

Item No: 8.	Classification: Open	Date: October 8 2009	Meeting name: Licensing Committee
Report title:	The Licensing Act 2003 – Consideration of local saturation policies dealing with the “cumulative impact” of licensed premises – Borough and Bankside area		
Ward(s) or groups affected:	Cathedral, Chaucer and Grange		
From:	Strategic Director of Environment and Housing		

RECOMMENDATION

1. That the committee considers, on the basis of the partnership analytical report and the responses from the local consultation exercises, whether it is appropriate and necessary to recommend council assembly to introduce a saturation policy in the Borough and Bankside area.
2. That, in the event that a policy is considered to be appropriate and necessary within the Borough and Bankside area, the committee determines:
 - a) The proposed boundary of the recommended saturation area; and
 - b) The proposed classes of premises to which a policy should apply.

BACKGROUND INFORMATION

3. Statutory guidance permits licensing authorities to consider the adverse cumulative impact of licensed premises on a local area and to implement a policy that seeks to restrict the further escalation of licensed premises in that area. This is known as a “special” or “saturation” policy.
4. A saturation policy may be declared where there is an evidential basis showing that the concentration of licensed premises in an area is impacting upon the licensing objectives and the addition of each further additional licence is likely to have a disproportionate impact on crime and disorder or nuisance in that area.
5. Essentially, the evidential basis needs to:
 - Be factual, quantitative, and proximate;
 - Demonstrate a positive correlation between alcohol/entertainment/late night refreshment premises, and crime and disorder and nuisance issues within the particular areas under consideration; and
 - Examine trends over a period of time.
6. Since the introduction of the Licensing Act 2003 in November 2005, the council’s licensing committee has been monitoring available information sources that might help to gauge the cumulative impact, particularly in terms of crime and disorder and nuisance, of licensed premises on their locality. Reports are provided at six-monthly intervals following the release of the latest relevant statistical information from the partnership analyst and the environmental protection team.
7. On 5 November 2008, council assembly agreed to introduce two saturation policies within the borough, in the Camberwell and Peckham areas.

8. On 17 March 2009, the licensing committee required public consultation to be carried out on the possible introduction of a third saturation policy in the Borough and Bankside area.
9. This report updates the committee on the latest analysis from the partnership analytical team and the environmental protection team with particular regard to the situations in Borough and Bankside. It also reports back on the responses received to the public consultation.

KEY ISSUES FOR CONSIDERATION

General

Partnership analytical report

10. The latest partnership analytical report was published on 18 June 2009. It provides statistical information on alcohol related "violence against the person" (VAP) and alcohol related "disorder and rowdiness" up to and including the period December 2008 – May 2009. A copy of the full analysis is attached at appendix 1 to the report on the Peckham and Camberwell areas elsewhere on this agenda. Further additional analysis relating to the general Borough and Bankside area is provided at appendix 1 to this report.

Violence against the person

11. VAP figures reproduced in the analytical report have attempted to capture incidents that are likely to be related to alcohol excluding incidents of domestic violence. The category of violence against the person incorporates a number of individual crime types including murder, grievous bodily harm, actual bodily harm, common assaults, the possession of offensive weapons, harassment and other violent crime. Other crimes broadly included are robbery of the person and sexual offences.

Alcohol related CAD data

12. The analytical report also provides information on disorder / rowdiness figures which collects all alcohol related crime and disorder (CAD) calls to the police regarding
 - Alcohol related rowdy behaviour
 - Licensed premises
 - Street drinking

Nuisance service requests

13. The council's environmental protection team has also reported, on 1 September 2009, on the number of nuisance complaints received by community safety enforcement in connection with licensed premises during the period November 2006 to May 2009. A copy of the full analysis is provided at appendix 2 to report on the existing Peckham and Camberwell saturation areas which appear elsewhere on this agenda.

Borough and Bankside – Analysis

14. For the purpose of the consultation exercise, the Borough and Bankside area was defined by the following boundary - Blackfriars Bridge / Blackfriars Road / Borough Road / Borough High Street / Long Lane / Crosby Row / Snowsfields / Bermondsey Street directly north to the river frontage and then westward back to Blackfriars Bridge. A map of the area is provided as appendix 2.

15. At the time of writing of this report there are 182 premises licensed under the 2003 Licensing Act for either the sale or supply of alcohol; the provision of regulated entertainment or the provision of late night refreshment trading within the area. This represents 15% of the total licensed premises in the borough. This figure includes 67 restaurants, 54 public houses / bars and 17 off-licences / supermarkets / grocers / convenience stores.
16. For the purpose of the consultation exercise it was proposed that any saturation policy introduced might apply to the following classes of premises - night-clubs / public houses & bars / restaurants & cafes / off-licences, supermarkets and grocers.
17. As mentioned the analysis for the Borough and Bankside area is contained within the latest partnership analytical report at appendix 1 to the Peckham and Camberwell report and the further information at appendix 1 to this report.
18. In brief the VAP figures for the most recent six-month period (Dec 08 – May 09) show a 15.5% increase on the previous comparable period while figures for the most recent twelve-month period (Jun 08 – May 09) show a 34% increase on the previous comparable period. Figures for alcohol related CAD calls show increases of 24% and 19% respectively for the same periods.

Borough and Bankside proposal – Consultation responses

19. Consultation on the potential introduction of a saturation policy was carried out in the Borough and Bankside area during April and May 2009.
20. As part of the consultation the licensing team directly contacted
 - All local licence holders;
 - Known local representatives of businesses and residents; and
 - All responsible authorities
21. The consultation was also advertised on the licensing web site and in the local media, including the SE1 web site. A well attended local meeting was held in Borough High Street to discuss the matter.
22. The consultation asked three specific questions
 - Whether, based on the evidence provided, a saturation policy was considered to be appropriate and necessary within the Borough and Bankside area;
 - If so, whether the suggested boundary of the proposed area (see section 14 of this report) is appropriate/; and
 - If so, whether the suggested classes of premises (see section 16) are appropriate?
23. In all a total of 40 responses were received to the consultation exercise. These are summarised at appendix 3 with individual comments and detailed responses provided in full in appendix 4. The 40 responses included:
 - 3 responses from responsible authorities;
 - 14 responses from or on behalf of local licensed operators;
 - 19 responses from or on behalf of local residents; and
 - 4 other
24. Of the 14 responses received from or on behalf of local licensed operators:

- 64% were against the introduction of a special policy; and
 - Of the 36% that supported the introduction of a policy 80% agreed with the proposed boundary and 100% agreed with the proposed classes of premises.
25. Of the 19 responses from or on behalf of local residents:
- 95% supported the introduction of a special policy;
 - 50% agreed with the proposed boundary; and
 - 78% agreed with the proposed classes of premises.
26. Within the consultation responses a range of suggestions were made for extensions of the proposed boundary of any special policy area that may be introduced, all of which are provided in the summary of responses. Proposals were received for extensions of the proposed boundary in westerly, southerly and easterly directions.

Borough and Bankside proposal – Planning policy comments

27. The planning policy team is currently preparing a Supplementary Planning Document to the core strategy for the Borough, Bankside and London Bridge Area, which will set out the council's plans for the regeneration and development of Borough, Bankside and London Bridge over the next 10 to 15 years. The Supplementary Planning Document is still at an early stage and as yet the planning policies for Borough, Bankside and London Bridge, which will be included in the SPD, have not yet been decided.
28. The SPD will also explore the potential for a planning policy saturation policy in the Borough and Bankside area for bars, cafes, restaurants and hotels. This is to ensure that there is a balance of different uses in the area, including shops, bars, restaurant and cafes is maintained and that one use(s) does not dominate the area or have a detrimental impact on the amenity of the surrounding residents in the area.
29. It is understood that the Borough and Bankside saturation zone will apply to the following classes of licensed premises - night-clubs / public houses & bars / restaurants & cafes / off-licences, supermarkets and grocers.
30. It should be noted that restaurants, bars and cafes can add to the vitality and life of areas and can therefore be a important part of the local economy. Therefore the introduction of a saturation policy in Borough and Bankside which would effectively make it more difficult, but not impossible, to obtain a licence for the above uses due to the existence of a rebuttal presumption may be acceptable provided that it does not completely inhibit the introduction of new licenses in the area. It is considered that the introduction of a saturation zone may discourage potential businesses from locating in this area, restricting the development of the night-time economy, reducing market confidence and inhibiting economic development and regeneration. Therefore it needs to be applied with caution and not be over zealous when licensing applications are considered.
31. It is worth noting that the Mayor of London recently produced best practice guidance entitled "Managing the night time economy" (2007) which states;
32. *"Saturation policies are likely to be more appropriate in addressing concerns in primarily residential areas. When considering adopting such a policy, boroughs should take into account its wider implications. The regeneration benefits that developing the night-time economy could bring to an area may be lost. Constraining growth alone therefore does not manage existing impacts. It reduces potential for competition and the benefits it can have for the consumer"* (para 7.16- 7.19).

Borough and Bankside – comments from the environmental protection team

33. Appendix 2 to the report on the existing Peckham and Camberwell saturation areas (elsewhere on this agenda) provides detail of nuisance service requests received by community safety enforcement. Figures for nuisance service requests received for the Borough and Bankside area are insignificant.

Borough and Bankside proposal – comments from the commissioner of police

34. The commissioner of police for the metropolis supports considers a saturation zone to be appropriate for the area.

Borough and Bankside proposal – next steps

35. In the event that the committee should decide to recommend to the full council assembly that a saturation policy should be established in the Borough and Bankside area, this report will be forwarded on to the assembly for final decision.
36. Any decision will form an amendment to the council's current Statement of Licensing Policy for 2008 – 2011 (current version approved by council assembly on 5 November 2008). As such the revision will be published and advertised in accordance with the Act and regulations and steps will be taken to ensure that all current and future affected licence holders understand the decision and the effects of it.

The cumulative impact of a concentration of licensed premises

37. The cumulative impact of a concentration of licensed premises is dealt with under sections 13.24 through to 13.39 of the Guidance to the Act produced by the Department of Culture Media and Sport (DCMS) (last revision approved June 2007). In order to be able to consider the issues around the introduction of saturation policies fully, it is important to understand the concept of cumulative impact and saturation policies. Members' attention is drawn to the key points of the guidance set out in the supplementary advice from the strategic director of law and governance in this report (paragraph 49 onward).
38. The absence of a special policy does not prevent any responsible authority or interested party making representations on a new application for the grant, or variation, of a licence on the grounds that the premises will give rise to a negative cumulative impact on one or more of the licensing objectives.

Moving toward saturation policies

39. The steps toward a special policy on saturation are set out in the DCMS guidance as follows
 - Identify concern about crime and disorder or public nuisance;
 - Consider whether there is good substantiated and reliable evidence that crime and disorder or nuisance are happening and are caused by the customers of licensed premises or that the risk of cumulative impact is imminent;
 - Identify the boundaries of the area where problems are occurring;
 - Consult with those in Section 5(3) of the 2003 Act, and subject to the outcome of that consultation; and
 - Include and publish details of the special policy in the licensing policy statement.

Mayor of London's Best Practice Guide – Managing the Night Time Economy

40. The responses from planning on the situation in Borough and Bankside reference the “Mayor of London's Best Practice Guide on Managing the Night-Time Economy” (BPG). The guide was published in 2008 and sets out to “suggest how public authorities and the private and voluntary sectors can work together to support the development of the night-time economy in appropriate locations and improve the way they manage its impacts”.
41. Sections 7.17 through to 7.23 of the BPG deal specifically with policies to manage cumulative impact. Section 7.19 in particular advises that “policies constraining growth, including special policies in licensing, should be used sensitively, and blanket restrictions on all new licences or development should be avoided unless the cumulative impact on a neighbourhood can be proven to be considerable. They should be based on robust and authoritative evidence and clearly illustrate the relationship between further growth in the night time economy and the issues such policies would seek to address. An evidence base also provides opportunities to consider if there are more appropriate measures to manage the night-time economy. Where used, licensing based saturation policies should form part of an integrated package of measures. The integration of planning and licensing policies, while avoiding duplication, is particularly important.”
42. The guidance also emphasises that constraining growth alone does not manage existing impacts and that the wider implications of the introduction of a policy should be taken into account. The guidance suggests, for instance, that:
 - Applying saturation policies could displace growth of the night time economy to nearby areas, or other neighbourhoods entirely;
 - Regeneration benefits that developing the night time economy could bring to an area may be lost;
 - Premises may alternatively be developed for a use not subject to licensing but with its own negative impacts;
 - Potential for competition will be reduced with resultant loss of potential benefits this may bring for the consumer; and
 - Incentives for existing operators to invest in improving the quality of their business may be lost.
43. The guidance suggests that a more “fine-grained approach” should be taken to the managing the range of premises within the late-night economy. It emphasises the importance of careful selective application of appropriate conditions to deal with identified concerns and it proposes developing planning policies through Development Plan Documents (DPD) or supplementary planning guidance so as to provide a mix of uses that diversify the night time economy, contributing to the wider vitality and viability of town centres.

Community Impact Statement

44. This report considers the extent to which a saturation policy may be appropriate and necessary within the Borough and Bankside area, to help control the direct impacts of the leisure and night-time economy on the local community.
45. Saturation policies have the potential to place a check on identified and escalating concerns relating to crime and disorder, anti-social behaviour and nuisance. In doing so a policy can contribute toward reducing the fear of crime and making Southwark a better place to live, work and visit.

46. Conversely, saturation policies may also impact on business growth and development of the area concerned. While it should be understood that the existence of a policy does not prevent responsible operators from becoming established within the area or from developing existing businesses, that operator will have to demonstrate that their business proposals do not further impact on the identified concerns. The implications of the introduction of saturation policies are discussed within this report.

Resource implications

47. While it is accepted that the introduction of a saturation policy will result in every relevant new licence application or variation application being considered in the light of the new policy, it is not considered that this will have any significant impact on resources.

Consultations

48. Details of public consultations carried out in development of the policy proposals are detailed within this report.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Strategic Director for Communities, Law and Governance

Cumulative Impact and Special/Saturation Policies

49. The Licensing Act 2003 does not, in itself, provide for saturation policies. However, section 4 of the Act provides that in carrying out its functions a licensing authority must have regard to “the guidance” issued by the Secretary of State under section 182 of the Act. The guidance acknowledges that saturation policies are a proper matter to be taken into account when developing a licensing policy.
50. In considering whether a statement of licensing policy should include a saturation policy in respect to an area, the licensing authority should consider the cumulative impact of licensed premises, in the particular area(s) concerned.
51. Cumulative impact is defined in the guidance at paragraph 13.24 as “the potential impact on the promotion of the licensing objectives of a significant number of licensed premises concentrated in one area”.

Consultation

52. Section 5(3) of the Act requires that before formulating any such policy the licensing authority must first consult with the local police, fire service and representative bodies of local residents, businesses and premises licence holders.

Evidence

53. It is clear from the guidance that any decision to include any saturation policy within the statement of licensing policy should have an evidential basis which demonstrates that the cumulative impact of licensed premises in that area is having an impact on crime and disorder and/or public nuisance.
54. The decision to include a saturation policy should only be made where, after considering the available evidence and consulting those individuals and organizations listed in section 5(3) of the Act, the licensing authority is satisfied that it is appropriate and necessary to include an approach to cumulative impact in the statement of licensing policy (guidance at paragraph 13.27).

55. Members are asked to consider the most recent analysis and evidence collated following consultations. If members wish to recommend the introduction of any new or extended saturation policy within the borough, members must first be satisfied that there is sufficient evidence to show that the cumulative impact of premises in the area is having an impact on local crime and disorder and/or public nuisance.

The effect of adopting a special policy

56. The adoption of a special policy creates a rebuttable presumption that applications for new licences and variations that are likely to add to the existing cumulative impact of premises within the area to which the special policy applies, will normally be refused where relevant representations are received.
57. The special policy must stress that this presumption does not relieve responsible authorities and interested parties of the need to make representations in respect of applications for premises within the special policy area(s). It will not be possible to refuse to grant such applications, or seek to impose conditions if no representations are received.
58. If no representations are received in respect of applications within the special policy area, it will remain the case that an application must be granted in the terms that are consistent with the operating schedule submitted.
59. Applicants will be expected to provide information in their operating schedules to address the special policy issues in order to rebut the presumption of refusal. Applicants will need to demonstrate why the operation of their premises will not add to the cumulative impact being experienced.
60. Once adopted, special policies should be reviewed regularly to assess whether they are needed any longer or require expansion.

Limitations

61. It would not normally be justifiable to adopt a special policy on the basis of a concentration of shops, stores or supermarkets selling alcohol for consumption off the premises (guidance at paragraph 13.33). Members will note that the classes of premises to which the saturation may apply, includes off-licences, supermarkets, grocers and take-aways in each of the three areas. Members should be satisfied that the inclusion of such premises is justifiable, having regard to the evidence obtained through the consultation process.
62. A special policy should never be absolute, i.e. cannot have a blanket policy to refuse all applications but rather a rebuttable presumption that they will be refused. Each application will have to be considered on its own merits and should only be refused if after receiving representations, the licensing authority is satisfied that the grant of the application would undermine the promotion of the licensing objectives and, that necessary conditions would be ineffective in preventing the problems involved.
63. Special policies should never be used as a ground for revoking an existing licence or certificate when representations are received about problems with those premises, i.e. by way of a review. A review must relate specifically to individual premises whereas cumulative impact relates to the effect of a concentration of many premises.

64. A special policy cannot be used to justify rejecting applications to vary an existing licence except where the proposed changes are directly relevant to the policy and the refusal is necessary for the promotion of the licensing objectives.
65. Special policies cannot justify and should not include provisions for a terminal hour in a particular area.
66. Special policies must not impose quotas that would restrict the consideration of any application on its individual merits.
67. The Guidance states that statements of licensing policy should contain information about the alternative mechanisms available for controlling cumulative impact. The licensing policy should contain details of mechanisms available both within and outside of the licensing regime. (Guidance at paragraph 13.39).
68. Members should note that the statement of licensing policy must not be inconsistent with the provisions of the 2003 Act and must not override the right/s of any individual as provided for in that Act. Nor must the statement of licensing policy be inconsistent with obligations placed on the Council under any other legislation, including human rights legislation. Members should also note that the council has a duty under section 17 of the Crime and Disorder Act 1998, when carrying out its functions as a licensing authority under the 2003 Act, to do all it reasonably can to prevent crime and disorder within the Borough.
69. The 2003 Act provides that the functions of the licensing authority, except those relating to the making of the statement of licensing policy, are to be taken or carried out by its licensing committee and that the licensing committee may delegate these functions to sub-committees or to licensing authority officials in appropriate cases. The council has delegated its licensing functions in accordance with the 2003 Act as set out in its constitution (2008/2009) at part 3G.

Finance Director (ENV/ET/150909)

70. There are no financial implications as a result of accepting the proposals set out in the report. Any costs arising from implementing the proposals will be fully contained within the existing budgets of the division.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Licensing Act 2003 Associated secondary regulations DCMS Guidance to the Act Southwark Statement of Licensing Policy Saturation consultation papers Saturation consultation responses Mayors Best Practice Guide for Managing the Late Night Economy	The Health Safety & Licensing Unit, The Chaplin Centre, Thurlow Street, London, SE17 2DG	Name: Mrs Kirtikula Read Phone number: 020 7525 5748

APPENDICES

No.	Title
Appendix 1	Further analysis Borough and Bankside area
Appendix 2	Map of Borough and Bankside area
Appendix 3	Summary of consultation responses
Appendix 4	Detailed consultation response from Waterloo Quarter Business Alliance

AUDIT TRAIL

Lead Officer	Gill Davies, Strategic Director of Environment & Housing	
Report Author	Richard Parkins; Health Safety & Licensing Unit Manager	
Version	Final	
Dated	September 4 2009	
Key Decision?	Yes	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / EXECUTIVE MEMBER		
Officer Title	Comments Sought	Comments included
Strategic Director of Communities, Law & Governance	Yes	Yes
Finance Director	Yes	Yes
Executive Member	Yes	Yes
Date final report sent to Constitutional/Community Council/Scrutiny Team	September 25 2009	