When is too much too much?

David Clifton, **director of Clifton Davies Consultancy Limited**, reports on the growing trend for cumulative impact policies and the problems they can pose

I am presently preparing for the hearing of a client's application to extend the terminal hours at their premises situated within a 'cumulative impact policy' area. Readers with rural pubs need read no further, but those with pubs and bars in city or town centres should take note, because there is a growing trend for the adoption of such policies.

There are presently over 200 such policies in place in England and Wales, with some local authorities having more than one cumulative impact zone or 'saturation zone' as they are sometimes called. The Statutory Guidance under section 182 of the Licensing Act 2003 tells us that the phrase 'cumulative impact', which appears nowhere within the Act itself, means "the potential impact on the promotion of the licensing objectives of a significant number of licensed premises concentrated in one area".

The licensing objectives are the prevention of crime, disorder and public nuisance, the preservation of public safety and the protection of children from harm.

In some urban areas, it is considered that the high density of premises licensed to sell alcohol, and large numbers of drinkers concentrated in an area, is leading to problems of nuisance, disorder and anti-social behaviour. These problems are thought to occur particularly when customers are leaving pubs and bars at peak times or when they are queuing at neighbouring fast food outlets or waiting for public transport.

A policy of this type can only be imposed after a local authority has consulted on a revised statement of licensing policy and evidence has been produced to show that there has been a cumulative impact of licensed premises on the promotion of the licensing objectives.

However, once in place, it creates a rebuttable presumption that applications for new premises licences (or for variation of existing licences) in cumulative impact zones will normally be refused unless the applicant can demonstrate that there are exceptional circumstances that will result in there being no negative impact on the licensing objectives if the application is granted.

This can present an applicant with a considerable challenge when seeking to rebut the presumption of refusal. The approach we recommend applicants to adopt is to establish whether their application can justifiably be described as positively promoting the licensing objectives. We have achieved significant success by taking such an approach, which is supported by a High Court judgment dating back to 2008.

The Licensing Act requires that when licensing authorities are discharging their functions, they must promote the licensing objectives and have regard to the Statutory Guidance as well as, rather than giving priority to, their statements of licensing policy.

The Statutory Guidance makes it clear that a cumulative impact policy should never be absolute and that a licensing authority must consider whether it would be justified in departing from its special policy in light of the individual circumstances of each case. It points out that the impact can be expected to be different for premises with different styles and characteristics.

It also says that if a licensing authority decides to refuse an application, it will still need to show that a grant would undermine the promotion of one of the licensing objectives and that appropriate conditions would be ineffective in preventing the problems involved.

Once in place, cumulative impact policies should be reviewed regularly to assess whether they have been effective, are needed any longer or if they should be amended.

All affected by such policies should be aware that in a study running until April 2016, the School for Public Health Research is investigating how a cumulative impact policy has affected alcohol-related harm in Islington. More news on that when we have it.

Clifton Davies Consultancy Ltd

Clifton Davies Consultancy Limited is a consultancy business (not a law firm) which specialises in all licensing, gambling and regulatory issues affecting the pub and bar industry. David Clifton and Suzanne Davies are also consultants to Joelson Wilson LLP. The views expressed are given without any assumption of responsibility on their part. If you have any questions, do get in touch and they will be pleased to provide answers, either via this page or direct.

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Questions & Answers

Q: I am applying for a new premises licence. Should I include my beer garden on it?

A: You need to decide whether you might want to sell alcohol in the garden in the future. If you do, for example by installing an outdoor bar, you should include it. If you don't, drinks bought inside your premises for consumption in the garden will be regarded as off-supplies and any conditions that relate to off-sales will apply. If the beer garden is being provided for consumption of off-supplies, you must include a description of where the place is and its proximity to your premises.

Q: Will the proposed Welsh government ban on e-cigarettes in pubs be affected by the recent report that they could be prescribed to help smokers quit?

A: A report prepared for Public Health England has concluded that e-cigarettes are 95% less harmful than smoking tobacco and that no evidence exists currently to show that they are acting as a route into smoking for children or non-smokers. However, a spokesman for the Welsh government has been quoted as saying that they remain concerned that the use of e-cigarettes may renormalise smoking, especially for a generation who have grown up in a largely smoke-free society, so the answer to your question is probably "no".

Q: A local drama group wants to put on an improvisational comedy production in the large function room on the first floor of my pub. Will that constitute a play for licensing purposes?

A: A play is a performance of any dramatic piece (including a rehearsal), whether involving improvisation or not, which is given wholly or in part by one or more persons present and performing in which the whole or a major proportion of what is done by the person or persons performing, whether by way of speech, singing or action, involves the playing of a role. So you'll need to find out whether their production fits this description.