

Item No. 6.2	Classification: Open	Date: 17 July 2019	Meeting Name: Council Assembly
Report title:		London Borough of Southwark – Late Night Levy Consultation	
Ward(s) or groups affected:		All wards	
From:		Licensing Committee	

RECOMMENDATION

1. That council assembly considers the results of the public and statutory consultation conducted on the possible implementation of a late night levy (LNL) within the Borough and agree the following:
 - a) that Council Assembly approves a late night levy across the whole Borough
 - b) the commencement date should be 1 September 2019
 - c) the levy shall apply from 00:01 to 06:00 hours
 - d) Net monies raised by the levy after the payment of administration shall be used as follows:
 - to pay for the full costs of the police night time economy team
 - to pay for the Council resources within the night time economy team
 - surplus to be decided by a board made up of representatives for the Council, Police, licensed trade and residents.
 - e) No 30% reductions are to be applied
 - f) Exemptions to the levy are to be applied to the following categories:
 - i. a hotel or guest house, lodging house or hostel at which the supply of alcohol between midnight and 6am on any day may only be made to a person:
 - 1) who is staying at the premises, and
 - 2) for consumption on the premises;
 - ii. a theatre at which the supply of alcohol between midnight and 6am on any day may only be made to a person for consumption on the premises who is:
 - 1) a ticket holder in relation to a relevant production at the premises,
 - 2) concerned in the performance, organisation or management of the relevant production, or
 - 3) invited to the premises as a guest to attend an event to which the public do not have access;
 - iii. a cinema at which the supply of alcohol between midnight and 6am

on any day may only be made to a person for consumption on the premises who is:

- 1) a ticket holder in relation to the exhibition of a film at the premises, or
 - 2) invited to the premises as a guest to attend an event to which the public do not have access;
- iv. a club which is registered as a community amateur sports club by virtue of section 658 of the Corporation Tax Act 2010(2); and
- v. a licensed premises which is authorised to be used to supply alcohol for consumption on the premises between midnight and 6am on 1st January in every year (but are not so authorised at those times on any other day in any year).

2. A full list of reduction and exemption categories are listed in Appendix A.

BACKGROUND INFORMATION

3. The meeting of the licensing committee held on 25 June 2019 made the following recommendations:

- Having considered the results of the public and statutory consultation into a late night levy, the Licensing Committee recommends approving the levy across the whole Borough. The Committee therefore recommends to Council Assembly to adopt the introduction of the levy.
- The Committee recommends that the commencement date should be 01 September 2019.
- The Committee recommends that the following premises be exempt from the Levy:
 - premises with overnight accommodation that serve alcohol to their bona fide residents for consumption on the premises only (i.e. hotels);
 - theatres that serve alcohol to ticket holders, participants in the production and invited guests to a private function only;
 - cinemas that serve alcohol to ticket holders, and invited guests to a private function only;
 - registered community amateur sports clubs;
 - premises that supply alcohol in the late night supply period on New Year's Day only.

4. In making their decision the Licensing Committee considered information that follows.

5. Under the Police Reform and Social Responsibility Act 2011, Licensing Authorities can charge late night levy (LNL) on persons who operate premises that sell alcohol between 00:00 (midnight) and 06:00.

6. Should the local authority decide to proceed with the LNL, it is required to use its portion of the levy on activities, which must be related to mitigating the impact of the supply of alcohol and associated activity, within the specified hours, namely the:

- reduction or prevention of crime and disorder,
 - promotion of public safety,
 - reduction or prevention of public nuisance,
 - cleaning of any relevant highway or relevant land in its area.
7. Before introducing a LNL the authority must consider the desirability of introducing the scheme and must be able to demonstrate that levels of crime and disorder exist or will rise from licensed premises selling alcohol during the LNL hours.
 8. Crime data has been mapped and reveals hotspots during the night time economy. Therefore the principal of 'polluter pays' demonstrates that premises should bear the cost of managing that environment. Current service demand against available financial resource could lead to a diminishing service delivery.
 9. Before the consultation took place, the council confirmed with the Borough Commander of Lambeth and Southwark that the police considered it to be appropriate to introduce the levy in Southwark.
 10. Under the 2011 Act the funds raised from the LNL must be split between the police and the council. However, the levy in its entirety may be combined and administered by a joint administrator under the crime partnership tasking team.
 11. Under Home Office guidance issued in March 2015 it is recommended that local authorities use existing partnership arrangements with the police to apply for 100% of the revenue raised with a minimum of 70% of the levy going to police. The Metropolitan Police Borough Commander and Mayor's Office for Policing and Crime (MOPAC) have both agreed to this administrative arrangement.
 12. The council has funded night time economy team (NTET) consisting of police and council officers from its baseline budget for the Police and using overtime for the Council staff. The teams work jointly to visit and inspect licensed premises and to deal with incidents and complaints arising from licensed premises operating within the night time economy.
 13. The costs of the policing element have increased considerably to approximately £298,500 per annum. This is due to the termination of MetPatrolPlus arrangements. This was a scheme that allowed the Local Authorities to buy in extra police officers on a 'buy one get one free' basis. Therefore the council previously paid for 50% of the police element. This scheme has been replaced by the Police Partnership Plus scheme.
 14. The council officers working on Night Time Economy duties are paid on an overtime costing approximately £40,000 per annum. This is not currently funded.
 15. Unless alternative funding is found there is a real likelihood that the services provided by the Police and Council night time economy teams will be reduced or lost.
 16. A LNL would be used to fund the partnership work of the night time economy team (and its associated administration). Any surplus can be used to fund other initiatives that work towards providing a safer, supported late night environment in Southwark.

17. The spending of any surplus would be administered by a board made up of representatives from the council, the police and other relevant interested parties (e.g. residents associations and representatives from the night time economy industry, such as a representative from a Southwark Business Improvement District).
18. The LNL is payable in addition to the annual maintenance fee for the premises licence. LNL revenue raised by Southwark must be used to reduce or prevent late night alcohol-related crime and disorder, and, having regard to the late night supply of alcohol, for services connected to the management of public safety, public nuisance and street cleaning.
19. The Policing and Crime Act 2017 schedule 18 adds a legal provision for;
 - the LNL to apply across the whole or any part of the Borough;
 - multiple LNL areas, each of which may have different late night supply periods;
 - a Police power to require Local Authorities to consider implementation of a LNL.

KEY ISSUES FOR CONSIDERATION

20. The Late Night Supply Period (LNSP) is set by the licensing authority and may include any consecutive hours between 00:00 (midnight) and 06:00. The LNSP must be the same every day of the week.
21. Holders of premises licenses that license the supply of alcohol during the LNSP are liable to pay the LNL, whether or not the licence is actually used to supply alcohol during the LNSP:
 - a LNL may apply to the whole of the Borough, or to any part of it;
 - all premises licensed for the supply of alcohol in the LNL area are included for both on and off sales;
 - the LNL includes boats and mobile bars where these are authorised under a premises licence;
 - temporary event notice ('TENS') authorisations are not included;
 - the LNL amount is set nationally and depends on the non-domestic rateable value ('NDRV') band of the licensed premises.
22. The NDRV bands, and the LNL amount payable by holders in respect of licensed premises in these bands, are set out in Appendix B.
23. Members were also asked to consider whether the authority needs to apply any exemptions or discounts to the LNL and how it will apportion net levy revenue between the police and the authority.
24. The authority needs to consider whether the introduction of a Borough-wide levy is proportionate. Whilst part-coverage is an option that has been considered the Licensing Committee have decided that the levy should be applied Borough wide. Large scale exemptions risk the levy becoming un-economic to deliver and may result in significant complaints from areas not exempted.

Maps

25. Appended are four maps in Appendix C:

- **Map 1:** Maps of premises that would be affected by the LNL and those that would be unaffected. Existing Cumulative Impact Zones (CIZs) within the Borough are highlighted;
- **Map 2:** Map showing all 439 premises within the Borough that may be affected by the LNL. Again, the numbers of premises within existing CIZs are highlighted;
- **Map 3:** Map depicting the location of premises receiving Small Business Rate Relief which may potentially benefit from a 30% reduction in LNL fees;
- **Map 4:** Map showing Southwark BIDs and the premises that would be affected by the LNL.

Potential reductions in maximum revenue

26. The Act allows premises with late night authorisations to which the LNL would apply, to reduce their licensed hours by way of a free minor variation application, so that the LNL will not apply to their premises. The number of premises likely to do this is uncertain, but it is likely that a number of premises will take up this option, thus reducing the actual levy raised; therefore income is likely to be lower than the potential maximum illustrated.
27. The numbers of premises in Southwark, open after midnight, in each NDRV Band are in the table below.

Band	No. of LNL Premises in Southwark	Potential LNL Fees
A	40	£11,960
B	224	£172,032
C	97	£122,123
D	26	£35,490
E	52	£77,636
Total	439	£419,241

Variations to the late night levy charge

28. The licensing authority may decide to give reductions to eligible categories of premises, or to exempt them altogether. These categories are listed in Appendix A.
29. The Licensing Committee considered and debated each category in turn as follows.

Exemptions

30. Hotels – The likelihood of hotel guests drinking in the hotel after midnight and leaving the hotel causing crime and disorder issues in the night time period

seemed low. Therefore it is recommended to allow hotels the exemption where the bar closes to non-residents between midnight and 06:00 and an additional condition is placed on the premises licence that alcohol purchased during this period is paid for via the room.

31. Theatres – to promote alternative activities in the night time period to pubs and clubs, theatres that met the criteria this exemption is recommended.
32. Cinemas – to promote alternative activities in the night time period to pubs and clubs theatres that met the criteria this exemption is recommended.
33. Bingo premises – the provision of bingo is restricted to between 09:00 and midnight, it was considered therefore that to allow the use of the premises for the sale of alcohol after midnight is not likely to be provided as ancillary to the playing of bingo. There is currently one bingo premises in Southwark situated in Surrey Quays. It was decided not to recommend this exemption.
34. Amateur sports clubs – this exemption would only apply to clubs registered under Section 658 to be open to the whole community, organised on an amateur basis and provision of facilities for, and the promotion of participation in, one or more eligible sports. Members decided to recommend this exemption.
35. Community premises – it was recognised that the majority of community premises were situated in residential areas and estates and have a closing time under the lease of 23:00 hours. Community premises opening after midnight on a regular basis are likely to have a significant impact on the residents in close proximity to the premises. Any one off events after midnight which include the sale of alcohol will require a temporary event notice which would not trigger the levy. Therefore members decided not to recommend this exemption.
36. Country village pub – it was not felt that this exemption was appropriate for an inner city area and this exemption was not recommended.
37. Business Improvement Districts (BIDs) – Members read an additional submission from Better Bankside BID and allowed London Bridge BID to make a verbal submission. It was not considered that the BID police and warden service that finish prior to midnight made a significant contribution to the promoting of the prevention of crime and disorder during the levy hours. Licensing committee also considered the contribution of the business crime reduction partnership (BCRP) arrangements, which act as an aid for BIDs by way of radio links. However, the BCRP service is available to all premises, not just BID areas and it was not considered in itself to fulfil the criteria for an exemption to be applied. The BCRP had also submitted comments during the consultation phase. Members recognised the work BIDs to promote the reduction of crime and disorder, mainly around theft on licensed premises. They did not consider that this was significant enough to allow for the reduction during the levy period.
38. New Year's Eve – the committee recommended the exemption for licensed premises which is authorised to be used to supply alcohol for consumption on the premises between midnight and 6am on 1st January in every year but are not so authorised at those times on any other day in any year.

Reductions to the levy

39. There are only two circumstances where the council may offer a reduction of 30% to the levy as follows:
40. Best practice scheme – Members were supportive of a best practice scheme across the Borough and recognised that a suitable scheme could have a positive role in promoting the reduction of crime and disorder within the levy period. It was considered that the current arrangements within the BID areas and BCRP did not qualify for this reduction and there was no qualifying best practice scheme operating within Southwark. It was decided not to recommend this reduction at this time, but to reconsider this when a suitable arrangement for a best practice scheme is proposed.
41. Small on-licensed premises – the committee felt that to give only a small number of premises a reduction when there were struggling pub businesses in higher rate classes was not fair and equal and decided not to recommend this as a reduction to the levy.

Options for spending the LNL

42. The office of the Deputy Mayor for Policing and Crime recently reported on arrangements with local authorities on joint spending of LNL revenues, setting out the basis on which these arrangements may be approved. The options for spending the net funds after administration and the funding of the Police and Council night time economy teams will be at the discretion of a board.
43. The London Borough of Islington has a good practice example where they secured commitment for the LNL funds allotted to the police to be committed within the borough and to be pooled with the council's share. A reference board has been formed with police, local authority, members and trade representation. The board reviews the allocation of the LNL, as well as having responsibility of the small surplus proportion of the revenue for project funding in the next year.
44. Other local authorities have spent contributions from LNL receipts on:
 - additional policing or private security
 - street marshals
 - a 'departure lounge' is a temporary venue for people dispersing from a late night economy area, giving information and assistance
 - town link radio systems
 - 'uri-lifts' (pop-up urinals for use late at night only)
 - taxi marshalls
 - street cleaning
 - enforcement (e.g. night time enforcement officers)
 - personal safety initiatives
 - health care facilities
 - financial support to assist schemes that promote improvement in the management of licensed premises, such as Best Bar None.
45. Section 135 of the Police Reform and Social Responsibility Act 2011 has been amended by the Policing and Crime Act 2017 in that receipts from a LNL that includes late night refreshment premises can also be spent on additional street cleaning, where there is evidence of additional littering near takeaway food

premises open late at night. Late night refreshment premises are not yet liable to the LNL; we await a commencement date for this.

Policy implications

46. The proposal to introduce the LNL supports the aim of Southwark's licensing policy, which is to uphold the licensing objectives by creating further opportunities to reduce crime and disorder, public nuisance and the public safety risks that are created by the supply of alcohol and late night refreshment in the late night economy.

Resource implications

47. There are no additional resource implications arising from this report at this stage. The late night levy is designed to be self financing, with council administration and collection expenses deducted from gross receipts before the remaining funds are allocated.

Financial implications

48. The late night levy (LNL) is a power that enables licensing authorities to charge a levy on persons who operate premises that sell alcohol between 00:00 (midnight) and 06:00. The amount payable is determined by the rateable value of the premises and is set nationally.
49. The potential maximum income that might be generated based on the number of relevant premises in the different rateable value bands is £419,000. All income raised by the levy must be spent on activities which benefit the night time economy.
50. The implementation of exemptions or reductions to the LNL will decrease the potential maximum income the levy could generate. Application of discounts in Southwark BID areas could reduce income by £46,700, whereas a 30% reduction to on-licensed premises who have a NDRV of £12,000 or less and in receipt of small business rate relief could result in a reduction of £8,400. Other variations based on the outcome of recommendations in this report would require calculation to ascertain their impact on revenues.
51. Any impact on revenues from the levy will have a significant impact on service provision, resulting in reduction of night time Police and Council services currently in place and decreasing the number of nights the teams are available.
52. The implementation of the LNL has been agreed with MOPAC that Southwark is to keep 100% of the net revenue raised with 70% of the net after administration costs going towards policing within the Borough.

Consultation

53. Under the Police Reform and Social Responsibility Act 2011, the local authority is required to undertake a public and statutory consultation. The consultation ran from 25 February for a period of 12 weeks to 19 May 2019.
54. The consultation was introduced by email and circular letter and sent to:

- all Premises Licence holders
- all Personal Alcohol Licence holders
- representatives of businesses and residents
- amenity groups
- community associations
- ethnic group associations
- faith groups
- traders' associations
- people and parties who responded to previous consultations on the policy statement and the cumulative impact policy areas
- neighbouring licensing authorities
- responsible authorities.

55. The consultation was displayed on the council web site and was conducted via an online questionnaire. Links to previous reports to the licensing committee on taking the decision to initiate the consultation were appended. The consultation was advertised in the local press and council buildings. Representative of the licensing authority attended meetings with Southwark's Business Improvement Districts and local PubWatches.

Consultation results

56. The consultation consisted of 8 questions on the potential implementation of the levy (the first question was to establish who they are). The questions and results are in Appendix G.

57. 217 individual online responses were received.

58. The groups answering the online consultation can be categorised as follows:

A licensed business with a licence potentially affected by the LNL	44
Any other licensed business	29
A non-licensed business	3
A member of the public	111
Other	38
Total responses (see paragraph 59)	225

59. Some consultees have ticked multiple boxes stating that they are both a business and a member of the public, thus the above figures add to 225.

60. Respondents were split over the introduction of the Levy, but the majority are in favour of its implementation. When asked if the Levy was appropriate to fund the work of the Night Time Economy Team the following percentages came out:

Agree/strongly agree	50.23
Disagree/strongly disagree	42.39

61. Respondents were invited to submit comments on each question. The comments and officer responses are detailed in Appendix H. Members should note that responses have been presented un-amended in their original form ([sic]).

62. Written responses were also received from:

- Better Bankside BID
- Team London Bridge BID
- WeAreWaterloo BID
- Southwark Safe Business Crime Reduction Partnership
- Amy Lane, the Night Czar
- Thomas and Thomas Solicitors
- Gavin Blackburn, Southwark Planning

63. These Responses and officer comments are available in Appendix I along with copies of their original correspondence.

Themes from the Responses

64. The following themes from the responses of those agreeing with the introduction of the levy are as follows:

- the nature of Southwark's nightlife is continually changing
- licensed premises that add to late night anti-social behaviour should be made to pay to regulate it
- the joint relationship between the police and council enforcement is essential
- 100% of the money from the LNL should come to the council with money being spent on local policing
- no discounts should be given

65. The following themes were apparent from those respondents disagreeing with the introduction of the LNL:

- Licensed premises within the borough have already experienced increases in business rates and rents – this will add an additional expense.
- Compliant businesses will be paying to enforce non-compliant premises
- The joint relationship between the police and council enforcement is essential
- Some premises will likely apply to vary their premises licences to reduce their hours, which may lead to fewer late-night venues
- Premises in BID areas should be exempt from the LNL

66. Based on the results of the consultation, recommendations to the licensing committee from the licensing authority are listed in the earlier Appendix A.

67. Some objectors to the introduction of a Levy have quoted recommendations from the House of Lords that they should not be adopted. This is not consistent with the government's approach. For members' information, the latest House of Commons briefing paper on late night levies is available in Appendix J.

Community impact statement

68. The consultation set out the council's aims at introducing a LNL and how revenue gained will be spent. The expenditure of the income will have a positive impact on the wider community by reducing the potential for alcohol-related crime and anti-social behaviour. The consultation allowed a wide variety of stakeholders, including residents and local businesses, to highlight how the LNL

may affect them.

69. Furthermore, Southwark's statement of licensing policy sets out to achieve a necessary balance between providing a platform upon which responsible business operators may contribute toward a thriving business and late night economy while ensuring that the quality of life of those who live and work in the Borough is protected and enhanced through the licensing system.
70. Central to this, is a licensing process which aims to be inclusive and ensures that local community concerns are understood, debated and resolved. This is supported by offering broad support to licensees, through the range of involved authorities, to establish best practice management, and by a strong directed enforcement resource.

Equality analysis in relation to the consultation

71. Alcohol-related crime and anti-social behaviour has the potential to affect all groups of people. It is acknowledged that the cost of the levy will primarily affect owners of businesses that provide alcohol during the late-night economy. The additional revenue raised however, has the potential to assist residents from all communities.
72. Southwark has a wide range of licensed premises, many which contribute to the late-night economy. As the levy would be applied equally to all premises selling alcohol after midnight, there is no data to suggest that this would negatively impact any community group in particular.
73. An Equality analysis was conducted in August 2018 regarding the consultation. Since the consultation has been completed, a detailed, updated equality analysis is available in Appendix K.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Law and Democracy

74. The Police Reform and Social Responsibility Act 2011 ("the 2011 Act") allows the council to raise revenue on alcohol licensed premises by way of a late night levy (the "LNL"). The powers to introduce the LNL come specifically from within the 2011 Act and not by way of an amendment to the Licensing Act 2003.
75. In considering whether to introduce a LNL, the council must first consider whether it is worth having the Levy having regard to the current cost of tackling the problems of crime and disorder that are caused by the night time economy from those premises that are licensed for alcohol sales between midnight and 6.00 am.
76. Any LNL imposed can apply to the whole borough and will only apply to those who hold a licence for the hours that the LNL will operate from. Local authorities do have discretion as to the hours when the LNL can start and finish, although it must be within those hours specified above.
77. The 2011 Act does not prohibit the local authority and police agreeing a separate agreement as to the use of the funds raised for the police.

78. Before the LNL can be introduced the council must comply with procedural requirements namely:
- Consult with the police and those licensees that will be affected by the proposed levy
 - Placing a notice of the relevant details for the proposed levy on the website and in the local newspaper with a copy of the notice also being sent to police and affected licensees
79. The consultation must:
- Be at a time when proposals are still at a formative stage;
 - Have sufficient reasons for the proposal to enable intelligent consideration and response;
 - Give adequate time for such consideration and response; and
 - The product of the consultation must be conscientiously taken into account in finalising any proposals.
80. Following the consultation should council assembly decide to adopting the LNL this must be approved by full council pursuant to Schedule 1 of The Local Authorities (Functions and Responsibilities) (England) Regulations 2000, as amended in 2013.

Strategic Director of Finance and Governance

81. This report is requesting the licensing committee to consider the results of the public and statutory consultation conducted on the implementation of a late night levy (LNL) and for council assembly to approve or otherwise, the adoption of the levy.
82. The strategic director of finance and governance notes the potential revenue from the introduction of a late night levy and the options for spending the LNL revenues in partnership with the Office of the Deputy Mayor for Policing and Crime contained within the main body of the report.
83. Officer time to effect recommendations will be contained within existing budgeted revenue resources.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
<p>Police Reform and Social Responsibility Act</p> <p>Licensing Act 2003 Home Office revised guidance to the Act</p> <p>Amended Guidance on the Late Night Levy, Home Office, March 2015</p> <p>House of Lords Select Committee on the Licensing Act 2003 , 'The Licensing Act 2003: post-legislative scrutiny, November 2017</p> <p>House of Commons Library, Briefing Paper, Late Night Levy, March 2019 Secondary Regulations: The Late Night Levy (Application and Administration) Regulations 2012</p> <p>The Late Night Levy (Expenses, Exemptions and Reductions) Regulations 2012</p> <p>Southwark's Statement of Licensing Licensing Committee Report and minutes – 7 November 2018</p>	<p>The Licensing Service, C/O 160 Tooley Street, London, SE1</p>	<p>Kirty Read Phone number: 020 7525 5748</p>

APPENDICES

No.	Title
Appendix A	Recommendations of the licensing authority
Appendix B	Non-domestic rateable value late night levy amount payable by holders
Appendix C	Maps of premises affected by the LNL
Appendix D	Potential changes to the expected monies from the Levy if MOPAC demand 70%
Appendix E	Premises in Southwark's BID areas
Appendix F	Premises the licensing authority advise should be exempt from the levy
Appendix G	Consultation questions and results
Appendix H	Consultee comments and officer responses from online consultation
Appendix I	Written consultee comments and officer responses and copies of the original correspondence
Appendix J	House of Lords Briefing Paper: The Late Night Levy, March 2019
Appendix K	Equality analysis
<p>Please note that all of the above appendices have been circulated separately in the appendices pack.</p>	

AUDIT TRAIL

Lead Officer	Mick Lucas, Director of Environment	
Report Author	David Franklin, Team Leader Licensing	
Version	Final	
Dated	4 July 2019	
Key Decision?	Yes	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments sought	Comments included
Director of Law and Democracy	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
Cabinet Member	Yes	Yes
Date final report sent to Constitutional Team	4 July 2019	