

Item No: 9.	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 – Old Kent Road corridor and Elephant & Castle area		
Ward(s) or groups affected:	Cathedral, Chaucer, Newington, East Walworth, Riverside, South Bermondsey, Livesey and Nunhead		
From:	Strategic Director of Environment and Housing		

RECOMMENDATION

1. That the committee considers, on the basis of the partnership analytical report, the situation within the Old Kent Road corridor and decides whether
 - a) To continue to monitor the situation for a further 6 month period; or
 - b) To carry out further local consultation with residents and businesses on the possible introduction of a saturation policy; or
 - c) To take no further action at the present time.

2. That the committee considers, on the basis of the partnership analytical report, the situation within the Elephant & Castle and decides whether
 - a) To continue to monitor the situation for a further 6 month period; or
 - b) To carry out local consultation with residents and businesses on the possible introduction of a saturation policy; or
 - c) To take no further action at the present time.

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 Peckham and Camberwell areas. These took immediate effect.
8. On 17 March 2009, the licensing committee required public consultation to be carried out in the Peckham area on the possible extension of the Peckham saturation zone and Borough and Bankside on the potential introduction of a third saturation area. The committee also required that the situations in the Old Kent Road corridor and the Elephant & Castle continue to be monitored.
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 the Old Kent Road corridor and the Elephant & Castle area.

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 full copy of the analysis is attached at appendix 1 to the report on the Peckham and Camberwell areas with additional further analysis relating to the Old Kent Road corridor and the Elephant & Castle areas provided at appendices 1 and 2 respectively, 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 this report.

Old Kent Road corridor analysis

14. For the purposes of this exercise the Old Kent Road corridor area is defined, by agreement with the committee on 30 September 2008, by the following boundary – the length of the entire road taking in both frontages and extending some 50 metres behind those frontages (loosely bordered by the likes of Congreve Street, Madron Street, Marcia Road). A map of the area is provided at appendix 3.
15. At the time that this report was prepared there were 61 premises licensed under the Licensing Act 2003 for either the sale or supply of alcohol and / or the provision of regulated entertainment and / or the provision of late night refreshment in the proposed Old Kent Road saturation area. This represents 5.1% of the total licensed premises in Southwark. This figure includes 21 restaurants; 17 off-licences / supermarkets / grocers / convenience stores; 7 take-away establishments; 4 night-clubs and 4 public houses / bars.
16. As mentioned, the main analysis for the Old Kent Road area is included within the partnership analytical report at appendix 1 to the report on the Peckham and Camberwell areas elsewhere on this agenda. Further area specific analysis developed at appendix 1 to this report.
17. In brief, the new analysis of VAP figures in the Old Kent Road corridor show a 7.5% overall increase in the most recent six-month period (Dec 08 – May 09), and a 13% increase in the most recent twelve-month period (June 08 to May 09) on the previous comparable periods. Calls to the police concerning disorder and rowdiness show a 30% decrease in the most recent six-month period, and an 18% decrease in the most recent twelve-month period against the previous comparable periods.
18. Appendix 2 to the report on the Peckham and Camberwell saturation areas (which appears elsewhere on this agenda) provides detail of nuisance service requests received by community safety enforcement. Figures for nuisance service requests received in the Old Kent Road corridor are insignificant.

Old Kent Road corridor – comments from the commissioner of police

19. The commissioner of police supports continued monitoring of situation in the Old Kent Road corridor.

Elephant & Castle area analysis

20. For the purposes of this monitoring exercise the boundary of the Elephant & Castle area has been defined as follows – Starting at the junction of Southwark Bridge Road and Borough Road following the railway line southwards across New Kent Road to Elephant Road into Walworth Road. Then south down Walworth Road to Hampton Street. From Hampton Street / Howell Walk to Newington Butts, Kennington Lane, Brook Drive, Hayles Street, St George's Road, Garden Row, London Road, Thomas Doyle Street and back to the starting point. A map of the area is provided at appendix 4 to this report.
21. At the time that this report was prepared there were 33 premises licensed under the Licensing Act 2003 for either the sale or supply of alcohol and / or the provision of regulated entertainment and / or the provision of late night refreshment in the defined Elephant & Castle area. This represents 2.75% of the total licensed premises in Southwark. This figure includes 8 grocers / supermarkets / off-licences; 7 restaurants; and 7 public houses.

22. As mentioned, the main analysis for the Elephant & Castle area is included within the partnership analytical report at appendix 1 to the report on the Peckham and Camberwell areas elsewhere on this agenda. Further area specific analysis developed at appendix 2 to this report.
23. In brief, the new analysis of VAP figures in the Elephant & Castle area show a 10% overall decrease in the most recent six-month period (Dec 08 – May 09), and a 12% overall decrease in the most recent 12 month period (June 08 to May 09) on the previous comparable periods. Calls to the police concerning disorder and rowdiness show a 14% decrease in the most recent 6 month period, and an 16% decrease in the most recent 12 month period against the previous comparable periods.
24. Appendix 2 to the report on the Peckham and Camberwell saturation areas (which appears elsewhere on this agenda) provides detail of nuisance service requests received by community safety enforcement. Figures for nuisance service requests received in the Elephant & Castle area are insignificant.

Elephant & Castle area – comments from the commissioner of police

25. The commissioner of police for the metropolis does not consider it to be appropriate to consider a saturation policy in the Elephant & Castle area at this point in time.

Next steps

26. In the event that the committee considers that it wishes to progress consideration of a saturation policy in either the Old Kent Road corridor or Elephant & Castle areas, then the next step is to commence formal public consultation under section 5(3) of the Act.
27. Section 5(3) requires consultation to take place with
 - The chief officer of the police for the area;
 - The local fire authority;
 - Representatives of holders of personal licences;
 - Representatives of holders of premises licences / club premises certificates; and
 - Representatives of local businesses and residents.
28. If the committee wishes public consultation to commence in any area, the following actions are proposed:
 - A public notice to be placed in a local newspaper;
 - A public notice to be placed on the licensing web site;
 - A direct letter drop to be sent to all premises licence holders, club premises certificate holders and personal licence holders in and around the area concerned;
 - A direct letter drop to be sent to representatives of all known local resident, business and community groups in and around the area
 - Arrangements to be made for a public meeting to be held in the area concerned; and
 - Public notices to be given at the relevant community councils.
29. Any consultation should run for a period of three months.

The cumulative impact of a concentration of licensed premises

30. 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 37 onward).

31. 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.

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

32. The "Mayor of London's Best Practice Guide on Managing the Night-Time Economy" (BPG) 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".
33. 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."
34. 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.
35. 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

36. This report considers the extent to which saturation policies are appropriate and necessary within the Old Kent Road corridor and the Elephant & Castle area, to help control the direct impacts of the leisure and night-time economy on the local community.
37. 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.
38. 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

39. Should the committee wish to move into public consultation on the potential introduction of a saturation policy in either area, the costs can be contained within the current service budget provision.

Consultations

40. 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

41. 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.
42. 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.
43. 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

44. 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

45. 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.
46. 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).
47. Members are asked to consider the most recent analysis and evidence collated following consultations. If members wish to recommend the introduction of a 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

48. 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.
49. 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.
50. 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.
51. 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.
52. Once adopted, special policies should be reviewed regularly to assess whether they are needed any longer or require expansion.

Limitations

53. 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.
54. 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.

55. 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.
56. 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.
57. Special policies cannot justify and should not include provisions for a terminal hour in a particular area.
58. Special policies must not impose quotas that would restrict the consideration of any application on its individual merits.
59. 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).
60. 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.
61. 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)

62. 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	The Health Safety & Licensing Unit, The Chaplin Centre, Thurlow Street, London, SE17 2DG	Name: Mrs Kirtikula Read Phone number: 020 7525 5748

Saturation consultation papers Saturation consultation responses Mayors Best Practice Guide for Managing the Late Night Economy		
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APPENDICES

No.	Title
Appendix 1	Further analysis – Old Kent Road corridor
Appendix 2	Further analysis – Elephant & Castle area
Appendix 3	Map of the Old Kent Road corridor
Appendix 4	Map of the Elephant & Castle area

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	