons listed in section 5(3) of the 2003 Act. These are:
 - 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) or Local Health Board in Wales for an area any part of which is in the licensing authority's area,
 - 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.

The cumulative impact of a concentration of licensed premises

What is cumulative impact?

3. "Cumulative impact" is not mentioned specifically in The 2003 Act. In the guidance issued to licensing authorities (under section 182 of the act), cumulative impact means the potential impact on the promotion of the licensing objectives of a significant number of licensed premises concentrated in one area. The cumulative impact of licensed premises on the promotion of the licensing objectives is a proper matter for the council as a licensing authority to consider in developing its licensing policy statement. Cumulative impact policies may relate to premises licensed to carry on any licensable activity, including the sale of alcohol for consumption on or off the premises, and the provision of late night refreshment. This includes late night fast food outlets which are not licensed to sell alcohol.
4. In some areas, where the number, type or density of premises 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. Licensing authorities can consider whether the number of fast food outlets or off licences in an area contribute to these problems, and may choose to include them in their cumulative impact policy.

Evidence of cumulative impact

5. There should be an evidential basis for the decision to include a special policy within the statement of licensing policy. Responsible authorities, such as the police, may hold relevant information which would inform licensing authorities when establishing

the evidence base for introducing a special policy relating to cumulative impact into their licensing policy statement.

6. In order to identify the areas in which problems are occurring, information about specific incidents can be mapped and, where possible, a time analysis undertaken to identify the key areas and times at which there are specific issues.
7. After considering the available evidence and consulting those individuals and organisations listed in paragraph 2 above, members may be satisfied that it is appropriate to include an approach to cumulative impact in the council's licensing policy statement. Where a licensing authority determines that it proposes to introduce an approach to cumulative impact, it may decide it is appropriate to indicate in its statement that it is adopting a special policy whereby, when it receives relevant representations, there is a rebuttable presumption that, for example, applications or variation applications which seek to extend the sale or apply of alcohol or provision of late night refreshment are refused or subject to certain limitations.

Steps to a special policy

8. The steps to be followed in considering whether to adopt a special policy within the statement of licensing policy are summarised below.
 - Identify concern about crime and disorder; public safety; public nuisance; or protection of children from harm.
 - 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 from harm.
 - If such problems are occurring, identify whether these problems are being caused by the customers of licensed premises, or that the risk of cumulative impact is imminent.
 - Identify the boundaries of the area where problems are occurring (this can involve mapping where the problems occur and identifying specific streets or localities where such problems arise).
 - Consult those specified in section 5(3) of the 2003 Act, and subject to the outcome of the consultation, include and publish details of the special policy in the licensing policy statement.

Effect of special policies

9. The effect of adopting a special policy of this kind is to create a rebuttable presumption that applications for the grant or variation of premises licences or club premises certificates which are likely to add to the existing cumulative impact will normally be refused or subject to certain limitations, following relevant representations, 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. Applicants should give consideration to potential cumulative impact issues when setting out the steps they will take to promote the licensing objectives in their application.
10. However, a special policy must stress that this presumption does not relieve responsible authorities (or any other persons) of the need to make a relevant representation, referring to information which had been before the licensing authority when it developed its statement of licensing policy, before a licensing authority may

lawfully consider giving effect to its special policy. If there are no representations, the licensing authority must grant the application in terms that are consistent with the operating schedule submitted.

11. Special policies may apply to the impact of a concentration of any licensed premises, including those licensed for the sale of alcohol on or off the premises, and premises licensed to provide late night refreshment. When establishing its evidence base for introducing a special policy, licensing authorities should be considering the contribution to cumulative impact made by different types of premises within its area, in order to determine the appropriateness of including different types of licensed premises within the special policy.

Limitations on special policies relating to cumulative impact

12. A special policy should never be absolute. Statements of licensing policy should always allow for the circumstances of each application to be considered properly and for applications that are unlikely to add to the cumulative impact on the licensing objectives to be granted. After receiving relevant 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 special policy in the light of the individual circumstances of the case. The impact can be expected to be different for premises with different styles and characteristics. For example, while a large nightclub or high capacity public house might add to problems of cumulative impact, a small restaurant or a theatre may not. If the licensing authority decides that an application should be refused, it will still need to show that the grant of the application would undermine the promotion of one of the licensing objectives and that appropriate conditions would be ineffective in preventing the problems involved.
13. Special policies should never be used as a ground for revoking an existing licence or certificate when representations are received about problems with those premises. The “cumulative impact” on the promotion of the licensing objectives of a concentration of multiple licensed premises should only give rise to a relevant representation when an application for the grant or variation of a licence or certificate is being considered. A review must relate specifically to individual premises, and by its nature, “cumulative impact” relates to the effect of a concentration of many premises.
14. Special policies can also not be used to justify rejecting applications to vary an existing licence or certificate except where those modifications are directly relevant to the policy (for example, an application to vary a licence with a view to increasing the capacity limits of the premises) and are strictly appropriate for the promotion of the licensing objectives.
15. Every application should still be considered individually. Therefore, special policies must not restrict such consideration by imposing quotas – based on either the number of premises or the capacity of those premises. Quotas that indirectly have the effect of predetermining the outcome of any application should not be used because they have no regard to the individual characteristics of the premises concerned.

Norfolk Constabulary proposal for a cumulative impact special policy

16. Attached at appendix A to the report is a document received from Norfolk Constabulary which requests that members consider adopting a special cumulative

impact policy within the council's statement of licensing policy. In the document the police have highlighted an area to which they consider a cumulative impact policy should apply in respect of premises seeking to sell alcohol and/or provide late night refreshment between the hours of 2100 and 0600. The identification of this area is supported by crime and disorder statistics and accompanying maps.

17. Members will note from paragraph 4.5 of the report that the police state that there is a defined link between the number of takeaway premises in an area and crime and disorder and that areas with a high saturation of such premises are more likely to suffer crime and disorder. Accordingly, the police have requested that late night refreshment premises should also, therefore, be considered as part of a cumulative impact policy.
18. The police conclude in their report that the geographical analysis clearly shows a pattern of reported crime and disorder in the defined area that is continually highlighted as being a peak area for violent crime, anti-social behaviour and calls to police service, which is primarily due to the large number of licensed premises located within this area. The police state that their resources are primarily directed to this area saturated with licensed premises to contain and control the levels of offences, leaving other areas potentially vulnerable.
19. The report advocates that to reduce the risk of a potential rise in the number of violent offences and disorder within the night time economy in Norwich, it is strongly recommended that the city council adopt a cumulative impact special policy as this would prevent any further licensed premises of a similar nature from opening in an area already saturated with pubs, clubs and late night refreshment premises, unless they can demonstrate they would not contribute to the existing issues and problems.
20. Representatives from Norfolk Constabulary have been invited to attend your meeting.

Summary

21. Although not specifically mentioned in the Licensing Act 2003, cumulative impact is defined in the guidance issued to licensing authorities by the Home Office as "the potential impact on the promotion of the licensing objectives of a significant number of licensed premises concentrated in one area".
22. The council's current statement of licensing policy does not include a special policy in relation to 'cumulative impact'. The Home Office guidance states that "the cumulative impact of licensed premises on the promotion of the licensing objectives is a proper matter for the council as a licensing authority to consider in developing its licensing policy statement".
23. Norfolk Constabulary has submitted a report requesting that the council consider adopting a special cumulative impact policy within the council's statement of licensing policy. By way of statistical analysis and 'hot spot' mapping the report has identified an area of 'cumulative impact' which the police are requesting that any approved special policy should apply to in respect of premises seeking to sell alcohol and/or provide late night refreshment between the hours of 2100 and 0600.
24. If members are minded to amend the council's existing licensing policy statement to include a special policy in respect of cumulative impact then the authority must carry out a statutory consultation process. The consultation responses will be considered at

a future meeting of the Licensing committee and if members are minded to adopt a special policy, the revised licensing policy statement will need to be approved by full council.