

<b>Item No.</b> 6.	<b>Classification:</b> Open	<b>Date:</b> 28 February 2023	<b>Decision Maker:</b> Licensing Committee
<b>Report title:</b>		The Licensing Act 2003 – Review of Cumulative Impact Areas within Southwark	
<b>Ward(s) or groups affected:</b>		All Wards	
<b>From:</b>		Strategic Director of Environment, Neighborhoods and Growth	

## RECOMMENDATIONS

1. That the Committee:
  - a) Considers the review of the current Cumulative Impact Areas (CIAs) within the Borough using the data analysis provided at Appendix A to this report;
  - b) Agrees the CIAs remain as they are in their current geographical state or whether to propose changes;
  - c) Agrees the arrangements for the public consultation on the CIAs.

## BACKGROUND INFORMATION

2. The Licensing Act 2003 came into effect on 25 November 2005. The Act introduced a regime for the licensing of alcohol, regulated entertainment and late night refreshment, to be administered by the local licensing authority.
3. Under the Act, cumulative impact is the potential impact on the promotion of the licensing objectives of a significant number of licensed premises concentrated in one geographical area, which goes beyond that which can be dealt with via premises-specific enforcement. The Cumulative Impact Areas (CIAs) are locations which the Council has identified as experiencing cumulative impact and to which a CIA Policy will apply.
4. The CIA policy places a presumption that any new licensed premises within the defined areas would have a rebuttable presumption against the grant of the licence or the variation of the licence to increase the capacity or hours of the premises. The policy did allow for an exception if the applicant could demonstrate that the premises operation would not adversely impact the intention of the policy and add to the CIA.
5. The implementation and assessment of a CIA Policy must be based on data specific to alcohol-related crime. The Policy is to be kept under review, but is statutorily required to be reviewed every 3 years.

6. The CIAs were introduced to support the Southwark Statement of Licensing Policy aims of reducing the negative impact of alcohol on residents, visitors and businesses in the borough.
7. Three CIAs were introduced between 2008 and 2011, in the areas of Borough and Bankside (2011), Camberwell (2008) and Peckham (2009). There are also three monitoring areas at Elephant & Castle, Walworth and Old Kent Road, which have been monitored since 2011. The monitoring areas are locations that did not yet warrant a CIA but where alcohol related disorder was still a potential issue.
8. The Committee is asked to assess the current CIA Policy, using the data analysis in Appendix A and decide whether or not to maintain the Policy in its current form.
9. The Committee is asked to agree the arrangements for the public consultation on the CIA areas.

## **KEY ISSUES FOR CONSIDERATION**

### **The purpose of the policy**

10. The purpose of a CIA Policy is as follows:
  - Under the Licensing Act 2003 the Licensing Authority (the council) is required to publish a statement on licensing policy every 5 years. The current Southwark Statement of Licensing Policy runs from 2021 to 2026;
  - A policy must take into account any Cumulative Impact Assessment (CIA) published under section 5A of the Act. If adopted, a licensing authority must review its CIA every 3 years. In the Act, cumulative impact is described as “the potential impact on the promotion of licensing objectives of a significant number of licensed premises concentrated in one area”;
  - A licensing authority can publish a CIA to help it limit the number or types of licence applications granted in areas where there is evidence demonstrating the number or density of licensed premises is having cumulative impact, circumstances which undermine the licensing objectives;
  - In cumulative impact areas, there is a presumption that the licensing authority will refuse or impose limitations on applications which are likely to add to the cumulative impact unless the applicant can demonstrate that there will be no negative cumulative impact on the licensing objectives;

- The publication of a CIA does not change how licensing decisions are made; the Licensing Authority will always consider each application on its merits. However, a CIA is a strong statement of intent about an authority's approach to licence applications;
- CIAs relate to applications for new premises licences and 'club premises certificates, as well as applications to vary existing premises licences and club premises certificates in a specified area.

### **The Impact of COVID-19**

11. While Members of the Licensing Committee consider the review, it must be noted that some of the data may be influenced by the COVID-19 Pandemic. Further explanation is provided in the 'Financial Year Table Summary' in Appendix A.
12. Due to the uncertain short, medium and long-term effects of COVID-19 within Southwark and shortage of data to describe its impact from 2020 to 2022, this analysis and the patterns observed in this research may not accurately describe the fabric and dynamics of Southwark at the time the data was produced.

### **The licensing objectives**

13. Central to the statement of policy is the promotion of the four licensing objectives established under the Act. These are:
  - The prevention of crime and disorder
  - Public safety
  - The prevention of public nuisance
  - The protection of children from harm

### **SUMMARY OF THE REVIEW**

14. As part of this assessment, detailed analysis has been carried out using specific data analysis. This assessment is available in Appendix A.
15. Based on the analysis, the data supports that no changes should be made, either with the existing CIAs as they stand or reassessing the 'monitoring' areas to create an additional CIA.
16. The areas already identified as 'saturated' with licences premises, have been reviewed using two separate crime data cohorts. The first cohort, in line with previous reviews, was all crime reports that were recorded as being alcohol-related. The second cohort is a bespoke violent crime dataset.
17. Members will need to agree if they are content that the CIAs remain the same, or if further clarification is required to support the Officer's assertion that the status quo remains in force.

18. Members will need to agree the arrangements for the public consultation. The consultation will last for 6 weeks and consist of one question:

a) Do you agree that the CIAs are sufficient?

19. Respondents will be offered a choice of:

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

20. A comments box is provided for each response.

### **Consultation - Process**

21. It is proposed that consultation will take place as follows;

The policy will be introduced by circular letter sent via email to

- The chief officer of the police
- The fire authority
- Representatives of holders of premises licences; club premises certificate holders; and personal licence holders
- Representatives of businesses and residents
- All responsible authorities specified under the Act

22. The consultation will also be introduced on the Council website with an online questionnaire for easy response.

23. The policy consultation will be advertised in the local press.

### **Consultation timetable**

24. The following timetable for the public consultation on the CIAs is proposed:

<b>Activity</b>	<b>Date</b>
Licensing Committee– Consideration of the current CIAs; and consultation timetable;	28 February 2023
Consultation to be advertised in local press and at main Council buildings;	March 2023
Statutory and public consultation;	6 March-10 April 2023 (6 weeks)
Consideration of consultation responses	April 2023

Overview at Lead Member briefing	End of April 2023
Report back to Licensing Committee consultation responses and ask the Committee to consider any additional changes, based on the responses	TBC (first available meeting in May 2020)

## **Community, equalities (including socio-economic) and health impacts**

### **Community impact statement**

25. Each application is required by law to be considered upon its own individual merits with all relevant matters taken into account.

### **Equalities (including socio-economic) impact statement**

26. This report does not result in a policy decision and each application is required to be considered upon its own individual merits with all relevant matters taken into account. In considering the recommendations of this report, due regard must be given to the public sector equality duty set out in section 149 of the Equality Act 2010. This requires the Council to consider all individuals when carrying out its functions.
27. Importantly, the Council must have due regard to the need to eliminate discrimination, harassment, victimisation, or other prohibited conduct; advance equality of opportunity and foster good relations between people with protected characteristics and those who do not. The relevant protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation. The public sector equality duty also applies to marriage and civil partnership, but only in relation to the need to eliminate discrimination, harassment, victimisation, or other prohibited conduct.
28. The equalities impact statement for licensing decisions is contained within the Southwark Statement of Licensing Policy 2021 – 2026 <https://www.southwark.gov.uk/business/licences/business-premises-licensing/licensing-and-gambling-act-policy>.

### **Health impact statement**

29. Health impacts cannot be considered by law when making decisions under the Licensing Act 2003.

### **Public Sector Equality Duty**

30. Equality impact assessments are an essential tool to assist Councils to comply with our equalities duties and to make decisions fairly and equalities and human rights impact assessments that are carried out

should be mindful of the protected characteristics under the Equality Act 2010. An assessment was carried out throughout the assessment of the CIA Policy. Members will need to consider whether there are any potential negative impacts on the protected at the Committee Hearing. The current assessment as part of the Equalities Analysis is available in **Appendix B**.

### **Climate change implications**

31. Following council assembly on 14 July 2021, the council has committed to considering the climate change implications of any decisions.
32. The council is developing a toolkit for staff on the council's climate change strategy. This provides guidance for staff to consider climate change impacts.
33. The council's climate change strategy is available [here](#).
34. For considering the climate change impacts, report authors are recommended to consult with the climate change director and their team.

### **Resource implications**

35. The revision and update of the CIA policy does not have any resource issues in itself.
36. This is an update to the existing CIA policy. Costs associated with implementing the existing policy are currently met from the licensing revenue budget.

## **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

### **Director of Law and Governance**

37. The Licensing Act 2003 ("the 2003 Act") requires the Council, as the licensing authority, to prepare and publish a statement of its licensing policy every five years. Southwark's current Statement of Licensing Policy 2021-2026 was approved by Council Assembly on 30 November 2020 which included the current CIAs. After publishing a CIA the licensing authority must, within three years, consider on the continuation of the CIAs based on the assessment in Appendix A.
38. In determining its policy, the Council is exercising a licensing function and as such must have regard to the Guidance issued by the Secretary of State under section 182 of the 2003 Act. It must also give appropriate weight to the views of those persons/bodies listed in section 5(3) of the Act which it is required to consult before determining its policy.
39. Although the Guidance represents best practice, it is not binding on the Council. As long as the Guidance has been properly and carefully

understood and considered, licensing authorities may depart from it if they have reason to do so. In this event they will need to give full reasons for their decisions, which must be consistent with the objectives of the 2003 Act.

40. The Council is required to have regard to the statement of licensing policy and make decisions in accordance with it. Licensing authorities may depart from their policy if the individual circumstances of any case merit such a decision in the interests of promoting the licensing objectives. In this event it is important that full reasons are given for departing from the published statement of licensing policy.
41. Members should note that the 2003 Act imposes a duty on the Council, as the licensing authority, to carry out its functions under the Act with a view to promoting the four licensing objectives, namely:
  - the prevention of crime and disorder
  - the promotion of public safety
  - the prevention of public nuisance
  - the protection of children from harm
42. Each of these objectives is of paramount and equal importance. There are no other licensing objectives and therefore the Council cannot reject an application for a licence or impose conditions on a licence for any purpose unrelated to the promotion of these objectives. For example, whether or not there is a 'need' for another licensed premises in a given area is a matter for planning committees but is not a matter for a licensing authority in its statement of licensing policy or in discharging its licensing functions.
43. However, the cumulative impact of licensed premises on the promotion of the licensing objectives is a proper matter for the Council to consider when adopting its statement of licensing policy. The Guidance explains 'cumulative impact' as the potential impact on the promotion of the licensing objectives – for example crime and disorder and/or public nuisance - of a significant number of licensed premises concentrated in one area.
44. The statement of licensing policy cannot seek to impose 'blanket' conditions. Each application must be considered on its own merits. Conditions can only be imposed on a licence if they are necessary to promote the licensing objectives in relation to the specific premises and are a proportionate response to the specific situation to be addressed. The Guidance provides that if the situation the condition is intended to address is already addressed by a provision in the 2003 Act or any other legislation then the condition cannot be said to be 'necessary'.
45. Licensing is about regulating the carrying on of licensable activities within the terms of the 2003 Act. The statement of licensing policy should make

it clear that licensing law is not the primary mechanism for the general control of nuisance and anti-social behaviour by individuals once they are beyond the direct control of the individual, club or business carrying on licensable activities. However, the Guidance also states that licensing law is a key aspect of such control and should always be part of a holistic approach to the management of the evening and night-time economy. It is therefore desirable that the statement of licensing policy is in line with the Council's wider objectives and consistent with other policies.

46. Members should note that the statement of licensing policy must not be inconsistent with the provisions of the 2003 Act and must not override the right/s of any individual as provided for in that Act. Nor must the statement of licensing policy be inconsistent with obligations placed on the Council under any other legislation, including human rights legislation. Members should also note that the Council has a duty under Section 17 of the Crime and Disorder Act 1998, when carrying out its functions as a licensing authority under the 2003 Act; to do all it reasonably can to prevent crime and disorder within the Borough.
47. Positive equalities obligations are placed on local authorities, sometimes described as equalities duties, with regard to race, disability and gender. Race equality duties were introduced by the Race Relations Amendment Act 2000 which amended the Race Relations Act 1976. Gender equalities duties were introduced by the Equality Act 2006, which amended the Sex Discrimination Act 1975. Disability equality duties were introduced by the Disability Discrimination Act 2005 which amended the Disability Act 1995.
48. Under the Local Authorities (Functions and Responsibilities) (England) Regulations 2000, as amended, decisions relating to licensing matters cannot be the responsibility of an authority's executive. The 2003 Act provides that whilst the majority of the functions of the licensing authority, are to be taken or carried out by its licensing committee, decisions relating to the statement of licensing policy cannot be delegated in such a way. The decision on whether to adopt the statement of licensing policy must therefore be taken by council assembly.

**Strategic Director of Finance and Governance (EL22/117)**

49. The strategic director of finance and governance notes the recommendations (paragraph 1) to the Licensing Committee for the review of Cumulative Impact Areas (Licensing Act 2003) within Southwark.
50. The strategic director of finance and governance also notes the resource implications contained within the report and that there are no additional financial implications as a result of accepting the proposals. Officer time to effect recommendations will also be contained within existing budgeted revenue resources.

## BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
The Licensing Act 2003 plus secondary regulations	The Licensing Service, C/O 160 Tooley Street, London, SE1	Name: Mrs Kirtikula Read Phone number: 020 7525 5748
The Home Office Guidance to the Act published June 2014	As above	As above
Local Government (Miscellaneous Provisions) Act 1982	As above	As above

## APPENDICES

No.	Title
Appendix A	Crime data analysis for maintenance of CIAs
Appendix B	Equalities Analysis

## AUDIT TRAIL

<b>Lead Officer</b>	Caroline Bruce, Strategic Director of Environment, Neighborhoods and Growth	
<b>Report Author</b>	Andrew Heron, Team Leader - Licensing	
<b>Version</b>	Final	
<b>Dated</b>	09 February 2023	
<b>Key Decision?</b>	Yes	
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b>		
<b>Officer Title</b>	<b>Comments Sought</b>	<b>Comments Included</b>
Director of Law and Governance	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
<b>Cabinet Member</b>	No	No
<b>Date final report sent to Constitutional Team</b>		09 February 2023