

# Appendix 3

In the matter of the Licensing Act 2003

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

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## Submissions by the Applicant

### In respect of the Leeds City Council Statement of Licensing Policy

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1. At the hearing of the application on the 10<sup>th</sup> October, 2017 the licensing sub-committee having heard submissions in respect of the Leeds City Council Statement of Licensing Policy determined to adjourn the hearing of the application to the afternoon of the 5<sup>th</sup> December, 2017. The licensing sub-committee further directed that:

[1] Within 14 days of the hearing – by the Thursday 25<sup>th</sup> October, 2017<sup>1</sup> – the applicant to provide detailed submissions as to the challenge to the SLP and the CIP; these submissions to be served on all the responsible authorities; and

[2] 14 days thereafter the responsible authorities to comment on the submissions.

### The Local Statement of Licensing Policy

2. Section 5(1) of the Licensing Act 2003 requires that each licensing authority must in respect of each five year period (a) determine its policy with respect to the exercise of its licensing functions and (b) publish a statement of that policy before the beginning of that period.<sup>2</sup>
3. Further, s 5(4) provides that a licensing authority must keep its policy (in respect of that period) under review and make such revisions to it, at such times, as it considers appropriate.
4. Section 5(3) provides that before determining its policy, the licensing authority *must* consult with:
  - 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 (Local Health Board in Wales);
  - 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

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<sup>1</sup> Submitted Monday 30<sup>th</sup> October, 2017.

<sup>2</sup> See *R (on the application of the British Beer and Pub Association) v Canterbury City Council* [2005] EWHC 1318 (Admin).

- Persons/bodies representative of businesses and residents in its area.
5. 'Subject to the statutory requirements, it is for each local authority to determine the extent of the consultation it should undertake, and whether any particular person or body is representative of the groups described in the 2003 Act.' (See s 182 Guidance, para 14.6). The Leeds City Council has consulted with a 'wide range of people and organisations' who are listed in paragraph 1.2 of the current 2014 edition of its Statement of Licensing Policy.
  6. By virtue of s 5(5) the consultation requirements of s 5(3) apply in relation to *any revision* of an authority's statement of licensing policy as it applies to the original determination of that policy. The Editors of *Paterson's Licensing Act 2017* provide the following pointed commentary: 'In any changes to policy may only be made following consultation with each of the bodies which the local authority is at liberty to identify itself as being representative of the classes of persons specified.' (*Paterson's Licensing Act 2017*, 1.3504, fn 5).
  7. The concept and application of cumulative impact is not [\*] found in the Licensing Act 2003 but within the s 182 Guidance issued by the Secretary of State. A cumulative impact policy must be based upon evidence and consultation in compliance with the minimum statutory requirements of s 5(3) (see s 182 Guidance, para 14.28 and 14.29).<sup>3</sup>
- [\*] *Nb* Police and Crime Act 2017, Pt 7, s 141.
8. The Secretary of State further advises that: 'Once adopted, special policies should be reviewed regularly to assess whether they are needed any longer or if those which are contained in the statement of licensing policy should be amended' (s 182 Guidance, para 14.32). It follows that reviews and amendments are subject to the statutory consultation requirements in s 5(5):

's 5(4): During each five year period, a licensing authority must keep its policy in respect of that period under review and make such revisions to it, at such times, as it considers appropriate.

s 5(5) Subsection (3) [Consultation requirement] applies in relation to any revision of an authority's policy as it applies in relation to the original determination of that policy.'

### **Leeds City Council Statement of Licensing Policy**

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<sup>3</sup> S 182 Guidance, para 14.28: 'After considering the available evidence and consulting those individuals and organisations listed in 5(3) of the 2003 Act and any others, a licensing authority may be satisfied that it is appropriate to include an approach to cumulative impact in its licensing policy statement.'

S 182 Guidance, para 14.29 (fifth bullet point): '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 statement.'

### 15<sup>th</sup> January 2014 – 15<sup>th</sup> January 2019 Edition

9. The current edition of the Leeds City Council Statement of Licensing Policy (“Leeds SLP”) was approved on the 15<sup>th</sup> January 2014. An amendment was approved in September 2016 to include a cumulative impact policy for Armley and to make small typographical changes. It is proposed that a new policy will be in place by 15<sup>th</sup> January, 2019.<sup>4</sup>

### Leeds City Council Cumulative Impact Policy (General)

10. Section 7 of the SLP sets of the Leeds City Council Cumulative Impact Policy (“CIP”) the general outline of which is set out at paragraphs 7.1 – 7.15. Paragraph 7.9 lists the six areas in which the CIP applies; these six areas are *seemingly* the subject of one CIP. These six areas include ‘the city centre (Area 1)’. There is no definition nor accompanying map to show the extent and scope of Area 1 city centre.
11. Paragraph 7.4 sets out the effect of the policy which ‘creates a rebuttable presumptions that applications within the designated cumulative impact area for new premises licences that are likely to add to the existing cumulative impact will normally be refused if relevant representations are received. It is for the applicant to demonstrate that their application will nor add to the cumulative impact of such licensed premises in the area.’
12. Paragraph 7.15 provides that ‘the council will keep the cumulative impact areas under an annual review’. Further that applicants ‘should contact Entertainment Licensing to ensure they are in possession of the latest information before making their application.’
13. Despite the policy commitment to an annual review of the cumulative impact areas there has been no annual review in compliance with section 5 of the 2003 Ac; save for the inclusion of the Armley CIP in 2016 (see Leeds SLP paras 1.1 and 7.13) and the ‘amendments to the wording of the City Centre CIP to remove ambiguity’ (see Leeds SLP 7.13). It is unclear whether Leeds City Council has one CIP effecting six areas or six CIPs in six separate areas; ambiguities abound. There *seems* to be a review of guidance documents which are not part of the Statutory Policy; indeed in the case of so-called Local Licensing Guidance (see below) the City Council accept that such guidance documents are not and cannot be part of the Statutory Statement of Licensing Policy.
14. The Leeds SLP (at para 7.15) seeks to incorporate ‘the latest information’ but does not define nor explain what is comprised in the ‘latest information’.

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<sup>4</sup>Leeds SLP, para 1.1.

15. Paragraphs 6.32 – 6.34 provide for ‘Local Licensing Guidance’; Leeds City Council recognise that ‘it cannot insist on applicants using the local licensing guidance when completing their operating schedules’ (see Leeds SLP, para 6.34). The Leeds City Council makes reference to three documents called ‘special guidance’ and links to three documents: (i) Local Licensing Guidance, Inner West Leeds (LS 21); (ii) Local Licensing Guidance, Inner East (Gipton and Harehills) and (iii) Local Licensing Guidance, South Leeds (LS 10 and LS 11). The City Council accept that such guidance documents are not and cannot be part of the Statutory Statement of Licensing Policy.
16. This local guidance is not part of the statement of licensing policy and has not been consulted upon and reviewed in accordance with s 5 of the Act. The use of such external guidance documents undermines the clarity and certainty of the local statement of licensing policy.
17. The website also provides ‘some guidance on the city centre cumulative impact policy’. This links to a document titled: ‘Cumulative Impact Assessment, City Centre – December 2016’. This too is an external guidance document that has not been consulted upon and reviewed in accordance with s 5 of the Act; it too undermines the clarity and certainty of the local statement of licensing policy. Such *seemingly* ongoing CIP assessment seeks to avoid and circumvent the clear policy aim to annual review the cumulative impact areas and to avoid and circumvent the clear statutory requirements for consultation in the event of such reviews.

#### **Leeds City Council Cumulative Impact Policy (Area 1 – City Centre)**

18. Paragraphs 7.16 – 7.26 of the Leeds SLP are concerned with the City Centre area of the CIP. Paragraph 7.16 states that: ‘Area 1 relates to the city centre.’ There is no map and no description setting out the extent, scope and boundaries of Area 1 (City Centre) of the CIP.
19. This lack of map and description is in stark contrast to areas 2 – 5 each of which (as the opening paragraph) provides a map and description setting out the extent, scope and boundary of each area (see Leeds SLP: area 2, para 7.27; area 3, para 7.34; area 4, para 7.41; and area 5, para 7.46). Area 6 – Armley is said to relate to ‘the main shopping areas of Armley, known as Armley Town Street and Branch Road. A map with a lined boundary (unreferenced within the text) is provided. There is no link between the text and the map. As Leeds City Council have recognised ambiguities need to be remedied by way of ‘directed consultations’ and evidently undermine the clarity, certainty and reliability of the local SLP.
20. At para 7.24 of the Leeds SLP the City Council provides: ‘The current map and evidence is available on the council’s website from Entertainment Licensing.’ Given that the consulted and approved SLP does not itself contain neither a map nor a proper

description there can be no 'current map' as no such map (nor description) has been consulted upon or subsequently approved.

21. The website also provides 'some guidance on the city centre cumulative impact policy'. This links to a document titled: 'Cumulative Impact Assessment, City Centre – December 2016'. This too is an external guidance document that has not been consulted upon and reviewed in accordance with s 5 of the Act; it is not clear whether this paragraph relates to local licensing guidance (Leeds SLP 6.32 – 6.34), the *annual review* (Leeds SLP, para 7.15), or the *latest information* (Leeds SLP, para 7.15). In any event it is entirely outside the statutory SLP.
22. At the initial hearing, on the 10<sup>th</sup> October, 2017, the Licensing Officer stated that it was for an applicant to check on the website for the map and details of the CIP. However, the documents are not part of the policy as originally consulted upon and adopted in 2014 nor do they form part of the directed consultations in early 2016 (Leeds SLP, para 7.13). There is no express incorporation of any external guidance, documents *etc* in the adopted SLP.
23. If there are omissions, ambiguities or other amendments that need to be incorporated into a SLP the proper course is to follow the statutory requirements set out in s 5 of the 2003 Act and not to adopt additional guidance which sit outside the officially adopted policy.
24. At the initial hearing, on the 10<sup>th</sup> October, 2017, the legal advisor to the subcommittee advised that the guidance documents were regularly reviewed in conjunction with the police. That the additional guidance documents were 'within and below' the SLP and that these documents were 'constantly under review'.
25. Neither the Licensing Officer nor the Legal Advisor were able to point to any portion of the officially adopted SLP where provision had been made for these additional documents and procedures (for procedures, see below).
26. The impression given by officers of the Council was that additional guidance and procedures were a private practice of review, amendment and designation between the Council and the West Yorkshire Police.

### **CIP presumption**

27. The effect of the CIP is set out at para 7.4 of the Leeds SLP, however, within the vaguely designated Area 1 City Centre 'the council will adopt an approach of designating areas within the city centre CIP as 'red' or 'amber' upon an analysis of night time economy related issues that are relevant to the licensing objectives' (Leeds SLP, para 7.20). Later at para 7.23 a 'green area' designation is also introduced.

28. The Leeds SLP does not explain how the approach to designating areas within the city centre is to be undertaken nor the extent and scope of the analysis. Howsoever this designation is carried out the practical effect *seems* to be that areas within the vaguely defined city centre will be subject to differing and changing considerations; it seems to be the case that the designations are reviewed, amended, designated and agreed in private between the licensing authority and representatives of the West Yorkshire Police.
29. The *Cumulative Impact Assessment, City Centre – December 2016* document is based entirely on police data, evidence and submissions (even the A&E data is filtered through the police report). It is unclear to what extent the police report has been properly ‘scrutinised’ (*cf* s 182 Guidance, para 9.12); insofar as the December 2016 guidance is concerned the evidence and conclusions of the police are accepted in their entirety.
30. These private determinations of policy and policy designations have far reaching consequences:
  - 30.1 The general effect of the CIP as set out at para 7.4 is that the CIP creates a rebuttable presumption that applications will normally be refused unless the applicant can demonstrate that the application will not add to the cumulative impact of such premises in the area (Leeds SLP, para 7.4, see also paras 7.67 – 7.70 *Rebutting the presumption against grant in a CIP area*) seems to be set aside in favour of different tests.
  - 30.2 In red areas the council adopts a policy that it will ‘seek to refuse all applications in the red areas’ (Leeds SLP, para 7.21, repeated at para 7.25). The effect of this policy is that on a seemingly annual basis the City Council will have privately(pre-) determined with the West Yorkshire Police that any designated red areas ‘cannot support any more premises opening or existing premises extending their operation no matter how impressive the concept or application’ (Leeds SLP, para 7.21 see also paras 7.67 – 7.70 *Rebutting the presumption against grant in a CIP area*). The City Council moreover will actively set its face against any applications ‘and seek to refuse’ all these applications in the red area. The statement that ‘the council will only grant applications in the red zone in exceptional cases’ (Leeds SLP, para 7.21) is a pithy attempt to poorly conceal what in practical effect is a blanket ban on new premises and variations in the designated red areas.
  - 30.3 Overnight without notification or consultation a private cabal of council representatives and the West Yorkshire Police can designate an area within the city centre so as to effectively ban all new applications or variations.
  - 30.4 In an amber designated area the council expects ‘to offer additional measures tailored to the problems in the area’ (Leeds SLP, para 7.22, repeated at para 7.25). While in a

green designated area 'good quality applications will be generally more acceptable' (Leeds SLP, para 7.23, repeated at 7.25).

- 30.5 It is unclear to what extent the red, amber and green designations relate to the general position in respect of the CIP provided at para 7.4 of the SLP nor whether the policies at paras 7.67 – 7.70 (*Rebutting the presumption against grant in a CIP area*) (in particular para 7.69) apply.

### **Conclusion**

31. The aim of the Leeds SLP is set out at para 1.13:
- 'Applicants for premises licences should be aware of the expectations of the licensing authority and the responsible authorities as to the steps that are appropriate for the promotion of the licensing objectives, and to demonstrate knowledge of their local area when describing steps they propose to take to promote the licensing objectives. This policy seeks to provide advice to applicants about the approach they should take to making applications and the view the council is likely to take on certain key issues where representations are made.'
32. In many respects the Leeds City Council has failed to meet this aim.
33. There is a lack of clarity and certainty as to the exact definition and boundary of the CIP area 1 – City Centre. There is a substantial and significant issue as to the lawfulness of the area 1 CIP area.
34. There has been a failure to provide an annual review of the CIP in accordance with the local policy and the statutory requirements, yet further raising a substantial and significant issue as to the lawfulness of the CIP and of area 1 – City Centre.
35. There is a lack of clarity and certainty as to the test applied in CIP area 1, being subject to private review, amendment and designation without consultation or scrutiny, yet further raising a substantial and significant issue as to the lawfulness and fairness of the CIP and of area 1 – City Centre.
36. Leeds City Council have sought to avoid and circumvent the clear requirements of s 5 of the 2003 Act.
37. Leeds City Council have adopted a blanket ban in all but name and are actively engaged in seeking to oppose applications, having (pre-) determined that the City Centre 'cannot support' any more premises this is contrary to the scheme of the 2003 Act
38. Leeds City Council are applying a SLP that is tainted by illegality, impropriety and irrationality and is in urgent need of review.

**Options for the Licensing Subcommittee**

39. It is submitted that, in the present circumstances, the proper course of action is for the licensing sub-committee to set aside the entirety of section 7 of the SLP (CIP) setting out its reasons for doing so. Further the matters set out herein ought to be brought to the urgent attention of the full licensing committee.

Leo Charalambides  
30<sup>th</sup> October, 2017

Kings Chambers