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SUPPLEMENTARY INFORMATION – 5TH DECEMBER 2017

Agenda Item 7 - Application for the grant of a premises licence for Restaurant/Cafe 5
Briggate, Leeds, LS1 3LZ

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In the matter of the Licensing Act 2003

And in the matter of an application for a premises known as and situate at 5 Briggate, Leeds LS1 3LZ

Submissions by the Licensing Authority

In respect of the submissions made by the applicant of a premises licence for 5 Briggate with regards to the Leeds City Council Statement of Licensing Policy

1. At the hearing of the application on the 10th October 2017 the applicant made submissions regarding the Leeds City Council Statement of Licensing Policy, the city centre cumulative impact policy that sits within it and the annual City Centre Cumulative Impact Assessment that sits alongside and below the policy.
2. At the hearing the licensing sub-committee further directed that the applicant would provide written submissions by 25th October 2017 and the responsible authorities would comment on the submissions within 14 days.
3. The applicant provided his detailed submissions to Entertainment Licensing at 9:25 on the 6th November, some 12 days past the deadline provided by the licensing sub-committee.
4. Before addressing the comments in the Applicants submission it is important to note that the appropriate time to challenge any part of a policy is within three months of the policy being approved by Council and by way of a Judicial Review. The policy was approved by Council on 15th January 2014. By entertaining this challenge the Council leaves the door open for any applicant to challenge the policy at each licensing subcommittee.

Applicants Paragraphs 2 - 8

5. In his submission the applicant explains the statutory process for determining a policy under the Licensing Act 2003. The current policy – Statement of Licensing Policy 2014 – 2018 was approved by Leeds City Council at its full Council Meeting on 15th January 2014. It was further amended in September 2016 to include a cumulative impact policy for Armley and to address some small typographical errors. There have been no other revisions of the current policy. The consultation requirement applies in relation to any revision, not the review.

Applicants Paragraph 9

6. The current policy went through a public consultation from 3rd June to 23rd August 2013 and comprised of 108 postal consultations and 160 emails. The council consulted with 6 branches of citizen's advice, 14 pub companies, the 8 responsible authorities, 54 solicitor practices known to us as administering licence applications, 7 supermarket chains, 10 support organisations, 5 trade organisations, 99 elected members, 13 faith groups, 8 MPs, 31 Parish Councils. The consultation was discussed at PubWatch meetings, was advertised on the PubWatch website. A press notice was released, and the consultation was advertised on the council's consultation portal. There was a notice posted on the Council's web pages

relating to the policy. The final date for submissions was 28th August 2013 and respondents were able to provide comments by email, by post or through an online form.

7. The consultation elicited 10 responses, none from the trade or from licensing solicitors.
8. The amendment to the policy that included the Armley CIP and made a number of minor typographical amendments, was subject to two public consultations. One centred on Armley and took place between 26th January and 8th April 2016. This was a comprehensive consultation which included a questionnaire, guidance and the wording of the suggested policy being distributed by West Yorkshire Police, the local MPs and council staff at the Armley One Stop Shop. Residents and business owners were encouraged to respond by letter, email, an online form or by filling in a questionnaire. 158 responses to the consultation were received.
9. At the same time a consultation on the minor typographical changes was undertaken amongst business owners and licensing solicitors who were known to us as administering licensing applications for 4 weeks between 14th March and 15th April 2016. 254 letters and 235 emails were sent to all premises licence holders in the City and Hunslet ward, agents and solicitors, as well as the responsible authorities, PubWatch and BACIL advertising the consultation and providing links to the information. No responses were received.
10. A report regarding the outcome of the consultation and the recommended amendments to the policy was taken to Licensing Committee on 20th May 2016. Reports and appendices are a matter of public record and are searchable on the council's website. The policy was approved by full Council at their September 2016 meeting. All report and appendices are public record and available on the council's website.
11. In April 2012 the Police Reform and Social Responsibility Act changed the length of the lifetime of a policy from three to five years. This necessitated a different approach to the City Centre CIP, which due to the dynamic nature of the night time economy would need to be reviewed more frequently than every 5 years.
12. The current CIP was adopted as part 7 of the Licensing Act 2003 Statement of Licensing Policy 2014 to 2018 in December 2013. The new policy specified that the city centre CIP evidence and map would be reviewed each year based on the most recent crime and disorder statistics supplied by West Yorkshire Police, although the scope and wording of the cumulative impact policy would remain the same. The review is scheduled for the latter part of the year so that it can take effect in January.
13. In 2016 Officers from Entertainment Licensing issued a call for evidence from the Responsible Authorities and other partners through the Licensing Enforcement Group. Officers met with West Yorkshire Police who were the only authority to respond to the call for evidence and who provided crime statistics for the preceding 12 months. From this information draft amendments were made to the cumulative impact assessment.

14. In previous years where this process has resulted in a change to the red or amber zone boundaries, and so necessitate a new map to be published, the changes have been consulted on amongst the responsible authorities and the local businesses affected by the change. For example in 2014 the decision was made to introduce a second red area in the north of the city centre centred on Albion Street and Woodhouse Lane. The consultation took place between 20th October and 7th November 2014 but no responses were received.
15. In 2015 the evidence showed that the area around Assembly Street was no longer a hot spot area and so the red area in the south of the city was reduced to remove this area and to place it in the much less restrictive amber zone. No consultation took place as it was a positive change which benefitted the businesses in the affected area, and mindful of the cost of consultation, and the lack of response in the past it was decided not to consult on that occasion.
16. In 2016 the decision was made not to consult as no change was recommended and it would not be cost effective to do so.
17. In 2017, the current review is in process. Although crime has increased by a further 15% no changes are proposed at this time and unless the call for evidence from the responsible authorities indicate otherwise, it is not the intention to consult on a no change position.
18. Regardless of the process the wording and scope of the policy is not changed. The review ensures the boundaries of the red and amber zones within the city centre cumulative impact policy area are relevant and that the red zone covers the smallest area possible, and that the latest crime statistics are made available to applicants and the licensing sub-committee.
19. As the applicant states the current Statement of Licensing Policy was approved by Council to come into effect on 15th January 2014 and will be replaced by a new policy on 15th January 2019.

Applicants Paragraphs 10 and 11

20. Section 7 of that policy relates to the Council's Cumulative Impact Policy. Despite the inference that there is some confusion about the structure of the cumulative impact policy, it is clear. The Council has a cumulative impact policy, and this policy relates to six areas of the city.
21. One of these areas is the city centre. In Leeds the City Centre is well defined by the M621 motorway in the north and the river in the south. This makes the city centre a well-known distinct area which does not normally need further definition. However there is a published map which shows the extent of the city centre CIP incorporated into the City Centre Cumulative Impact Assessment. This map is provided on the website and is available to anyone considering making an application in the city centre. This document is referred to in the policy at paragraph 7.24.

Applicants Paragraph 12

22. As stated in the applicant's submission, paragraph 7.15 of the current policy encourages applicants to read this document as it not only contains the map of the extent of the city centre CIP, but also provides the three zones, red, amber and green, and the latest statistical

evidence provided by the police along with the Council's interpretation. The matter of designating zones to the city centre cumulative impact area was borne from an appeal case (Brewdog v Leeds City Council) where Anderson, J stated that "It cannot be the policy of the Cumulative Impact Policy to bring the iron curtain clanging down..." and that "... the application of the Policy was too rigid. They seemed to take the view that man was made for the Policy, when the Policy should be made for man. " It was in this environment, and with this opinion in mind that the Council determined that the city centre cumulative impact area be so managed to provide focus on the worst crime hotspots but to ensure that it could be easily amended to ensure the red zone be as small as possible to ensure that areas that improve, and the businesses within them are not unfairly penalised or restricted.

Applicants Paragraph 13

23. The applicant is inferring that any review of the cumulative impact policy needs to be undertaken with full consultation and to follow the full demographic process as prescribed in the Licensing Act 2003 under section 5. This is not the case. A review in itself is not subject to consultation, although any resulting revisions are. In this paragraph the applicant makes much comment about ambiguity in the policy. It is very simple. There is one cumulative impact policy which is applied to six areas in the city. The scope of the policy in each area is clearly described. This policy has been reviewed once in the five year lifetime of the policy and that was subject to full consultation as required by S5 of the Act.
24. The scope of the 'annual review' as stated at paragraph 7.15 of the policy is not described. By not providing a prescriptive method by which the review will be undertaken allows a degree of flexibility that was important in the first few years when the Council established the best method to review the map and evidence.
25. Without a prescriptive method being described in the policy, which is only reviewed every 5 years, the Council has been able to develop a different method for each of the CIP areas. 5 of the areas are subject to an internal review where the number of applications received in the preceding year is reviewed and from this it is decided whether any further action needs to be taken. Due to the very low level of applications in the CIP areas outside of the city centre, this minor review with no revision is all that has been necessary.
26. The city centre is a different matter. Applications continue to be received despite increasing crime rates. Operators seek more inventive ways of increasing their businesses and their customer base despite the sheer volume of people in parts of the city being a causative factor of the cumulative impact of licensed premises in the red zones. Where these applications are received in the amber zones, negotiation often takes place between the responsible authorities and the applicants to ensure that good quality applications are submitted and the resulting licences are suitable for a busy city centre premises. However where an application is received for a premises in the designated red zone, West Yorkshire Police and the Licensing Authority submit a representation seeking refusal of the application. This then leads to the matter being brought in front of a licensing sub-committee who are able to hear all sides before making their determination. This is because the problems in these areas are so severe the decision to grant a licence must be made by elected Members who are trained for this purpose and who bring a wealth of local knowledge to the decision

making process. Stuart-Smith, J in *Ruby May and Bean Leisure V Leeds City Council* was clear on the role of the licensing subcommittee and its knowledge of local matters.

27. In order to ensure that the evidence provided to applicants and used by the responsible authorities in their representations is the most up to date and current, and the zoning also remains relevant and specifically the red zone to be as small as possible, the council undertakes an evidence review each year. This is not a review of the cumulative impact policy in Section 7 of the Statement of Licensing Policy and as such is not subject to the consultation and democratic approval process required under section 5 of the Act.
28. This review process is unambiguous. The scope and wording of the city centre CIP remain unchanged as this is specified in the current policy. The only matter that is reviewed is the evidence that underpins the need for the CIP and the boundary of the red and amber zones and this reviewed information is provided in a new cumulative impact assessment each January.

Applicants Paragraph 14

29. At the conclusion of this review, which is undertaken in conjunction with the responsible authorities and, if negatives changes are sought, in consultation with business owners, agents and solicitors of premises in the City and Hunslet ward, the council publishes the results in a document called either the City Centre Cumulative Impact Policy Guidance (2014, 2015) or City Centre Cumulative Impact Assessment (2016). In a policy that needs to remain relevant and current for five years, it was decided not to include a specific document name, and instead to refer at paragraph 7.24 of the current policy to the map and supporting evidence. This does not introduce ambiguity, but rather allows for flexibility. All applicants in the city centre are encouraged to consult with the responsible authorities before making their application and any businesses seeking a new or varied licence in the CIP red and amber zones are advised of this cumulative impact assessment.

Applicants Paragraphs 15 and 16

30. The applicant refers to Local Licensing Guidance which is a separate matter to the cumulative impact policies and not relevant in this case. This is area specific guidance providing the applicant with information as required under the S182 Guidance at paragraphs 8.38 to 8.46 but specifically paragraph 8.39 to 8.42.

Applicants Paragraph 17

31. The applicant refers to the website and 'some guidance on the city centre cumulative impact policy' and provides links to the document titled 'Cumulative Impact Assessment City Centre – December 2016' which is the current map and statistical evidence. The introductory text in that document identifies its scope and purpose, and is a thorough examination of the crime statistics provided by West Yorkshire Police,
32. The applicant refers to this being an external guidance document and not consulted upon. This particular document, the City Centre Cumulative Impact Assessment, did not require consultation as no changes from the previous year's assessment were recommended. This is referred to at 7.24 of the policy, and this same document is presented to applicants seeking a new or varied licence in the city centre cumulative impact area. It is difficult to see how

this is ambiguous and undermines the clarity of the Statement of Licensing Policy as it is referred to at 7.24 of the policy and is so easily available.

Applicants Paragraph 18 to 23

33. The applicant continues to assert that there has been no consultation on the cumulative impact assessment, which is not the case. The initial map and guidance was consulted upon in 2013. Any amendment to that document that would have impacted negatively on businesses in the area has been consulted upon. The existence of the map and guidance (now called the cumulative impact assessment) is clearly stated at 7.24. The only reason for no consultation in 2016 was because there was no change proposed to the red and amber zone boundaries.
34. It is clear from the policy that a different approach was required for the city centre to the rest of the city and the other cumulative impact areas, due to the dynamic nature of the city centre and the five year review period. In order to ensure that the cumulative impact area for the city centre remained current and as small as possible the council zoned the area into red and amber, and committed to taking all applications in the red area to a licensing subcommittee. The council has reviewed these areas three times, and consulted twice. The cumulative impact assessment, in which the map is incorporated, is clearly referred to in the policy at 7.24.
35. As the policy wording and scope is not amended, there is no need to review and consult upon an amended policy. This process is long, taking some 9 months to review, consult, approve and publish a policy. It would not be possible to keep the cumulative impact area up to date in this time, and if the council hadn't adopted this approach there would be no choice but to have a blanket cumulative impact area across the entire city centre and for every application to be heard in front of a licensing subcommittee creating unnecessary delay and expense to business owners across the city. This is contrary to the judgement made in the *Brewdog v Leeds* case.

Applicants Paragraph 24 to 26

36. The applicant seems to be asserting that the Licensing Officer and Legal Advisor should be experts in the review and approval of the policy and associated documents. The applicant asserted at the hearing that the Principal Licensing Officer, who was indeed an expert in this matter, be disallowed from providing an explanation of the process due to their role in representing the Licensing Authority in this matter. Indeed the applicants comments regarding the Principal Licensing Officer having "skin in the game" meant that the questions around the review and approval of the policy and associated documents were left unanswered. It is wrong therefore to assume that the Legal Advisor's decision to refer the matter to the Chair of the licensing subcommittee rather than enter into a lengthy explanation of the process meant that additional guidance and procedures were a "private practice of review, amendment and designation between the Council and the West Yorkshire Police".

Applicants Paragraph 27 to 30.5

37. In these paragraphs the applicant repeatedly uses the phraseology 'vaguely designated'. Despite there being no written description of the city centre, the policy names Area 1 to be that of the city centre, a distinct part of the city bounded by a motorway and river, and the map of the city is referred to at 7.24 as being available from Entertainment Licensing. This missing information does not disadvantage the applicant as the map is contained within the city centre cumulative impact assessment which also provides extracts from West Yorkshire Police crime statistics that the Police rely on in any representation they make. By making the latest information available each January on the website and by requesting it from Entertainment Licensing means that applicants have advanced information before they make their application and are able to tailor their application accordingly.
38. Contrary to the applicants continual assertion that the areas reviewed in private, the matter is discussed each year at the six-weekly Licensing Enforcement Group meeting where all the responsible authorities are invited to provide evidence which relates to the city centre cumulative impact area. However as this area is included in the policy on the basis of crime and disorder, the council only expects West Yorkshire Police to respond and this was the case in the 2016 review. The crime statistics are initially discussed in a private meeting between the Police and the Licensing Authority, which is appropriate as the meeting consists of discussing the crime statistics, emerging streets of concern and the year on year comparison of the crime rate, and only the Police were interested in attending the meeting.
39. However any resulting amended cumulative impact assessment which includes a change that would negatively impact on businesses in the area is consulted upon with those businesses and the responsible authorities and then is presented to Licensing Committee and is available as a public document. The cumulative impact assessment including the map and evidence is approved by Licensing Committee and comes into effect in the January each year.
40. At the early part of 2017 the outcome of this review was discussed in two meetings with businesses in the city centre. Due to the 17% increase in crime West Yorkshire Police and the Licensing Authority sent the West Yorkshire Police Crime Statistics to every licensed premises in the two red zones and strategies were discussed to try to reduce this crime figure. A number of measures were discussed, as was the decision not to amend the boundary of the red zones.
41. As the initial meetings are open to anyone, including any responsible authority, any change to the cumulative impact assessment is consulted upon with business owners, agents and solicitors to premises that would be affected, and the resulting cumulative impact assessment is presented to 15 members of the Licensing Committee for debate and approval, it cannot be said that these are private determination of policy and policy designations.
42. In addition although the policy and the cumulative impact assessment may lead to a Police and Licensing Authority representation, every applicant has the right to a fair hearing in front of a licensing subcommittee. The cumulative impact assessment merely provides a guide to applicants of where the areas of highest concern are and whether they can expect either a negotiated settlement, in line with the S182 Guidance, or whether they can expect a

representation from the Police/Licensing Authority which will result in the matter being determined by Members.

43. So the assertion at 30.3 that there is a private cabal of council representatives and the West Yorkshire Police is entirely untrue and an inflammatory statement. Any change to the red and amber zone boundaries recommended from the review of the crime statistics and detailed in the cumulative impact assessment is consulted upon if there is a negative change recommended and the final cumulative impact assessment is approved by Licensing Committee. In addition once an application is made and representations are submitted, the licensing subcommittee is entirely able to depart from the policy and disregard representations made by West Yorkshire Police and the Licensing Authority at the hearing as every case is determined on its own merits.
44. It is simply not true that a private cabal of council representatives and West Yorkshire Police can designate an area within the city centre so as to effectively ban all new applications or variations. The final decision on these applications rest with three members of the Licensing Committee, not with officers.

Applicants Paragraphs 31 to 38 - Conclusions

45. In his conclusions, the applicant asserts again that by holding the map and crime statistics outside of the policy, the Licensing Authority has circumvented the requirement of s5 of the 2003 Act. However if the applicant had checked deeper he would have discovered that:
 1. The cumulative impact assessment (map and evidence) were consulted upon in the first year (2013 with effect from 2014)
 2. The cumulative impact assessment was amended with a new red line boundary, a second red zone and updated evidence which was consulted upon in 2014 with effect from January 2015
 3. The cumulative impact assessment was amended with new evidence, but the red line boundary was reduced and so was not consulted upon in 2015 with effect from January 2016
 4. Again the cumulative impact assessment was amended with new evidence but no change to the red line boundaries in 2016 with effect from January 2017.
 5. Meetings were held in January 2017 with premises from both red zones to discuss the 17% increase in crime.
46. The applicant has misrepresented the facts, as well as disregarded the fact that a licensing subcommittee can and does regularly depart from the Council policy to ensure a fair hearing and to determine each case on its own merits and has made a sweeping statement that the Council has deliberately sought to avoid and circumvent the clear requirements of the 2003 Act. Further the applicant accuses the Council of predetermination which is patently not the case.
47. The applicant has then declared the Policy to be illegal, improper and irrational, despite s5 of the 2003 Act being followed and each further review of the cumulative impact assessment having followed the same consultation method when deemed necessary, which is not required by the Act.

48. It is for the Licensing subcommittee to decide on the course of action to take in this matter. It is the Licensing Authority's assertion that the Licensing Act 2003 has been followed to the letter, that no secret discussion has taken place between the Licensing Authority and West Yorkshire Police and the impact of the cumulative impact assessment is to ensure the red zone of the city centre cumulative impact area is as small as possible, and that applicants have to hand the latest crime statistics when making their application. Therefore the Licensing Authority believes that Section 7 of the Statement of Licensing Policy (the CIP) can remain in play in this matter and that the matter should be determined on that basis.
49. Any accusation of illegality, impropriety and irrationality is a matter that should have been brought to the attention of the Council within three months of the setting of the Policy by way of Judicial Review or by way of appeal, and not brought to the attention of the licensing subcommittee some four years after the setting of the policy.
50. The five yearly review of the Statement of Licensing Policy is due to take place during 2018 so that a new policy is in place by 15th January 2019 and, if necessary, the points raised by the applicant can be considered and reviewed at that time.

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In the matter of the Licensing Act 2003


**And in the matter of an application for premises known as and situated at 5 Briggate,
Leeds, LS1 3LZ**

Submissions by the Chief Constable of West Yorkshire

**In respect of the submissions made by the applicant of a premises licence for
5 Briggate with regards to the Leeds City Council Statement of Licensing Policy**

1. The Chief Constable notes with concern the submissions made by the Applicant which culminate in the suggestion that Section 7 of the Cumulative Impact Policy be set aside.
2. The Chief Constable respectfully supports the submissions of the Local Authority both as to the facts of, for example, consultations and the law and seeks to make a brief additional submission.
3. The city centre of Leeds is a well-defined and understood area. The Chief Constable submits that there is no flaw in the policy as contended for by the Applicant. Further, the Chief Constable would respectfully submit that no confusion could have been caused to the Applicant in this case whose application concerns premises at the very heart of the city centre.
4. The objections to the policy are misconceived. The policy is the product of years of work and experience designed to provide both democratic control and flexibility to the night time economy in a major city. There have been entirely proper consultations

5. The Chief Constable submits that the suggestion that the zoning arrangements within the CIP area are decided by a “private cabal” is incorrect, inflammatory and tautological. The Applicant correctly identifies the right to a hearing before the committee and the rebuttable nature of the presumption before referring to designation as being an “effective ban.”
6. West Yorkshire Police Licensing Department involvement is to supply annual crime statistics to Leeds City Council at their request, upon which the city centre CIP is based.
7. The Chief Constable is concerned as to whether the inflammatory nature in which the application is being conducted reflects the way in which the Applicant would co-operate with the Police and Local Authority in the event that a licence was granted.


KBW Chambers, Leeds.

27th November 2017