

Item No: 8.	Classification: Open	Date: 9 March 2010	Meeting name: Licensing Committee
Report title:	The Licensing Act 2003 – Consideration of local saturation policies dealing with the “cumulative impact” of licensed premises – Elephant & Castle and Old Kent Road Corridor		
Ward(s) or groups affected:	Cathedral, Chaucer, East Walworth, Newington, South Bermondsey, Livesey and Nunhead		
From:	Strategic Director of Environment and Housing		

RECOMMENDATION

1. That based on the partnership analytical report and the report from the environmental protection team, further monitoring for a period of 6 months should be undertaken at this stage in both of the following areas, prior to wider consultation being undertaken:
 - a) the Elephant and Castle: and
 - b) the Old Kent Road corridor.

BACKGROUND INFORMATION

2. 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.
3. 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.
4. 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.
5. 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 of licensed premises on the Southwark community, particularly in terms of crime and disorder and nuisance. 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.
6. On 5 November 2008, council assembly approved the introduction of two saturation policies within the borough, in the Camberwell and Peckham areas.

7. On 4 November 2009, council assembly approved a third saturation area, covering Borough and Bankside and an extension of the boundary of the Peckham saturation area. At the same meeting the assembly asked the licensing committee to further consider whether to
 - extend the western boundary of the Borough and Bankside saturation zone, and in doing so look at the possibility of including The Cut and Isabella Street; and
 - extend the boundary of the Peckham area to cover the entirety of Meeting House Lane.
8. This report updates the committee on the latest analysis from the partnership analytical team and the environmental protection team, with particular regard paid to two further areas currently under continued monitor, being the Elephant & Castle and the Old Kent Road corridor. A separate report considers the situations within Borough and Bankside, Camberwell and Peckham, including the matters raised by council assembly on 4 November 2009.

KEY ISSUES FOR CONSIDERATION

General

Partnership analytical report

9. The latest partnership analytical report was published on 16 December 2009. It provides statistical information on alcohol related “violence against the person” (VAP), together with information taken from police CAD data (dealing with alcohol related “disorder and rowdiness”) up to and including the period June – November 2009. The analysis also incorporates information on alcohol related ambulance calls for the period June – October 2009. A copy of the full analysis is attached at appendix 1 to the separate report on the Borough and Bankside, Camberwell and Peckham areas elsewhere on the agenda.

Violence against the person

10. 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

11. Statistics reproduced in the analytical report from police CAD data collects information on calls to the police regarding
 - rowdy / inconsiderate behaviour
 - licensed premises
 - street drinking

Analysis of nuisance data provided by the environmental protection team

12. The council’s environmental protection team also reported, on 16 February 2010, on the number of nuisance service requests received by the community safety enforcement team, in connection with licensed premises, during the period November 2006 to November 2009. Area specific details are included within the main body of this report. A copy of the full analysis is provided at appendix 2 to the separate report on the Borough and Bankside, Camberwell and Peckham areas elsewhere on the agenda. The report includes detail of the methodology used in capturing the information.

General Southwark overview

13. The latest partnership analysis shows an overall decline in alcohol related VAP. VAP figures for the latest six-month period (Jun – Nov 09) are the lowest of the six periods reported and are down 29% on the previous corresponding period (Jun – Nov 08). Figures for the past 12 months (Dec 08 – Nov 09) have decreased by 14% over the previous 12 months (Dec 07 – Nov 08).
14. Hot-spot mapping for alcohol related VAP shows evening incidents (Jun – Nov 09) to be at their highest intensity around the London Bridge area (within the current Borough and Bankside saturation area) and to the north of the Elephant & Castle. The highest intensity of daytime offences currently accumulates in the Peckham town centre (also within the current Peckham saturation area). Alcohol related CAD are at their highest intensity in Peckham and to lesser extents Elephant & Castle, Camberwell and Borough High Street.
15. Hot-spot mapping of alcohol related ambulance calls (Jun – Oct 09) also indicates that highest levels are around London Bridge and the surrounding areas.

Elephant & Castle

16. For the purposes of the monitoring exercise the Elephant and Castle area is defined by the following boundary - 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 as appendix 1 to this report.
17. At the time of writing of this report, 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 trade within the boundary of the saturation area. This represents 3.6% of the total licensed premises in the borough. This figure includes 13 restaurants / cafes; 9 off-licences / supermarkets / grocers; and 8 public houses.

Elephant & Castle analysis

18. Analysis for the Elephant & Castle area is contained within the latest partnership analytical report and the environmental protection team reports at appendices 1 & 2 to the report on the Borough and Bankside, Camberwell and Peckham areas which appears elsewhere on the agenda. Further area specific analysis is contained within appendix 2 to this report.
19. In brief, analysis shows overall decreasing VAP figures (although evening period figures have risen). In the most recent six-month period (Jun – Nov 2009), the area accounts for a proportionately high 8% of the borough's total evening period VAP. VAP figures for the most recent six-month period are down 6% on the previous comparable period, while figures for the most recent twelve-month period (Dec 08 – Nov 09) show a 9% decrease on the previous year. Figures for alcohol related CAD calls, however, show a 4% increase when comparing the past six-months with the previous comparable period but a 6% decrease this past year against the previous year.

Elephant & Castle – comments from the environmental protection team

20. An analysis of nuisance service requests within the Elephant & Castle area is provided in appendix 2 to the report on Borough and Bankside, Camberwell and Peckham elsewhere on the agenda. Figures show an increase in the number of service

complaints received in the most recent period June – November 2009 with 9 complaints received relating to 3 different premises. This figure is higher than normal for the period of year with 4 complaints received in both June – November 2007 and 2008. It is believed that this rise may be at least partially attributable to improved recording.

Elephant & Castle – comments from the metropolitan police service

21. The metropolitan police service supports continued monitoring of the situation in the Elephant & Castle.

Elephant & Castle – next steps

22. Members will wish to consider whether to go out to public consultation on the potential introduction of a saturation policy in the Elephant & Castle area. Relevant points are that

- The area accommodates 3.6% of the licensed trade within the borough but experiences 8% of the borough's total evening alcohol related VAP;
- Overall alcohol related VAP is down, although there is some increase in the evening period;
- Alcohol related CAD shows an increase in the most recent six-month period though a longer term downward trend; and
- Hot-spot mapping for alcohol related VAP identifies the area to the north of the Elephant & Castle as having one of the highest evening intensities of incidents.

23. In the event that the committee should decide it wishes to pursue a potential policy for the area, a new round of public consultation will be required under section 5(5) of the Licensing Act 2003. Consultation will necessarily include

- the chief officer of police;
- the fire authority;
- representatives of holders of premises licences, club premises certificates and personal licences; and
- representatives of local businesses and residents

24. Should the committee decide to go out to public consultation on this matter it is proposed that the consultation should comprise

- notices in the local press and on the Southwark licensing web site;
- direct mail shots to all licence / certificate holders in and around the proposed extended area;
- direct mail shot to all responsible authorities;
- direct mail shot to all known local resident and business representative groups;
- announcements at the local community councils; and
- a public meeting on the issue.

25. The consultation should aim to seek views on whether it is appropriate and necessary to introduce a saturation area; and, if so, the boundary of that area and the classes of premises it should cover.

Old Kent Road corridor

26. For the purposes of the monitoring exercise the Old Kent Road corridor is defined 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.

27. At the time that this report was prepared there were 62 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 Old Kent Road area. This represents 5.1% of the total licensed premises in Southwark. This figure includes 22 restaurants; 19 off-licences / supermarkets / grocers / convenience stores; 8 take-away establishments; 5 night-clubs and 2 public houses / bars.

Old Kent Road analysis

28. Analysis for the Old Kent Road area is contained within the latest partnership analytical report and the environmental protection team reports at appendices 1 & 2 to the report on the Borough and Bankside, Camberwell and Peckham areas which appears elsewhere on the agenda. Further area specific analysis is contained within appendix 4 to this report.

29. In brief, analysis shows a 15% decrease in VAP in the most recent six-month period (Jun – Nov 09) against the previous comparable period but a 1% increase when comparing the past twelve months with the previous year. Alcohol related CAD shows a 3% increase in the most recent six-months period against the previous comparable period but a 13% decrease this past year against the previous year. Figures for alcohol related VAP amount to 8.3% of the total evening period VAP in the borough.

Old Kent Road – comments from the environmental protection team

30. An analysis of nuisance service requests within the Old Kent Road corridor is provided in appendix 2 to the report on Borough and Bankside, Camberwell and Peckham elsewhere on the agenda. Figures show an increase in the number of service complaints received in the most recent period June – November 2009 with 14 complaints received relating to 9 different premises. This figure is higher than normal for the period of year with 11 complaints received in June – November 2008. It is believed that this rise may be at least partially attributable to improved recording.

Old Kent Road – comments from the metropolitan police service

31. The metropolitan police service supports continued monitoring of the situation in the Old Kent Road.

Old Kent Road – next steps

32. Members will wish to consider whether to go out to public consultation on the potential introduction of a saturation policy in the Old Kent Road area. Relevant points are that

- The area accommodates 5.1% of the licensed trade within the borough but experiences 8.3% of the borough's total evening alcohol related VAP;
- Overall alcohol related VAP is down this most recent period but continues to show a slight rising trend over the past year; and
- Alcohol related CAD shows an increase in the most recent six-month period but a longer term downward trend.

33. In the event that the committee should decide to pursue a potential saturation policy for the area, the advice given in sections 22 – 25 of this report (above) applies.

The cumulative impact of a concentration of licensed premises

34. 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 published December 2009). 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 (section 40 onward).

35. 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

36. 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.

Community Impact Statement

37. This report considers the impact of licensed operations (in terms of VAP / CAD and ambulance calls) within the Elephant & Castle and the Old Kent Road corridor and asks the committee to consider whether public consultation should be undertaken in either area on the potential introduction of a local saturation policy.
38. 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.
39. While, conversely, saturation policies may also impact on business growth and development of the area concerned, 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. Instead operators will have to demonstrate that their business proposals do not further impact on the identified concerns within the locality.

Resource implications

40. While it is accepted that the existence of a saturation policy does 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

41. Details of proposals for public consultations that might arise from consideration of this report are detailed within sections 22 – 25 of this report.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Strategic Director of Communities, Law & Governance

Cumulative Impact and Special/Saturation Policies

42. 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.
43. 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.
44. 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

45. 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

46. 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.
47. 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).
48. 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

49. 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.
50. 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.
51. 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.
52. 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.

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

Limitations

54. 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.
55. 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.
56. 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.
57. 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.
58. Special policies cannot justify and should not include provisions for a terminal hour in a particular area.
59. Special policies must not impose quotas that would restrict the consideration of any application on its individual merits.
60. 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).
61. 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.
62. 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's Concurrent (Env/ET/120110)

63. 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 Mayors Best Practice Guide for Managing the Late Night Economy Analysis reports	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	Map of the Elephant & Castle area
Appendix 2	Further analysis for the Elephant & Castle
Appendix 3	Map of the Old Kent Road corridor
Appendix 4	Further analysis for the Old Kent Road corridor

AUDIT TRAIL

Lead Officer	Gill Davies, Strategic Director of Environment & Housing	
Report Author	Richard Parkins; Health Safety & Licensing Unit Manager	
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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
List other officers here	None	None
Executive Member	Yes	Yes
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