

## **CAMBRIDGE CITY COUNCIL**

### **LICENSING POLICY**

### **RESPONSE TO CONSULTATION ON CUMULATIVE IMPACT ASSESSMENT AND POLICY**

#### **BY UKHOSPITALITY**

1. UKHospitality thanks Cambridge City Council (“CCC”) for the opportunity to submit comments on this important consultation.
2. UKHospitality is the UK’s hospitality sector industry body, representing over 700 companies which in turn operate around 70,000 venues in a sector that employs 3.2 million people. The body speaks on behalf of a wide range of leisure and ‘out-of-home’ businesses, from FTSE 100 enterprises to niche groups and independent single-site operators – covering pubs, restaurants, hotels, nightclubs, contract catering, leisure parks, visitor attractions and coffee shops. Data shows that pre-Covid total employment in the hospitality sector in Cambridge accounted for 13,698 persons.
3. UKHospitality notes that CCC only received a single response to the consultation. We appreciate that the consultation which started on 1<sup>st</sup> September was not within a national lockdown period, however, restrictions were in force from 14<sup>th</sup> September, including Tier restrictions from 14<sup>th</sup> October and a national lockdown commenced again on November 5th. As such during the consultation any businesses may have been closed and/or trading with a more limited offer. As such, we would respectfully suggest that it is possible that participation was impacted as a result of that. It is unclear how businesses were contacted to advise them of the consultation. UKHospitality is not aware of how the consultation was publicised. However, the reality has been that leisure operators have been fully occupied by the pressing matters caused by the pandemic, including dealing with creditors and their staff during the prolonged period of business disruption, and putting in place extensive measures to reduce the risk of transmission on their premises. In these unprecedented times, the protection of businesses from

insolvency has taken primacy, and responses to consultation exercises have naturally diminished.

4. Accordingly, UKHospitality is particularly grateful for the opportunity to participate, albeit belatedly, in this consultation process.
5. UKHospitality has also invited the well-known licensing barrister Philip Kolvin QC to prepare a brief paper on cumulative impact following the pandemic, which is attached. It is hoped that his views are found to be helpful.
6. UKHospitality summarises its position as follows:

(1) The only data underpinning the cumulative impact assessment concerns the number of licensed premises and the level of alcohol-related crime to March 2020. However, that data is now out of date. Because of the pandemic, many premises have closed or will close, or have changed or will change the style of their operation. Further, the quantum, pattern and causes of crime will also have changed significantly, and will continue to do so, as the profile of the city leisure industry alters, footfall is reduced and more entertainment is enjoyed at home. To adopt an expanded cumulative impact policy based on superseded data would be a flawed approach.

(2) A cumulative impact policy presumes against any further development of the licensed leisure industry. A policy of this nature may be justified where the overriding requirement of the City is to restrain such development. However, as the nation emerges from the severe economic hardship caused by the pandemic, with many town and city centre leisure units closed, it may well be that the opposite, or at least a less draconian, approach is needed, to prevent an ongoing increase in vacancies, and a reduction in business rate contributions, footfall and employment.

(3) In addition, at a time when the retail base of towns and cities is reducing, it may be considered important to promote leisure rather than restrain it. While Cambridge has a conspicuously successful retail core, it is notable

that it has the highest level of on-line spend in the UK – with over a quarter of spending on-line. The pandemic can be expected to increase that percentage to the detriment of its local high streets.

- (4) In these circumstances, UKHospitality respectfully suggests that CCC rolls over its current licensing policy, but without the cumulative impact element, for a period of 12 months. This will give CCC sufficient time to consider up to date licensing and crime data following the pandemic, and adopt a policy which reflects the needs of the city in what will undoubtedly be a new era.
- (5) Failing that, CCC is requested simply to roll over its existing policy for a period of 12 months, including the current cumulative impact element, but not to expand its cumulative impact areas.
- (6) The policy should make provision for temporary modifications of licences to help businesses survive and adapt during the crisis.
- (7) The policy should specifically promote pavement licensing, which provides crucial income at a time when physical distancing has to be maintained indoors.

If the Council takes up the suggestion of revisiting its cumulative impact policy at this unprecedented time, UKHospitality will be pleased to furnish the Council with further data and policy suggestions, to enable the Council to adopt a policy which achieves a suitable balance between public protection and cultural development.

UKHospitality

January 2021

## **CAMBRIDGE CITY COUNCIL**

### **LICENSING POLICY CONSULTATION**

#### **PAPER BY PHILIP KOLVIN QC**

1. I have been asked by UK Hospitality to comment briefly on Cambridge City Council's proposed licensing policy which, following an analysis of crime data to March 2020, would readopt the current cumulative impact areas and add a further one. This paper should not be viewed as legal advice, much less as an intimation of a legal claim. Rather, it is intended to provide some hopefully helpful ideas in relation to the formulation of policy at a time of crisis for the industry.
2. As everybody is aware, this is a time of unprecedented difficulty for the hospitality industry, and one which will continue to affect the licensing landscape across the nation both now and in the medium and long term.
3. The hospitality industry as a whole has faced severe financial and operational constraints over the last 10 months, with many having been forced to close permanently or temporarily. As is well-understood 2021 will be a further extremely difficult year, with rising levels of unemployment and debt and falling economic activity. For those businesses which can afford to open, the need for social distancing, the increased operational costs of Covid-secure measures and a growing consumer preference for home entertainment will further hamper the viability of licensed premises.
4. In summary, for an industry which trades on small margins, it is inevitable that Covid-19 will have an extremely serious long-term impact. Quarter 2 Gross Domestic Product data recently published showed a decline of around 20% for the UK economy overall – but for the hospitality sector it was even worse with a massive 85% decline. New commercial data for Quarter 3 showed that the sector's sales fell a further 48%, even with the boost from Eat Out to Help Out, the VAT cut and extra 'staycations'. In addition, a UKHospitality survey of companies undertaken in November 2020 showed almost half (41%) of

businesses that were surveyed suggested that they would fail by mid-2021. 23% said that they would do so by the turn of the year.

5. The 10pm curfew saw sales fall around 20% year-on-year from already depressed levels. In terms of visitors to the UK, hotels surveyed were reporting a 50% increase in cancellations, with forward bookings from October falling by 20%. Finally, Christmas trade forms a key part of hospitality's 'golden quarter,' which many businesses rely on for significant amounts of their annual revenue. This year, due to restrictions, cancellations and distancing measures, revenues were extremely limited: the recent UKHospitality survey of our membership indicated a revenue loss of £73 billion for this year (-57%), and this was before the November lockdown was announced and in place. UKHospitality is still updating Q4 data, which is anticipated will show further severe significant impact on the sector due to the strengthening of tier restrictions heading into Christmas and the resulting loss of trade and the national lockdown that commenced at the start of 2021 and currently has no end date set.
6. In such a climate, two matters are clear. The first is that any previous analyses of cumulative impact will be out of date. The second is that there is a social and economic imperative to facilitate and not frustrate business development. This is not to say that there should not be licensing controls: quite the contrary. It is simply to say that the usual tools of control under the Licensing Act, namely the assessment of the impact of proposals on the licensing objectives, provides a sufficient safeguard at this time. They do not need to be supplemented by a presumption against new or varied licences.
7. Additionally, it is axiomatic that any adoption of cumulative impact policy should be underpinned by an up to date CIA assessment. What is already clear though is that many businesses will not survive and the licensing landscape will not return to its pre-March 2020 state. It is quite impossible in these circumstances to predict crime data, but it is almost inevitable that reductions in premises and footfall will produce less alcohol-related crime in the public realm, although quieter streets and the reduction in SIA supervisors who perform an important security role may produce an increase in other sorts of crime. It is also possible

that a greater proportion of home consumption will produce a greater proportion of alcohol-related crime in domestic settings, but that will certainly not be a function of the number of licensed premises.

8. All of this would apply to any town or city, but there are some special features of Cambridge which may also have an effect. The entire cumulative impact proposal is based around two quite crude measures of overall licensed premises and overall alcohol-related crime. I would respectfully suggest that there are many other important measures, e.g. what type of premises (on-licences/off-licences, nature of premises such as bars/ clubs/restaurants/cinemas/theatres), what hours are the licences, what are the types of crime (inside premises/outside premises/somewhere else, violence/public order) and what day and times are the crimes committed? A picture whereby most crime is committed at 3 a.m. when nightclubs disgorge requires a completely different policy response to a picture whereby crime is committed all day by street drinkers. The latter may well have little to do with the number of on-licences, but may have a lot to do with how alcohol is sold from off-licences and the city's response to the issue.
9. The imposition of a cumulative impact policy is the most draconian lever available to a licensing authority. Usually, it is based on some relatively detailed analysis of relevant data. Cambridge has not undertaken that exercise, but there is the additional issue that the data cannot realistically be taken as a reliable basis for the policy because of the intercession of the pandemic.
10. The corollary of this, of course, is that the presumption against any further licences or even material variations may well not be an advisable policy position for Cambridge as it emerges from the pandemic and seeks to maintain a vibrant high street, employment and cultural opportunities, a reputation for a good standard of leisure provision and so forth. It is the equivalent of imposing a presumption against new building following a hurricane.
11. Considerations of this sort have moved other authorities to revisit and remove their cumulative impact policies with recent examples being Trafford with effect from 7<sup>th</sup> January, Hereford from 11<sup>th</sup> December and additionally cumulative impact policies in the last few months have been removed in Birmingham,

Bournemouth, Hartlepool and Oxford are currently consulting on the removal of theirs.

12. Even if the Council wishes to maintain a cumulative impact policy, it would presumably wish to do so against up to date and sensitive data, and in a less blanket way than is currently the case. E.g. is the presumption to be against all premises or just types of premises, and for all hours or just particular hours? Would the Council like to state what it supports as well as what it opposes, and would it like to set standards which may assist operators to overcome the policy strictures?
13. In all of these circumstances, while it is entirely a matter for the Council, I can see value in revisiting this policy in 12 months' time when the new economic and leisure landscape is clearer, and when some more detailed analysis has been carried out, and some further consideration has been given to what the future vision is for leisure in Cambridge; and also when there has been a consultation which has produced a credible level of responses.
14. In the meantime, however, there is the question of what to do with the policy now.
15. My suggestion is that the policy should be rolled forward but without the cumulative impact element. However, it should be explained why this has been done, and it should be indicated that the matter will be revisited in 12 months' time. It should also be said that it remains open to any person to oppose a licence application based on cumulative impact, and the authority will then consider whether the application should be refused, or conditions added, based on cumulative impact considerations.
16. If the Council does not consider such a course acceptable, then it might decide to roll forward the existing policy, without extending the current cumulative impact areas, for 12 months, followed by a policy review once the outcome of the pandemic is known.

17. Furthermore, the policy might make interim provision for a more flexible approach for businesses which wish temporarily to modify their business model to help them survive, explore new ways of working and help them to adapt to rapidly changing customer types, numbers and needs.
18. As CCC will be acutely aware, operators facing these unique challenges are striving to adjust and create new business models to attract a diminishing number of customers in lower capacity premises trading over fewer hours than their licences currently permit. These changes might involve layout alterations, use of parts of the premises not previously used for trading, expansion out of doors, trying to trade over extended hours, or revising the business model so as to introduce more seating, more food or an element of performance. This is all strongly to be encouraged to help to save the hospitality industry and ensure a continuation of a diverse offering.
19. Given the dramatic decreases in footfall over the last few months and the inevitability that it will remain depleted over the short to medium term, it is suggested that there is good reason to permit greater flexibility for variations which will only operate for at least 12 months from the date of opening or implementation of variation, as the case may be. (It is important that time runs from opening or implementation rather than grant since it is uncertain when premises will be able to re-open fully or at all).

The following policy wording is suggested:

*Temporary Modifications*

*“The Licensing Authority will take a flexible approach to applications for new premises licences or variations of premises licences which:*

*(1) are expressed to be for a period expiring no later than [12 months from opening or implementation, as the case may be.*

*(2) comply with the relevant policies in this Statement of Licensing Policy.*

*The purpose of this policy is to permit and encourage businesses to take a flexible approach to their business models in order to help them adapt and to survive the pandemic and its consequences. The licensing authority particularly wishes to endorse layout changes, expansions of space and flexing of business models which help to diversify the Cambridge economy and attract a wider customer base. In deciding on such applications, the Licensing Authority will give weight to the temporary nature of the proposal, and that the fact that, if granted, the proposal will be implemented during a period in which overall trade and footfall is significantly diminished.*

21. The further benefit of such a Policy would be that businesses will have an enhanced opportunity to try out different business models. This will give them and CCC the opportunity to consider the impact of such models on the licensing objectives, which will improve the evidence base for the review of the licensing policy which it is suggested takes place one year from now.
22. I do however need to contextualise and qualify that suggestion in two respects.
23. First, I am not suggesting that such applications are only ever granted on a temporary basis. The operator must decide whether it wishes to make an application in the usual way. If the application is for an open-ended licence or variation, it is for the authority to decide whether the policy tests are met and whether the licensing objectives are undermined.
24. Second, and linked, is the consideration that for new licences in particular, it is unlikely to be viable for the business to apply for a 12 month licence, due to the investment and property commitment required and the need for business uncertainty in an uncertain environment. The suggestion is to enable an increase in applications, not to reduce the opportunity for investment.
25. It should be noted that this approach of temporary modifications is not unusual. For example, it is known that Plymouth, Hartlepool and Westminster, which all operate Cumulative Impact Policies, have granted temporary permissions for time-limited extensions of hours for a circa 12 month period so that the impact

can be assessed, in view of the impact of the pandemic on the hospitality industry.

26. Finally, and briefly, the Council may wish to consider creating a positive policy in favour of pavement licensing, which is such a crucial lifeline for businesses which cannot break even based on the number of tables they are permitted indoors, and such a positive opportunity for customers who are concerned about the risks of socialising inside premises.
27. I would conclude by saying that the pandemic has had an unprecedented impact on the hospitality and entertainment industry nationwide.
28. In my view, the appropriate response is to use the policy to nurture the hospitality industry, and seek to rebuild a sustainable, diverse offering rather than presuming against all licensing development.
29. I do hope that these views are helpful.

**PHILIP KOLVIN QC**

**14 January 2021**

**11 KBW**

**Temple EC4**