

<b>Item No.</b> 6.	<b>Classification:</b> Open	<b>Date:</b> 11 February 2021	<b>Meeting Name:</b> Licensing Committee
<b>Report title:</b>		London Borough of Southwark – Late Night Levy Review	
<b>Ward(s) or groups affected:</b>		All wards	
<b>From:</b>		Strategic Director of Environment and Leisure	

### **RECOMMENDATION(S)**

1. That the licensing committee reviews Southwark’s late night levy (LNL) and determines whether to maintain the levy, or recommend to council assembly that it be removed.
2. That if the levy be retained, the licensing committee convenes a meeting to agree how the council’s 30% portion of the revenue shall be spent after the current late night levy year ends (31 August 2021).

### **BACKGROUND INFORMATION**

3. The 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.
4. The local authority 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
  - The promotion of public safety
  - The reduction or prevention of public nuisance
  - The cleaning of any relevant highway or land in its area.
5. Council assembly adopted the late night levy on 17 July 2019 with an implementation date of 1 September 2019.
6. The levy applies whether the hours for the sale/supply of alcohol detailed in the licence are used or not. For example if a business has a licence, which permits them to sale/supply of alcohol until 02:00 (i.e. within the levied hours) but the business regularly closes at 23:30, they still have to pay the levy.

7. There are some exemptions from the LNL:
  - a) Premises with overnight accommodation (this exemption does not apply to any premises which serve alcohol to members of the public who are not staying overnight at the premises).
  - b) Theatres and cinemas (this exemption only applies if alcohol is sold during the late night supply period, only for consumption on the premises, to ticket holders, participants in the production or invited guests to private events; they must be bona-fide theatres or cinemas and the sale of alcohol must not be their primary purpose).
  - c) Community amateur sports clubs (these are clubs registered as community amateur sports clubs that are entitled to various tax concessions including relief from business rates).
  - d) New Years Eve premises only (this applies to premises which are authorised to sell/supply alcohol between midnight and 06:00, and applies on New Year's Day only).
8. Temporary event notices are exempt from the late night Levy because they are not included within the scope of the legislation governing the levy.
9. The council agreed that a reduction of 30% be granted to premises licence holders in relation to on-trade premises that are in receipt of Small Business Rate Relief (as specified in Part III of the Local Government Finance Act 1988) and have a rateable value of £12,000 or less.
10. A reduction can also potentially be offered to a premise who is a member of a best practice scheme. To qualify such schemes must meet the benchmarks specified in the late night levy (expenses, exemptions and reductions) regulations 2012. Southwark does not currently operate any relevant best practice schemes because the council believes there to be more value in the established partnership working with business improvement districts (BIDs).
11. For premises which are liable to pay the levy, the council should collect at the same time as the licence annual fee.
12. The funds raised from the LNL are split between the police and the council. However, these two amounts can be combined and administered, by a joint administrator, under the crime partnership tasking team, and thus spent within Southwark on policing, regulation and providing the support services that operate within the LNL period.

13. Under the 2011 Act, LNL net revenue, after deducting the cost of collection and administration, must be divided with at least 70% going to the police. Southwark has already obtained an agreement with the police for 100% of the levy to come directly to the council, with agreement that their 70% is spent on local policing operating within the LNL period.
14. Using the levy income, the council funds a night time economy (NTE) team. This team consists of both police and council enforcement officers, who work jointly to visit and inspect licensed premises and deal with incidents and complaints arising from licensed premises operating in the night time economy.
15. The police resource consists of one police sergeant and four police constables at a cost of £298,000 per annum. This arrangement is subject to a percentage uplift of 2.5% in line with the police remuneration scheme, thus increasing costs to £308,000. If a decision to revoke the levy were taken, alternative funding would have to be identified or this service would be at risk. Local authority officers working overtime at weekends add an additional cost of approximately £40,000 to sustain the NTE team and its activities.
16. The decision to suspend or revoke the LNL must be taken by council assembly but the licensing committee will need to make a recommendation. The current LNL collection term is already dictated to run until the end of August 2021.

### Income from the LNL

17. The non-domestic rateable value bands, and the LNL amount payable by holders in respect of licensed premises in these bands, are set out in table below.

Rateable value bands (based on the existing fee bands)						
A	B	C	D	E	D x 2	E x 3
No rateable value to £4,300	£4,301 to £33,000	£33,001 to £87,000	£87,001 to £125,000	£125,001 and above	Multiplier applies to premises in category D that primarily or exclusively sell alcohol	Multiplier applies to premises in category E that primarily or exclusively sell alcohol
Annual levy charges						
£299	£768	£1,259	£1,365	£1,493	£2,730	£4,440

18. As stated in para. 12, under the 2011 Act, LNL, net revenue, after deducting the cost of collection and administration, must be divided

with 70% going to the police and 30% to the council. These monies could be spent on the police NTE contract, as the income raised through the levy does not cover the full cost of this service.

19. Before these percentages are divided, a licensing authority can deduct the costs it incurs in connection with the introduction or variation, administration, collection and enforcement of the levy. This happens prior to the levy revenue being apportioned between the police and licensing authority. The regulations prescribe the expenses which may be deducted before apportionment.
20. The deductible costs may include (but are not necessarily limited to) the following:
  - The preparation and publication of the consultation document, including publishing it online and sending details to the police and crime commissioner, the relevant chief officer of police and all premises licence and club premises certificate holders whose authorisations permit the supply of alcohol after midnight on any day
  - The collection of levy payments
  - The enforcement of levy payments
  - The cost of processing applications for a variation in relation to the introduction of the levy.
21. There are no specific restrictions on the amount of the expenses which licensing authorities can claim. However, licensing authorities have to account for their expenses following existing procedures.
22. With the remaining 30% to be spent, Southwark indicated at the consultation stage that this would be done by a board. The board can be made up of licensing committee members and would report back to the full licensing committee. The board is able to take non-binding advice on spending from any interested party, which could for example, be a BID or residents association. The licensing authority is concerned that the levy, even at full income level, has not generated as much income as hoped. This income has been hampered further by the effects of COVID-19. In addition, the cost for the police NTE contract has risen. Ideally the costs for council resources within the night time economy (such as officer overtime) would be covered by this revenue.
23. No specific arrangements are specified in the Act with regard to how the board would operate. The board has to be set up in accordance with usual local authority governance requirements.
24. This means that the decisions relating to the distribution of the levy surplus could be made by the licensing committee itself, by a sub-committee or by an officer with delegated authority, in accordance with Section 101 of the Local Government Act 1972.

25. There is no power to delegate the decision making to a board comprising of 'volunteer' representatives from the police, licensed trade and residents. Such a board could be established to make recommendations to the licensing committee, sub-Committee or authorised officer, but could not act as a decision-making body in itself.

## **KEY ISSUES FOR CONSIDERATION**

### **The Impact of COVID-19**

26. LNL fees are collected at the same time as the annual licensing fee. The requirement to do this is set in the statute. There is no legal provision to offer concessions on the payment of this fee. If premises do not pay the fees, the individual licence can be suspended until such time as the debt is settled, at which point the licence is reinstated. However, the local authority may exercise discretion and delay suspending the license for non payment of the LNL, as long as the premises annual license fee is paid.
27. Advice from the Home Office states:
- Local authorities have discretion when considering non-payment or late payment of an annual premises licence fee or a late night levy charge. While Section 55A of the Licensing Act 2003 requires that the licence be suspended; it is possible to delay when that suspension takes effect.
28. Additional supporting information was provided by the Local Government Association (LGA). In relation to fees, the LGA note states (in so far as is relevant to Licencing Act 2003):
- Councils should consider how to respond to the non-payment or late payment of an annual premises license fee. Whilst legislation requires licences to be suspended it is possible to delay when that suspension takes effect. The Home Office has encouraged councils to consider this approach.
  - Some councils have indicated that they will not be actively chasing unpaid annual fees. A related approach that has been used is to offer license holders the option to defer their annual licence fee payment for six months. Although fee due dates will remain unchanged and original invoices issued, no reminders will be sent.
  - Outstanding fees could be sought/recovered at the point at which licensed businesses become fully operational again.

29. The most pragmatic step was to suspend the collection and demand of fees from premises struggling as a result of the current trading restraints due to COVID-19. However, the levy fee will still be due within the calendar year of the individual licence cycle.
30. The council may wish to consider a more far reaching course and determine that the LNL cease to apply altogether. However, any revocation of the levy will only take effect from the end of the existing levy period (31 August 2021) and would need to be decided at council assembly before the end of the current levy period.
31. The impact of COVID-19 has inflicted far reaching financial hardship on all licensed premises, including those being charged the LNL. The interests of public health have seriously affected operators' ability to trade and to attract customers. Restrictions, even before the current lockdown, included imposing curfews requiring most licensed premises to close well before midnight.
32. The figures regarding the impact of the pandemic on the hospitality sector make for stark reading. A House of Commons briefing paper released in January 2021 shows that, at 14 to 23 December 2020, the Office for National Statistics (ONS) reported that 59% hospitality businesses were trading compared to 84% of trading businesses across all sectors and industries. 41% of hospitality businesses had temporarily paused trading compared to 13% across all sectors and industries. This briefing paper is available at Appendix A.
33. It should be noted that formal representations are being made to central government suggesting changes (either temporary or permanent) to the legislation governing the LNL. This has included a proposal to government to add a power to suspend a LNL as an amendment to the Police Reform and Social Responsibility Act 2011 or via an insert into a future version of Coronavirus (Business Restrictions) Regulations.
34. These suggested changes could create amending legislation to prevent authorities collecting the levy during the period/s of lockdown/restrictions and permit councils to charge pro rata for any part/s of the year when the lockdown/restrictions are lifted. However, reaction from government has been slow and is unlikely to offer any real change in the short term.

### **Advantages and disadvantages of the levy**

35. Advantages of the LNL:
  - Revenue is generated by the Levy, it maintains a valuable income stream which is used to fund the NTET. Without this funding, the Team is a service at risk.

- The LNL could contribute to possible future budget commitments on crime reduction.
- Local community members welcome the NTE team as a way of providing an expedited response to night time licensing issues thereby reducing anti-social behaviour related to the night time economy and licensed premises.
- It is possible that once out of COVID-19 restrictions, a period of 'hyper' socializing by the public and a very active and well attended period of nightlife will occur. This will require additional Police and council resource to help the public stay safe.
- Furlough schemes, business rates relief, repurposing and (most recently) court-enforced business insurance pay-outs for loss of trade, have continued to provide venues with some income.

36. Criticisms of the retention of the levy:

- Some venues have chosen to shorten their licensing hours to avoid the Levy. Long term, this may reduce the attractiveness of the area to patrons of the night time economy.
- The effect of lockdown is that premises may be paying a late night levy even though for the time being they cannot trade.
- The period of restrictions on licensed premises is unknown, it will likely be quite some time until businesses are functioning at pre-pandemic levels and patrons will be able to enjoy the venues in the way they did before the pandemic. It may be that this sector of the economy never fully recovers.
- Public confidence regarding the night time economy post-pandemic is unmeasurable, such as the willingness for patrons to return to venues, or travel there.
- Evidence from the ONS suggests that many businesses are simply surviving and providing takeaway services are just keeping venues viable.
- Levy payments come from business profit, which is currently lacking. Businesses will need to spend to recover and recoup recent losses. The levy payment could be a deciding factor as to whether or not reopen and thus could hamper recovery.
- Is it fair to impose a cost that may not be justified as the date at which premises can reopen fully is unknown?

- Is it fair to draw funds from post-midnight premises that have no post-midnight operations due to current COVID-19 regulations?

### **Options for spending the LNL**

37. Any LNL board will review the allocation of Levy monies. Other local authorities have spent contributions from LNL receipts on:
  - a. Additional policing
  - b. Street marshals
  - c. A 'departure lounge' – a temporary venue for people dispersing from a late night economy area, giving information and assistance
  - d. Town-link radio systems
  - e. 'Uri-lifts' (pop-up urinals for use late at night only)
  - f. Partnership NTE teams & contracts
38. The Policing and Crime Act 2017 has been amended by Section 135 of the Police Reform and Social Responsibility Act 2011. Now receipts from a LNL, that includes late night refreshment premises, can be spent on additional street cleaning, where there is evidence of additional littering near late night takeaway food premises.

### **Options to premises wishing to avoid the LNL**

39. Premises with late night authorisations to which the LNL would apply can reduce their licensed hours, by applying for a minor license variation (£89), so that the LNL will not then apply to their premises. The number of licensed 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 amount raised. Thus income is likely to be lower than the potential maximum illustrated at Paragraph 15.
40. If the LNL is revoked on 31 August 2021 then the council can subsequently re-introduce the levy at some future date, subject to following the statutory procedures, which would include carrying out a full consultation exercise again.
41. Operators could add a premises license condition by means of a minor variation, stating that the licence does not authorise the sale of alcohol during the late night supply period during any lockdown period/s. This is similar to a condition stating that the premises will not sell alcohol while the levy has effect, which is widely accepted in existing levy areas to preserve hours, but avoid the levy if they are not operating at relevant hours.

### **Policy implications**

42. Council ssembly approved Soutwark's current statement of licensing policy 2021 – 2026 on 25 November 2020. This came into

effect on 1 January 2021. 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 time period.

### **Resource implications**

43. The LNL is designed to be self-financing, with council administration and collection expenses deducted from gross receipts, before the remaining funds are allocated to relevant activities. However, with the reduction in LNL income there is a significant risk of shortfall of funding for the NTE team, which will need to met from elsewhere in the regulatory services budget.

### **Financial implications**

44. Before the consultation took place in 2019, the potential maximum income that might have been generated based on the number of relevant premises in the different ratable value bands was £419,000, and was based on the fact that the 439 licensed premises operating after midnight would continue to do so.
45. Since September 2019 over eighty premises have amended their licenses to avoid paying the LNL. It is possible that this trend may continue, especially as businesses face additional financial hardship resulting from the pandemic.
46. The following table shows the income received from the LNL in the first year. It currently projects a total of £316,999.

<b>Month 2019/2020</b>	<b>Levy income</b>	<b>Month 2020/2021</b>	<b>Levy income</b>
<b>Sept 2019</b>	£24,352	<b>Sept 2020</b>	£25,828
<b>Oct 2019</b>	£19,841	<b>Oct 2020</b>	£1,275
<b>Nov 2019</b>	£178,852	<b>Nov 2020</b>	£0
<b>Dec 2019</b>	£11,372	<b>Dec 2020</b>	£0
<b>Jan 2020</b>	£11,220		
<b>Feb 2020</b>	£16,150		
<b>Mar 2020</b>	£1,493		
<b>April 2020</b>	£24,941		
<b>May 2020</b>	£6,058.		
<b>June 2020</b>	£4,331.		
<b>July 2020</b>	£5,333		
<b>Aug 2020</b>	£13,056		
<b>Total received</b>	<b>£316,999</b>		<b>£27,103</b>

47. It is notable that the income from the LNL significantly dropped in March 2020, when the first national lockdown was introduced and licensed premises were required to close. Since that time, in almost every month, more Levy fees are outstanding than have been received. No levy payments have been received since November 2020.
48. If members were minded to recommend that the Levy be removed, any income since September 2020 would need to be returned.

### **Community impact statement**

49. The expenditure of the income generated from the levy has a positive impact on the wider community by reducing the potential for alcohol-related crime and anti-social behaviour.
50. Southwark's statement of licensing policy aims to achieve a balance between providing a platform upon which responsible business operators may contribute toward a thriving business and late night economy, whilst ensuring that the quality of life of those who live and work in the borough is protected and enhanced through the licensing system.

### **Equality analysis**

51. Alcohol-related crime and anti-social behavior has the potential to affect all residents. It is acknowledged that the cost of the levy

primarily affects the owners of businesses that provide alcohol during the late-night economy levy time period.

52. Southwark has a wide range of licensed premises, many of whom contribute to the late-night economy. As the levy is 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 or the protected characteristics of either business or residents as defined by the Equalities Act 2010.

## **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

### **Director of Law and Governance**

53. 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 (LNL). The powers to introduce the LNL come from within the 2011 Act and not by way of any amendment to the Licensing Act 2003.
54. 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 crime and disorder caused by the night time economy, and essentially due to those premises licensed for alcohol sales between midnight and 06:00.
55. Any LNL imposed must apply to the whole borough and will only apply to those who hold a licence to operate during for the LNL hours. Local authorities do have discretion as to the hours when the LNL can start and finish, although it must be within the hours specified.
56. The 2011 Act does not prohibit the local authority and police agreeing a different agreement with regard to the use of the funds raised in the future.
57. Before the LNL can be introduced the council must comply with procedural requirements:
  - Consult with the police and those licensees affected by the levy.
  - Place a notice of the relevant details for the proposed levy on the council’s website and in a local newspaper, with a copy of the notice also being sent to the police and affected licensees.
58. 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.
- The product of the consultation must be conscientiously taken into account when finalising any proposals.

59. Should the licensing committee determine to remove the LNL, it would be a matter for council assembly to decide to remove it pursuant to Schedule 1 of The Local Authorities (Functions and Responsibilities) (England) Regulations 2000, as amended in 2013.

**Strategic Director of Finance and Governance (EL20/077)**

60. The Strategic Director of Finance and Governance notes the recommendation that the licensing committee determines whether to maintain the late night levy (LNL), or recommend to council assembly that it be removed and that if the LNL is retained, the recommendation that the licensing committee determine how the council’s 30% portion of the revenue should be spent.

61. The strategic director also notes the resource implications in paragraph 43 and the financial impact of the pandemic on LNL income set out in paragraphs 44 to 47 of this report, with the financial risk posited by removal of the LNL.

62. The strategic director also notes staffing and other costs connected with these recommendations will be contained with existing departmental revenue budgets.

**BACKGROUND DOCUMENTS**

<b>Background Papers</b>	<b>Held At</b>	<b>Contact</b>
Licensing Act 2003 Home Office revised guidance to the Act Secondary Regulations Southwark statement of licensing Policy Case file	Southwark Licensing, C/O Community Safety & Enforcement, 160 Tooley Street, London SE1 2QH	Kirty Read Tel: 020 7525 5748

**APPENDICES**

<b>No.</b>	<b>Title</b>
------------	--------------

Appendix A	House of Commons briefing paper on COVID-19's effect on the hospitality industry
------------	--

### AUDIT TRAIL

<b>Lead Officer</b>	Caroline Bruce, Strategic Director of Environment and Leisure	
<b>Report Author</b>	Andrew Heron, Principal Licensing Officer	
<b>Version</b>	Final	
<b>Dated</b>	1 February 2021	
<b>Key Decision?</b>	Yes	
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b>		
<b>Officer Title</b>	<b>Comments Sought</b>	<b>Comments Included</b>
Director of Law and Governance	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
<b>Cabinet Member</b>	Yes	No
<b>Date final report sent to Constitutional Team</b>	1 February 2021	