

<b>Item No.</b> 8.2	<b>Classification:</b> Open	<b>Date:</b> November 4 2009	<b>Meeting name:</b> Council Assembly
<b>Report title:</b>	The Licensing Act 2003 – Proposed extension of the Peckham saturation policy dealing with the “cumulative impact” of licensed premises		
<b>Ward(s) or groups affected:</b>	Peckham, Livesey, The Lane, Peckham Rye and Nunhead		
<b>From:</b>	Strategic Director of Environment and Housing		

## RECOMMENDATIONS

1. That council assembly approves the recommendation of the licensing committee that on the basis of:
  - a) The partnership analytical report on both alcohol related violence against the person and crime and disorder in the areas of Peckham; and
  - b) Responses from the local consultation exercise carried out with both residents and businesses,

it is appropriate and necessary, in order to deal with the cumulative effects of licensed premises, to extend the current saturation policy.
2. That, in the event that the assembly approves the introduction of a local saturation policy, the boundary of that policy area should be:
  - a) As set out in this report (see paragraph 11); or
  - b) Amended as directed by the assembly.
3. That, in the event that the assembly approves the introduction of a local saturation policy, the classes of premises within the area to which the policy should apply should be:
  - a) As set out in this report (see paragraph 19); or
  - b) Amended as directed by the assembly.

## BACKGROUND INFORMATION

4. 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.
5. 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.
6. 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.
7. 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.
  8. 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.
  9. On 17 March 2009, the licensing committee authorised further public consultation to be carried out in the Peckham area on the possible extension of the Peckham saturation zone.
  10. Responses received to the public consultation were reported back to the committee at its meeting of 8<sup>th</sup> October 2009, together with the latest available analysis from the partnership analytical team and the environmental protection team. Upon consideration of this information, the committee decided to recommend council assembly that in order to deal with the cumulative effects of licensed premises in the Peckham area it is appropriate and necessary to extend the current saturation policy as set out in this report. At the same meeting the committee decided to maintain the existing Camberwell saturation area.
  11. In reaching its decision on the Peckham extension, the committee redefined the boundary of the proposed extended area from that set out in this report. The proposed extended boundary recommended by the committee is - Commencing on Peckham High Street at the junction with Kelly Avenue progressing to Gattonby Street / Sumner Road / Jocelyn Street / cross Peckham Hill Street / Goldsmith Road / Meeting House Lane / Consort Road / Heaton Road / Sternhall Lane / McDermott Road / Maxted Road / Bellenden Road / Chadwick Road / Lyndhurst Way / Peckham Road to junction with Talfourd Road and back to start.
  12. The matter is put before the assembly for consideration accordingly.

## **KEY ISSUES FOR CONSIDERATION**

### **General**

#### **Partnership analytical report**

13. 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" (given under CAD reports) up to and including the period December 2008 – May 2009. A copy of the analysis is attached at appendix 1 to this report with additional further analysis relating to the general Southwark and Peckham areas provided at appendices 3 and 4 respectively.

### **Alcohol related violence against the person**

14. 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**

15. 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**

16. 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.

### **Alcohol related ambulance pick-ups**

17. Alcohol related ambulance pick-ups are periodically reported to the committee. No updated information on alcohol related pick-ups is available on this occasion.

### **Peckham – Analysis**

18. The boundary of the current Peckham saturation area commences on Peckham High Street at the junction with Sumner Road and progresses via Jocelyn Street / Peckham Hill Street / Goldsmith Road / Meeting House Lane / Consort Road / Bournemouth Road / Rye Lane / Choumert Road / Bellenden Road North until returning to Peckham High Street at the junction with Sumner Road.
19. The current policy applies to the following classes of premises - night-clubs; public houses / bars; off-licences, grocers, supermarkets, convenience stores and other similar premises
20. For the purposes of the recent consultation exercise, the boundary of the proposed extended area was set as follows - Commencing on Peckham High Street at the junction with Kelly Avenue progressing to Gatonby Street / Sumner Road / Jocelyn Street / cross Peckham Hill Street / Goldsmith Road / Meeting House Lane / Consort Road / Heaton Road / Sternhall Lane / McDermott Road / Maxted Road / Bellenden Road / Chadwick Road / Lyndhurst Way / Lyndhurst Grove / Talfourd Road / Peckham Road to start.
21. At the time of writing of this report there are 44 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 3.6% of the total licensed premises in the borough. This figure includes 14

restaurants / cafes; 12 supermarkets / grocers / off-licences; and 10 public houses / bars.

22. The main analysis for the existing and extended Peckham areas is included within the partnership analytical report at appendix 1 with further area specific analysis developed at appendix 4. A map showing both the current and the extended area (as proposed by the licensing committee) is attached at appendix 5.
23. In brief, the new analysis of VAP figures in the existing Peckham saturation area show an overall decrease of 18% in the most recent 6 month period (Dec 08 – May 09), but an 11% overall increase for the most recent 12 month period (June 08 to May 09) from the previous comparable periods. Calls to the police concerning disorder and rowdiness show a 3% decrease in the most recent 6 month period, and an 8% decrease in the most recent 12 month period against the previous comparable periods.
24. VAP figures across the proposed extended Peckham area show an overall decrease of 12% in the most recent 6-month period (Dec 08 – May 09) and an overall 10% decrease in the most recent 12 month period (June 08 – May 09) from the previous comparable periods. Calls to the police concerning disorder and rowdiness for the most recent 6 month period is constant with the previous comparable period, with an 8% overall decrease showing in the most recent 12 month period against the previous comparable period.
25. Appendix 2 to this report provides detail of nuisance service requests received by community safety enforcement. Figures for nuisance service requests received both in the existing and proposed extended areas are insignificant.

### **Peckham extension – consultation responses**

26. Consultation on the potential extension of the existing Peckham saturation policy was carried out in the local area during April and May 2009.
27. Under the consultation the licensing team contacted directly:
  - All local licence holders;
  - Known local representatives of businesses and residents; and
  - All responsible authorities
28. The consultation was also advertised on the licensing web site and in the local media. A local meeting was held at a venue in Peckham High Street, which was well attended, to discuss the matter.
29. The consultation asked three specific questions:
  - Whether, based on the evidence provided, an extension of the existing Peckham area saturation policy was considered to be appropriate and necessary;
  - If so, whether the suggested boundary of the proposed extended area (see section 18 of this report) is appropriate/; and
  - If so, whether the current classes of premises (see section 19) to which the policy should be applied remain appropriate?
30. In all a total of 34 responses were received to the consultation exercise. These are summarised at appendix 6 with individual comments and detailed responses provided in full at appendix 7. The responses included:

- 3 responses from responsible authorities;
  - 3 responses from or on behalf of local licensed operators;
  - 26 responses from or on behalf of local residents; and
  - 2 ward councillors.
31. Within the 3 responses received from or on behalf of local licensed operators there was 100% support for the extension of the special policy and the boundary and classes of premises proposed.
32. Of the 26 responses from or on behalf of local residents:
- 96% supported the extension of the policy area;
  - 96% agreed with the proposed boundary; and
  - 92% agreed with the proposed classes of premises.

### **Peckham extension – Planning policy comments**

33. The planning policy team states that it has some concerns. The team is currently preparing an Area Action Plan for Peckham and Nunhead. This will set out the council's plans for the regeneration and development of Peckham and Nunhead over the next 10 to 15 years. The Area Action Plan is still at an early stage (Issues and Options) and as yet the planning policies for Peckham and Nunhead, which will be included in the Action Plan, have not yet been decided. However it is likely that a potential option for the AAP may be to encourage development of an evening economy in Peckham town centre.
34. At present Peckham town centre experiences limited pedestrian activity in the evenings, which is often considered to increase crime and fear of crime. Increasing the footfall and pedestrian activity in quiet areas is a recognised solution to reducing both incidences of crime and fear of crime as it increases surveillance, human activity and interaction (English Partnerships, Urban Design Compendium, 2007).
35. A study carried out in Peckham (Peckham Town Centre Strategy, Peckham partnership, 2001) referred to the issue of the lack of evening activity, bars, cafes and restaurants in Peckham town centre and the need to attract more people into the town centre in the evening. Furthermore the Peckham Spatial Study which was prepared in 2006 by Intelligent Space Partnership states that there is poor natural surveillance in Peckham Town Centre and that crime 'hotspots' such as Queens Road and Peckham High Street are also areas which experience low pedestrian flows.
36. The evidence presented above suggests that incidences of crime and fear of crime is more likely to affect areas with limited pedestrian activity. In relation to Peckham town centre, the issue of low pedestrian activity is confined to the evening as during the daytime, Peckham experiences high numbers of pedestrian activity (Peckham Spatial Study, 2006).
37. One way to increase pedestrian activity in the evenings is to encourage a night-time economy through the establishment of bars, cafes and restaurants. As well as helping to reduce crime and the fear of crime, the establishment of evening activities can help to strengthen and diversity the local economy, improve the image of an area and enhance the vitality and viability of the town centre (Planning Policy Statement 6: Planning for Town Centres, Office of the Deputy Prime Minister, 2005).
38. The Peckham saturation zone currently applies to the following classes of licensed premises - night-clubs; public houses / bars; off-licences, grocers, supermarkets,

convenience stores and other similar premises but does not apply to cafes or restaurants.

39. The introduction of a saturation policy in Peckham would effectively make it more difficult, but not impossible, to obtain a licence for bars due to the existence of a rebuttal presumption. However cafes and restaurants would still have an entitlement to a license. While this may be acceptable it should be noted that the existing saturation zone already discourages potential businesses from locating in Peckham, restricting the development of the night-time economy, reducing market confidence in Peckham and inhibiting economic development and regeneration. However, if the saturation policy were to be extended to include cafe's and restaurants it would be considered unacceptable to the planning policy department as it would severely impede the ambitions set out in the PNAAP.
40. It is worth noting that the Mayor of London recently produced best practice guidance entitled "Managing the night time economy" (2007) which states;
41. *"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).

#### **Peckham extension – comments from the commissioner of police**

42. The commissioner of police for the metropolis does not consider it necessary to extend the Peckham saturation zone at this time.

#### **Peckham extension – next steps**

43. A decision to extend the Peckham saturation zone will form an amendment to the council's 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.

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

44. The response from planning on the situation in Peckham references 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".
45. 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.”

46. 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.
47. 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**

48. This report considers whether it is appropriate and necessary to extend the special saturation policy in the Peckham area to help control the direct impacts of the leisure and night-time economy on the local community.
49. 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.
50. 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**

51. 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**

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

## **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

### **Strategic Director of Communities, Law & Governance**

#### **Cumulative Impact and Special/Saturation Policies**

53. 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.
54. 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.
55. 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**

56. 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**

57. 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.
58. 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).
59. 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 or to maintain the existing saturation policy, 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**

60. 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.



61. 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.
62. 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.
63. 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.
64. Once adopted, special policies should be reviewed regularly to assess whether they are needed any longer or require expansion.

### **Limitations**

65. 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.
66. A special policy should never be absolute, i.e. cannot have a blanket policy to refuse all applications but rather (subject to paragraph 62 above) 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.
67. 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.
68. 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.
69. Special policies cannot justify and should not include provisions for a terminal hour in a particular area.
70. Special policies must not impose quotas that would restrict the consideration of any application on its individual merits.
71. 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) with examples.

72. 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.
73. 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)**

74. 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**

<b>Background Papers</b>	<b>Held At</b>	<b>Contact</b>
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**

<b>No.</b>	<b>Title</b>
Appendix 1	Partnership analyst report of 18 June 2009
Appendix 2	Nuisance service requests Nov 2006 to May 2009
Appendix 3	Further general Southwark Analysis
Appendix 4	Further Peckham Analysis
Appendix 5	Map of current and proposed extended Peckham saturation areas
Appendix 6	Summary of consultation responses Peckham area
Appendix 7	The Lane ward councillors response to Peckham consultation

## AUDIT TRAIL

Lead Officer	Gill Davies, Strategic Director of Environment & Housing	
Report Author	Richard Parkins; Health Safety & Licensing Unit Manager	
Version	Final	
Dated	13 October 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	October 22 2009	