

# North Tyneside Council Report to Licensing Committee Date: 7 October 2021

Title: Cumulative Impact  
Assessment

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Leisure

Wards affected: All

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## PART 1

### 1.1 Purpose:

The purpose of this report is to provide Committee with the consultation responses following the review of the draft Cumulative Impact Assessment and to seek agreement from the Committee to the publication of the Cumulative Impact Assessment attached to this report at **Appendix 1**.

### 1.2 Recommendation

It is recommended that the Committee:

1. Agree to the publication of the North Tyneside Council Cumulative Impact Assessment attached to this report at **Appendix 1**.

## 2.0 Background Information

### 2.1.1 Licensing Act 2003 (“the Act”)

Section 5A of the Act permits a Licensing Authority to publish a “Cumulative Impact Assessment” and states that if: -

“the licensing authority considers that the number of relevant authorisations in respect of premises in one or more of its area described in the assessment is such that it is likely that it would be inconsistent with the duty under section 4(1) [of the Licensing Act 2003 – the duty to promote the licensing objectives] to grant any further relevant authorisations in respect of premises in that part or those parts.”

The concept of cumulative impact is a recognition that the number of licensed premises or clubs concentrated in one area can result in problems such as public nuisance, crime and disorder or anti-social behaviour at or near those licensed premises. Such problems may occur because of large numbers of people being concentrated in a particular area.

Prior to April 2018, any Licensing Authority that wished to introduce a “Cumulative Impact Policy” did so by including such a Policy in their Statement of Licensing Policy. It was often the case, as with this Authority, that if there was an issue with cumulative impact in an area(s) of their local authority area, the Policy would create a rebuttable

presumption against the grant or substantial variation of premises licences in any such areas.

Section 5A of the Act requires the CIA to set out the evidence that the Authority has relied upon for arriving at its opinion that issuing further premises licences or club premises certificates in a particular area, or areas, would undermine the licensing objectives.

On 11 October 2018 this Committee approved the publication of a CIA. The Committee's opinion was that no further licences for alcohol led premises should be granted to such premises in South Parade in Whitley Bay and an area around Front Street in Tynemouth. The Committee considered that granting further such licences or variations thereof would fail to promote the licensing objectives.

On 22 November 2018 full Council endorsed that opinion and included in the Statement of Licensing Policy a rebuttable presumption against granting premises licences for alcohol led establishments permitting the consumption of alcohol on such licensed premises such as public houses in the areas of Whitley Bay and Tynemouth mentioned above.

Section 5A of the Act requires that where a Licensing Authority publishes a CIA it must, before the end of the "relevant period", which is 3 years from the publication of the CIA in October 2018 in the case of this Authority, consider whether its opinion remains as stated in the CIA published then. Therefore, the Authority must have completed its consideration of the CIA by October 2021 at the latest and agree to the publication of a further CIA before the expiry of the 3 year period.

If as a result of the consultation the Committee's opinion is to amend the CIA to either remove an aspect of the CIA or reflect a new area, this amendment will have to be considered by full Council and reflected in the Statement of Licensing Policy.

### Covid-19

It is understood that Covid-19 and the associated closures have had wide ranging implications for the hospitality trade both in North Tyneside and across the country. The consultation on the CIA was carried out when the Covid-19 restrictions had been eased and licensed premises from May 2021 were able to operate fully.

### Consultation

Before a Cumulative Impact Assessment is published, section 5A of the 2003 Act requires the Authority to consult those listed in section 5(3) of the 2003 Act. The bodies referred to in section 5(3) of the 2003 Act were written to in relation to the proposed Cumulative Impact Assessment. In addition, the proposed Assessment was publicly consulted on from 2 August 2021 to 12 September 2021. This consultation exercise included the draft CIA being available through the Engagement Hub, the North Tyneside Residents Panel and a press release. Existing licence holders and Members were also advised of the consultation exercise. An online survey was established to enable persons to comment on, whether or not, the proposed Cumulative Impact Assessment should be adopted by the Authority.

The proposed Cumulative Impact Assessment consulted on included reasons why the Authority was considering publishing a Cumulative Impact Assessment, an indication of the Parts of the Borough to be included in the Assessment and the fact that the Assessment would relate to alcohol led premises operating under a premises licence.

The consultation resulted in 27 responses via the on-line survey. In addition, Northumbria Police supplied the initial statistics supporting the areas included in the proposed Cumulative Impact Assessment. A summary of those responses is attached to this report at **Appendix 2**. The responses were as follows:

- 20 from residents;
- 3 from licence holders
- 2 from Responsible Authorities
- 1 from local business.
- 1 not identified

Of the 27 responses who expressed an opinion via the on-line survey 74% agreed with the area of Whitley Bay to be included and 84% agree with the area of Tynemouth to be included.

As part of the consultation responses other areas were suggested by respondents to be included in the proposed Cumulative Impact Assessment. These included the Fish Quay and to widen the Whitley Bay area to include Park View. These areas have been considered but at this time the level of evidence that currently exists to support these new areas being included in the CIA is considered to be insufficient to make amendments to the proposed Cumulative Impact Assessment. An option is therefore proposed that following a decision on the current Assessment, further work is carried out specifically on the consideration of these two areas being included to the CIA. The Police for example will be able to provide data on crime and disorder to the Authority in a more “normal” environment hopefully free from any further restrictions imposed on individuals and businesses because of the Covid-19 pandemic and including the Christmas and New Year period.

If the draft Cumulative Impact Policy is approved by Committee the Assessment will be published by the Authority. That CIA will have to be considered by full Council and consideration given to what changes, if any, may need to be made to the Statement of Licensing Policy. The CIA if published will be a statement from the Authority that it remains of the view that that the number of relevant authorisations in respect of licensed premises in parts of Whitley Bay and Tynemouth means that it is likely that it would be inconsistent with its duty to promote the licensing objectives to grant any further relevant authorisations in respect of premises in those areas.

However, it must be stressed that even where a Cumulative Impact Policy exists, there is still a requirement for individuals such as local residents and/or responsible authorities to make representations in relation to a particular application. If no representations are made then the Authority will be obliged, in accordance with the Act, to issue a premises licence or grant any variation, irrespective of whether there is a Cumulative Impact Assessment in force for the area in which the premises is situated. The Cumulative Impact Assessment will therefore only be taken into consideration in circumstances where relevant representations are made.

It must also be stressed that a Cumulative Impact Assessment can never be absolute, and that there may be occasions where it is considered appropriate by a Licensing Sub-Committee, hearing an application, to depart from the Assessment. This may be

because, for instance, the premises seeking a licence is different in style and characteristics from the other existing licensed premises in the area, to the extent that it is considered that granting a licence will not have a negative impact on the licensing objectives and can therefore rebut the presumption against granting the licence or variation.

It should be pointed out that representations citing cumulative impact as an issue can be raised in connection to licensed premises outside of the Cumulative Impact Area and considered as part of the determination of a licensing Sub-Committee considering an individual application for a premises licence.

### **3.0 Decision Options**

3.1 The options available to Committee are:

#### Option 1

To approve the publication of the Cumulative Impact Assessment as attached at **Appendix 1**, and that the Assessment applies to applications in respect of premises licence applications, including substantive variation applications.

#### Option 2

To approve the publication of the Cumulative Impact Assessment as attached at **Appendix 1**, and that the Assessment applies to applications in respect of premises licence applications, including substantive variation applications.

To request officers to commence work on the possible inclusion of North Shields Fish Quay and Park View in Whitley Bay in the Cumulative Impact Assessment. At the conclusion of such work, a further report will be brought to the Committee setting out the conclusion of that work, so that a decision can be taken at that time whether or not to consult on the inclusion of those areas in a revised Cumulative Impact Assessment.

#### Option 3

Not to approve and publish the Cumulative Impact Assessment and to request officers carry out additional work.

If Option 1 is chosen, the Cumulative Impact Assessment will be summarised in the Authority's Statement of Licensing Policy.

If Option 2 is chosen, the Cumulative Impact Assessment will be published and additional work undertaken to ascertain if additional areas should be included in the CIA.

If Option 3 is chosen, then there will be no Cumulative Impact areas in the Borough and the Statement of Licensing Policy will have to reflect that fact.

### **4.0 Appendices:**

Appendix 1 – Draft Cumulative Impact Assessment

Appendix 2 – Schedule of Consultation Responses

## **5.0 Contact Officers:**

- 5.1 Colin MacDonald, Senior Manager, Technical & Regulatory Services, Tel: 643 6620  
Joanne Lee, Public Protection Manager, Tel: 643 6901  
Stephanie Graham, Senior Licensing Officer, Tel: 643 6969

## **6.0 Background Information:**

- 6.1 The following background papers have been used in the compilation of this report and are available for inspection at the offices of the author of the report:

North Tyneside Council Statement of Licensing Policy.  
The Licensing Act 2003  
Policing and Crime Act 2018

## **PART 2 – COMPLIANCE WITH PRINCIPLES OF DECISION MAKING**

### **2.1 Finance and Other Resources:**

The costs of preparing and applying the Cumulative Impact Assessment and the associated consultation arrangements can be met from the Licensing revenue budget.

### **2.2 Legal**

#### **2.2.1 Legislative Framework**

All licensing functions undertaken by the Authority under the Licensing Act 2003 are the responsibility of Council. This is made clear by the Local Authorities (Functions and Responsibilities) (England) Regulations 2000.

Section 7 of the Licensing Act 2003 states that all matters relating to the discharge of licensing functions are referred to the Authority's Licensing Committee which discharges those functions on behalf of the Authority. This would include the approval of the proposed Cumulative Impact Policy and agreement to have the Cumulative Impact Assessment published.

The Statement of Licensing Policy summarises the contents of the Cumulative Impact Policy and the CIA must be considered when the Policy is reviewed. The approval of the Policy is reserved for full Council.

### **2.2 Consultation/Community Engagement:**

There has been extensive consultation over a 6 week period as already outlined. There were 27 responses all of which have been properly considered. The responses have been summarised in the summary of responses document at **Appendix 2**.

Those who were consulted included those listed in section 5(3) of the Act, namely, the Chief Officer of Police, Fire and Rescue Authority, representatives of licence holders and certificate holders and representatives of businesses and residents in the area in question.

All Councillors were made aware of the consultation exercise and there were articles about the consultation exercise in the local press.

## **2.4 Human Rights:**

There are human rights issues with cumulative impact insofar as such an Assessment will affect existing licence holders wishing to vary their licence in the area in question as well as new applicants seeking a premises licence.

The decisions made by the Licensing Committee/Sub-Committees and officers can have implications under the Human Rights Act 1998. Decisions of the Authority as Licensing Authority could be said to interfere with the property of the licence holder (a licence, or its goodwill, is classed as property) and also impact on the rights of parties to a family and private life. However, these rights are qualified rights and those rights can be interfered with if such interference is permitted in law. Any party who wishes to make representations in relation to a licensing matter has the right to express their views without interference and any person appearing before a Committee/Sub-Committee will be afforded an opportunity to a fair hearing.

There is also an appeal process available to those aggrieved by a decision of a licensing Sub-Committee.

## **2.5 Equalities and Diversity:**

The Authority ensured that anyone wishing to take part in the consultation process had an equal opportunity to participate. This included ensuring that translated copies of the Assessment are available upon request.

As the licensing authority the Authority ensures that all stakeholders in the licensing process have an equal opportunity to participate.

The Authority will ensure that any decision taken under the Licensing Act 2003 will not discriminate against any person or group in society.

The introduction of this Assessment has the potential to contribute to the achievement of a key aim of our public sector duty under the Equality Act 2010, which is to eliminate unlawful discrimination, victimisation and harassment.

## **2.6 Risk Management:**

There are no significant risk management implications to the Council arising from this report.

## **2.7 Crime and Disorder:**

The prevention of crime and disorder is one of the licensing objectives that may be engaged when dealing with a licensing application. It is a requirement under the Licensing Act 2003 and subordinate Regulations that the Police are forwarded a copy of an application for a licence or certificate so that the Police are able to scrutinise the application and make representations in relation to the application insofar as the prevention of crime and disorder licensing objective is concerned. The Police have been consulted in relation to the proposed Cumulative Impact Assessment and are supportive of the aims of the Assessment.

## **2.8 Environment and Sustainability:**

There are no sustainability implications arising directly from this report. In terms of environmental implications, one of the licensing objectives is the prevention of public nuisance. Noise created by the number of individuals visiting licensed premises in the area in question has been said to cause a nuisance to the residents.