



Bristol City Council (BCC)

City Centre Cumulative Impact Assessment Consultation

Response on behalf of TLT Solicitors

1. Introduction

This response to Bristol City Council's call for evidence in relation to the Cumulative Impact Assessment is made on behalf of the licensing team at TLT LLP ('TLT').

TLT is regularly ranked as one of the leading licensing advisers in England and Scotland in both Chambers and Legal 500, the annual independent guides to the legal sector, driven by client feedback.

We advise a broad range of clients from national operators to smaller independent organisations and sole traders. Our clients cover the whole range of hospitality and retail operations, from hotels, bars, clubs and restaurants to major music festivals, concert halls, food halls, sports clubs and race course operators. We support one-off events and venues, as well as businesses with property estates that run into the thousands. Our advice is bespoke and designed around our client's business need.

Our client portfolio requires us to understand and advise on all aspects of premises licensing, whether it is technical legal advice or business oriented operational guidance.

We advise at every level, from board level strategy to operational matters at individual premises. We lecture on licensing for council officers, councillors and responsible authorities on behalf of the Institute of Licensing, as well as for operators and their advisers and other practitioners at national conferences and events. We write for a number of journals and publications, as well as produce a newsletter for our clients and other interested parties. From initial advice through to advocacy at hearings, our licensing team has significant expertise, with individual partners and other solicitors top-ranked in the national legal guides.

We have experience of working with all of the licensing authorities in England and Wales and are the only truly national practice in the Great Britain, with a large and successful licensing team in Scotland that serves our clients across both jurisdictions.

The licensing practise in England and Wales is primarily based in Bristol. Our solicitor advocates have appeared before BCC Licensing Committee on numerous occasions since the introduction of the Licensing Act.

We also sit on the Bristol at Night working group which aims to assist in policy making and strategy for the City in relation to all matters pertaining to the night time economy, including licensing.

As such, we are ideally placed to respond to this call for evidence.

Whilst we appreciate that the timing of the consultation coincides with the challenges that we all face as a consequence of COVID 19, the long term impact on the sector may well outlive any CIA policy that BCC is considering on re-introducing. It is therefore important to look at these matters in the round bearing in mind the long term impact that COVID 19 will have on the wider hospitality sector, and how Bristol can best face up to these challenges in promoting a safe and vibrant night time economy that does not stifle inward investment, innovation and job creation.



2. COVID 19 and the CIA

The impact of COVID 19 on the hospitality sector is well documented.

During the COVID lockdown earlier in the year we had regular, and helpful, discussions with BCC officers from both the licensing and planning teams to exchange views on the every changing regulatory landscape within the hospitality sector, and how these could be addressed to the mutual benefit of both the City and the sector.

Businesses have had to modify and adapt to the ever changing landscape of regulation and guidance, with many businesses being forced to either remain closed as it proves uneconomic to trade or, sadly, in many cases, shut for good with the consequent loss of jobs and revenue. Bristol has not been immune from this and the long term outlook for the sector is bleak.

City centres across the country have been particularly hard hit. This impacts on not only the day time economy but the night time economy.

The future remains very uncertain. Given current circumstance, Bristol is in the fortunate position of currently being in Tier 1 – “LOCAL COVOD ALERT LEVEL – MEDIUM” although as we have seen in other parts of the country this can, and does change, often very quickly and for long periods of time. There is also talk of a “circuit breaker” lockdown and a potential ‘tier 4’ to contend with.

As a city, Bristol in the enviable position of being attractive to investment and investors, particularly within the hospitality sector. The re-implementation of a city centre CIA at this time is likely to act as a break on potential new business and investment in the sector to the city.

In the circumstances, we would recommend that BCC suspend their consultation on a city centre CIA for the time being. In time this can be re-visited when the dust has settled. The position can be reviewed when there is greater certainty about the long terms future.

No party will be prejudiced by this decision. The police, and other responsible authorities, can still make representations to applications, citing the effect of a cumulative impact, without the need for a formal policy to be in place.

3. Removal of Cumulative Impact Areas (CIA)

When BCC last consulted on the CIA policy across the City we included in our response the following:

“Existing cumulative impact policies need to be scrutinised with an open mind. Stagnation will kill a vibrant area. Put bluntly, CIP's, if left to choke the area they were designed to protect, can do as much damage as good.”

We were therefore pleased, and welcome the decision of the Council, to see the removal of the CIAs in so far as they affected Park Street, Whiteladies Road, Clifton, Gloucester Road, Bedminster and Southville.

The night time economy in Bristol is now a healthy mix of well-known high street brands and independent operators. In recent years Bristol has become known as one of, if not, the best centres for food outwith London (it has even led to the term “food tourism” being used to describe one of the ways that visitors can be attracted to the City).

The removal of these CIA areas one hopes will, in due course, encourage and stimulate further investment in these areas and encourage more operators to see Bristol as the city to develop their operation.

In the event that that BCC do not suspend the consultation on the CIA for the reasons given in 2 above, then we have set out below our views on the possible re-introduction of the CIA

4. General comments in relation to Cumulative Impact Policies ('CIP's')

We fully accept that there may be occasion where a CIAs provide a valuable tool to local authorities in regulating the night time economy. Our experience is, however, that they can also be an impediment to businesses and the development of a thriving night time economy. They can act as a brake to entrepreneurship, adding to the challenges that small business operators face when looking to enter a new market or look to adapt their offer to suit market trends.

CIAs can have the effect of dissuading operators from even attempting to apply for a licence. We have first hand experience of operators who have put on hold investment in to the city as a consequence of COVID 19. Once the dust has settled, these same operators may well decide, at a time when inward investment in to the city will be at a premium, not to take a risk on a site where there is a chance that a licence will be refused (or restricted) on policy grounds.

CIAs can unintentionally penalise operators considering smaller more novel applications (simply because of the prohibitive cost), often resulting in them looking to take their ideas elsewhere and thereby wasting a chance to develop a more rounded and vibrant economy within the CIA.

Any re-introduction of the city centre CIA will need to be scrutinised with an open mind.

5. CIP's and other Bristol strategies

Licensing policies, and CIAs in particular, work best when they reference, and indeed work with, other council strategic plans and policies. For instance, planning strategies and local cultural strategies often inform applicants for either new licences or variations to licences as to what the council are looking to do in terms of promoting culture, leisure use and night-time economy uses in a particular area.

Reference to specific strategies will also assist new potential businesses to understand and factor in the likely costs of entry into the city if their chosen site is within a CIA. There is nothing to prevent any CIA applying to only certain types or styles of premises, or other means being used to give potential operators a better understanding of what the council will and will not take into account in determining applications.

Providing this information and using these policies to inform where CIA's will 'bite' additionally allows applicants to be more proactive when initially looking at sites within the city.

6. Bristol City Centre CIA

We were pleased to see that any proposal for the re-introduction of the CIA in the centre of Bristol is for a revised (and smaller) area that seeks to exclude Broadmead.

If it is determined that there is good empirical and amenity reasons for the re-introduction of the city centre CIA, we believe that an assessment is needed as to exactly what the CIA is designed to catch.

We have seen the evidence provided by the police in support of the re-introduction of the CIA, and whilst we do not propose to carry out a forensic assessment of this we would make the following simple point

It is important to recognise that different types or styles of premises are likely to have different impacts on the night time economy, and whilst some may be viewed as high risk, others will not. Furthermore, within the CIA itself certain specific areas may be seen as "hotspots" (a word used by the Police in their data to support the CIA) significant parts of the proposed CIA are not. Both of these points are borne out by the aforementioned evidence.



If the city centre CIA is to be re-introduced it should be made clear to everyone of its purpose/intention. For instance, if it is deemed that only larger late night or vertical drinking establishments are likely to add to the cumulative impact, then it should be made explicit that small, independent and/ or otherwise innovative applications both for new licences and variations to existing licences will be considered to be outside of the scope of the CIA even if the application is for an alcohol-led venue.

Such applications will still need to demonstrate that they do not undermine the objectives, but we would hope that adding something to this effect into the policy will stimulate and incentivise smaller operators to make applications.

Likewise, if the issue is simply to do with a preponderance of late night refreshment facilities for takeaways leading to queues, noise and disturbance, there is nothing to prevent the policy from stipulating that late night refreshment premises looking only to increase hours for deliveries and not permitting customers to collect food will be deemed outside of the scope of the policy.

Given the exceptional circumstances that the sector currently finds itself in, if a decision is taken to re-introduce the city centre CIA, rather than approaching this on a “one size fits all approach” we would invite the Council to adopt a creative layered (as opposed to a binary) approach to this.

There is already a precedent for this in Leeds. There are similarities with Bristol in the approach adopted by Leeds City Council to their CIA. We would urge BCC engage with their colleagues (both members and officers alike) in Leeds (if they have not already done so) so as to understand the rationale behind the approach, how the policy has been adopted and the impact that this has had on the night time economy.

- **Case Study: The Leeds policy**

Leeds recently consulted on its licensing policy which resulted in the removal of three CIAs.

The Council took the decision, however, to retain the City Centre CIA.

Leeds City Centre CIA, is a good example of the dynamic, and flexible, use of a CIA.

The CIA itself, is divided into three distinct areas - red, amber and green.

- **Red Area**

The council's policy is to refuse all applications in the red areas on the basis that the impact on the licensing objectives are at such a level that the area cannot support any more premises opening or existing premises extending their hours operation no matter how impressive the concept or application is.

The council's policy is to only grant applications in the red zone in truly exceptional cases.

- **Amber**

The amber area is an area which is of concern based upon an analysis of night time economy related issues that are relevant to the licensing objectives.

The council expect applicants to offer additional measures tailored to the problems in that area.

- **Green**

All other areas within the City Centre CIA have been designated green areas where good quality applications will be generally be more acceptable even though the area is a CIA area.

Such a dynamic use of policy demonstrates not only that a careful calculation has been made in ensuring that the CIA is actually required, but also demonstrates that there are differences in what

'cumulative impact' can mean in any given area and that these differences should be recognised in the policy.

The importance and impact of such an approach can be evidenced by a recent case that we, as a firm, were personally involved in.

Our client was seeking an extension of his licence for the sale of alcohol until 0100 on three days of the week. The premises were situated in a CIA. No other premises in the immediate vicinity had a licence permitting the sale of alcohol beyond midnight and other applications for extensions had, in the past, been refused. Unusually the application was supported by local residents, businesses and the local residents' amenity group

After a lengthy, and contested hearing, the application was granted.

When the premises were permitted to re-open after an extended period of closure due to "lockdown" we were contacted by our client who said that the licence extension had saved his business. Without the licence extension being granted, he would have been forced to close the business, with the consequent loss of jobs and a significant investment by the individual concerned.

Finally, the recent "one size fits all" 10pm curfew has, in our view, seen us take a step back to the days that pre date the introduction of the Licensing Act 2003, when there was a uniform pub closing time (with the consequent issues that this creates not just for the regulatory authorities but the public and private transport systems that have the task of ensuring that people get home safely from a night out).

It is also, perhaps, a stark reminder of the unintended consequence of what a uniform and inflexible approach to a CIA might bring.

Conclusion

The benefits of CIA's must be weighed against the inevitable consequences of stifling growth and restricting new concepts from coming into an area. As such, the longer a CIA area has been in place, the closer the scrutiny must be as to its continued value and worth to the city as a whole.

The current consultation on the re-introduction of the CIA should be suspended for the time being (*para. 2*).

In the event that it is not, an open mind and willingness to look beyond the 'headlines' is key to ensuring that CIA's are only maintained where they are essential and that in those cases, they only affect those applications that have been identified as likely to add to the problems that led to the implementation of the CIA. As the District Judge in the 'Brewdog' case said: 'a rise in footfall isn't a reason to refuse entry [to a new applicant].'

A joined-up approach with other city development strategies should help to inform where there is a need to push for the development of the night time economy and where this is not a priority (*para. 5*).

CIP's should, if needed, mirror as closely as possible the reasons they are being introduced. General prohibitions are negative and off-putting.

At a time when the hospitality sector needs all the support that it can get, if the city centre CIA is to be maintained, we would urge BCC to take a creative approach to this (*para. 6*).

Focussed and adaptive CIA's give clear guidance to applicants and officers alike and allow for development where it is needed and innovation where it will benefit otherwise downtrodden or tired areas of the City.



In summary:

1. We welcome the removal of Park Street, Whiteladies Road, Clifton, Gloucester Road, Bedminster and Southville CIAs
2. Any discussions on the possible re-introduction of the city centre CIA should be suspended for the time being, at least until such time as the lasting impacts of COVID 19 on the hospitality sector are clearer
3. In the event that it is determined that the CIA should be re-introduced we would recommend that an approach similar to that adopted in Leeds is adopted

For and on behalf of TLT