

# North Tyneside Council

## Report to Council

### Date: 24 July 2014

## ITEM 7

Title: Licensing Act 2003:  
Cumulative Impact Policy

Portfolio(s): Housing and Environment

Cabinet Member(s): Cllr J. Harrison

Report from Service Area: Environment and Leisure

Responsible Officer: Phil Scott, (Tel: 0191 6437295 )  
Head of Environment and Leisure

Wards affected: All

### PART 1

#### 1.1 Purpose:

The purpose of this report is to enable Council to consider the adoption of a Cumulative Impact Policy for a specified area of Tynemouth which, if agreed, would form part of the Statement of Licensing Policy which came into force on 23 January 2014. If adopted, the Cumulative Impact Policy would have the effect of creating a rebuttable presumption that any application for a premises licence or club premises certificate allowing alcohol sales or supply for consumption on the premises (or for any substantive variation to these) within that area would be refused.

#### 1.2 Recommendation(s):

It is recommended that Council:-

- (a) considers the adoption of the Cumulative Impact Policy for the area of Tynemouth as delineated on the plan at **Appendix 1** and agree its incorporation into the Statement of Licensing Policy approved by Council on 23 January 2014; and
- (b) agrees that the Policy, if adopted, will have application to any premises in the area specified at **Appendix 1** holding either a premises licence or a club premises certificate permitting the sale or supply of alcohol for consumption on the premises.

#### 1.3 Forward Plan:

28 days notice of this report has been given and it first appeared on the forward plan that was published on 23 June 2014.

#### 1.4 Council Plan and Policy framework:

This report has no direct link to the planned priorities.

## 1.5 Information:

### 1.5.1 Background

#### Cumulative Impact

'Cumulative Impact' is a concept which is not referred to in the Licensing Act 2003 ("the Act") but which is mentioned at some length in the statutory guidance issued by the Secretary of State under section 182 of the Act, which the Authority is required to have regard to in making any decisions under the Act. The guidance states that the cumulative impact of licensed premises concentrated in one area can have a negative impact on the "licensing objectives" that underpin the Act, and in particular the licensing objectives concerned with the prevention of crime and disorder and the prevention of public nuisance. In other words, it is considered that problems with nuisance and disorder are likely to arise because there is a concentration of licensed premises in a particular area. The guidance goes on to state that cumulative impact is a proper matter for the Authority to consider when formulating its Statement of Licensing Policy.

### 1.5.2 Proposal and Consultation Outcomes

As a licensing authority under the Act, the Authority must produce a Statement of Licensing Policy at least every five years. However, such a Policy must be kept under review and amended when considered necessary. Before the Policy is published however there has to be consultation on the Policy. The current Statement of Licensing Policy, approved by Council on 23 January 2014, was the subject of a 12 week consultation process. During the period of consultation responses received from the residents of Tynemouth showed support for the introduction of a Cumulative Impact Policy in the Tynemouth area.

At its meeting on 23 January 2014 Council instructed officers to undertake further work in relation to the Tynemouth area and to specifically consult on whether or not there should be a cumulative impact policy introduced in that area in due course.

Officers undertook a further 12 week consultation on the possibility of the introduction of a cumulative impact policy for the Tynemouth area. The document attached at **Appendix 2** was the proposal consulted on. The consultation ran from 28 February 2014 until 9 May 2014 and allowed opportunity for residents, responsible authorities (such as the police) and licensees/certificate holders to comment on whether or not such a policy should be adopted by the Authority.

The consultation resulted in 117 responses. A summary of those responses is attached to this report at **Appendix 3**. The responses were as follows:

- 71 from Tynemouth residents;
- 3 from Responsible Authorities (Northumbria Police, Environmental Health (Pollution) and Director of Public Health);
- 2 from Resident Associations/Groups;
- 28 from residents of North Tyneside;
- 9 from students;
- 1 from a Tynemouth business;
- 1 from a Tynemouth Councillor; and
- 2 given anonymously.

Of the 117 representations, 95 (81%) supported the proposal to create a Cumulative Impact Policy in Tynemouth, 9 (7%) opposed the proposal, and 13 (11%) made comments on the proposed Cumulative Impact Policy in Tynemouth, but did not express a view on whether they supported the proposals.

### **Responsible Authorities under the Licensing Act 2003**

Three Responsible Authorities responded to the consultation.

- Northumbria Police do not support the implementation of the policy but if introduced would use it, alongside existing tactics, to deal with the night time economy in Tynemouth.
- The Director of Public Health for North Tyneside Council supports the introduction of a cumulative impact policy and highlighted that evidence would suggest that domestic violence can be triggered by excessive alcohol consumption.
- North Tyneside Council Environmental Health (Pollution Section) supports the implementation of a Cumulative Impact Policy, stating 'Any additional drinking establishments on Front Street would lead to an increase in noise climate'.

### **Residents Associations/Groups**

Responses were received from local resident associations and other groups, all of whom strongly supported the establishment of a Cumulative Impact Policy for Tynemouth. Complaints about noise, drunken behaviour, residents being afraid to walk down Front Street were cited as being reasons to support the introduction of the policy.

#### **1.5.3 Current position/effect of adoption of a Cumulative Impact policy**

It is clear from the Secretary of State's guidance that there should be an evidential basis for the decision to include a Cumulative Impact Policy in a Statement of Licensing Policy. The responses to the consultation exercise have provided evidence for this purpose and several residents have given examples of the problems that occur in the area in question on a regular basis. It is for Council to decide, on the evidence provided, if it is reasonable and proportionate to adopt such a policy for the area.

If the draft Cumulative Impact Policy is adopted by Council the policy will create a rebuttable presumption that applications for a premises licence or a club premises certificate, and certain variation applications, that are likely to add to the existing cumulative impact in the area, will be refused. 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 club premises certificate or grant any variation, irrespective of whether there is a Cumulative Impact Policy in force for the area in which the premises is situated. The Cumulative Impact Policy will therefore only be taken into consideration in circumstances where relevant representations are made.

It must also be stressed that a Cumulative Impact Policy 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 Cumulative Impact Policy. 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.

## 1.6 Decision options:

The following decision options are available for consideration by Council:

### Option 1

Council resolves to adopt the cumulative impact policy for the area of Tynemouth as delineated on the plan at **Appendix 1**, and that the policy extends to applications in respect to both premises licences and club premises certificates, including substantive variation applications, and that such a policy be incorporated into the Statement of Licensing Policy approved by Council on 23 January 2014.

### Option 2

Council resolves not to adopt a policy of cumulative impact for Tynemouth and that the Statement of Licensing Policy remains in place unaltered.

## 1.7 Reasons for recommended option:

If Option 1 is chosen in relation to premises holding premises licences and those holding club premises certificates permitting the consumption of alcohol on the premises, a Cumulative Impact Policy will be adopted for the area of Tynemouth as shown in **Appendix 1**. The local consultation undertaken has enabled local residents to give examples of the sort of behaviour and general disturbance that they witness as a result of the night-time economy in Tynemouth. They have specific examples of litter being dropped, people arguing in the street, urinating in gardens and vomiting in streets which amounts to anti-social behaviour and public nuisance. This sort of behaviour and disturbance will quite often not be reported to the police who therefore have not recorded such incidents or recorded them as a crime. The police therefore can only produce the data that they hold which may not always reflect what the residents are actually witnessing. The police do not share the views of the residents that a policy is needed. If such a policy is adopted then an applicant will know that he must produce evidence that will rebut the presumption against a licence or variation being granted.

If adopted by the Authority the Cumulative Impact Policy will be the subject of at least a five year review when the Statement of Licensing Policy is next reviewed. If upon review the Cumulative Impact Policy is no longer considered to be justified then it can be removed from the Statement of Licensing Policy if Council so chooses at a later date.

If Option 2 is chosen then the Statement of Licensing Policy will remain in its current form. There will be no rebuttable presumption that applications for a premises licence or club premises certificate or for certain variations thereof in Tynemouth will be refused. Each application for a licence or certificate will continue to be dealt with on its merits in accordance with the existing Statement of Licensing Policy.

## 1.8 Appendices:

Appendix 1: Cumulative Impact Policy area of Tynemouth

Appendix 2: Consultation document

Appendix 3: Summary of consultation responses

## 1.9 Contact officers:

Catherine Lyons, Regulatory Services Manager. Tel no: 0191 6437780  
Joanne Lee, Public Protection Manager. Tel no: 0191 6436901  
Alan Burnett, Principal Officer, Trading Standards and Licensing. Tel no: 0191 6436621  
John Barton, Lawyer, Law and Governance. Tel no: 0191 6435354  
Alison Campbell, Finance Business Manager. Tel no: 0191 6437038

## 1.10 Background information:

The following background papers have been used in the compilation of this report and are available at the office of the author:

1. Licensing Act 2003 <http://www.legislation.gov.uk/ukpga/2003/17/contents>
2. Chapter 13 – ‘Statements of Licensing Policy’ of the Secretary of States Guidance issued under Section 182 Licensing Act 2003  
<https://www.gov.uk/government/publications/licensing-act-2003-amended-guidance-issued-under-section-182>
3. Consultation responses received.

## PART 2 – COMPLIANCE WITH PRINCIPLES OF DECISION MAKING

### 2.1 Finance and other resources

The costs of preparing and applying the Statement of Licensing Policy and the associated consultation arrangements can be met from the Licensing revenue budget.

### 2.2 Legal

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.

Under section 5 of the Act the Authority is required to have a Statement of Licensing Policy in place. The Secretary of State’s guidance makes clear that cumulative impact is something that can be properly considered by Council and included in the Statement of Licensing Policy if Council considers this to be appropriate when formulating that Policy.

Any decision to include a Cumulative Impact Policy in the Statement of Licensing Policy has to be based on evidence. It is for Council to decide if the adoption of such a policy is appropriate given the evidence provided by the responses from local residents and the other consultees including the Police.

What must be stressed is that the introduction of a Cumulative Impact Policy **will not** prevent applications for licences and certificates being made in relation to premises situated within the area in question. If an application is received, it must be properly considered by the Licensing Authority albeit in the light of there being a Cumulative Impact Policy for the area in which a premises is situated. As with any policy, a Cumulative Impact Policy will not be absolute and there may be occasions when a licence or certificate may be granted because the applicant has been able to rebut the

presumption against granting a licence, certificate or variation. If a Cumulative Impact Policy is adopted, it must be clear that it is not a prohibition on further licences or certificates being granted.

Any decision of Council must have an evidential basis including a decision on the introduction of a Cumulative Impact Policy.

The Secretary of State's Guidance states that the Police should be the main source of advice on the crime and disorder licensing objective. Paragraph 9.12 of the Secretary of State's guidance sets out the role of the Police as a responsible authority under the legislation. It states –

“In their role as a responsible authority, the police are an essential source of advice and information on the impact and potential impact of licensable activities, particularly on the crime and disorder objective. 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. The police should be the licensing authority's main source of advice on matters relating to the promotion of the crime and disorder licensing objective, but may also be able to make relevant representations with regard to the other licensing objectives if they have evidence to support such representations. The licensing authority should accept all reasonable and proportionate representations made by the police unless the authority has evidence that to do so would not be appropriate for the promotion of the licensing objectives. However, it remains incumbent on the police to ensure that their representations can withstand the scrutiny to which they would be subject at a hearing”.

The Police have submitted a response to the consultation and it should be considered having regard to paragraph 9.12 of the Guidance.

The Police are not supportive of the introduction of a Cumulative Impact Policy. The police in their response to the consultation of the Statement of Licensing Policy say

“Northumbria Police fully believe in the worth of Cumulative Impact Policies but we believe that each location should be looked at on its own merit. We at the Neighbourhood Team at North Shields believe that the situation in Tynemouth Village is under control, in hand and well policed at this time.”

The Police produced comparable statistical evidence between Tynemouth and Jesmond. In a subsequent response to the consultation undertaken specifically in relation to the possible introduction of Cumulative Impact Policy, the Police responded by stating the data available to them would not support the introduction of a Cumulative Impact Policy. However, if Council chooses to adopt such a Policy it would provide the Police with another “tool” to deal with the issues raised by the night time economy in Tynemouth.

Council needs to make a decision based on the evidence available to it.

### **2.3 Consultation/community engagement**

There has been extensive consultation over a 12-week period as already outlined. There were 117 responses all of which have been properly considered. The responses have been summarised in the summary of responses document at **Appendix 3**.

Those who were consulted included those listed in section 5(3) of the Act, namely, the Chief Officer of Police, Fire and Rescue Authority, Local Health Board, 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 "Our North Tyneside" and the local press.

## **2.4 Human rights**

There are human rights issues with cumulative impact insofar as such a policy 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.

## **2.5 Equalities and diversity**

The Authority ensured that anyone wishing to take part in the consultation process had an equal opportunity to participate.

As the licensing authority the Authority will ensure 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 policy has the potential to contribute to the achievement of a key aim of our public sector duty under the 2010 Equality Act, which is to eliminate unlawful discrimination, victimisation and harassment.

## **2.6 Risk management**

Risks associated with the service are managed via the Operational Risk Management Group.

## **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.

## 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.

### PART 3 - SIGN OFF

- Deputy Chief Executive  X
- Head of Service  X
- Mayor/Cabinet Member(s)  X
- Chief Finance Officer  X
- Monitoring Officer  X
- Strategic Manager,  
Strategic Services  X