

<p><b>Council</b></p> <p>19 July 2017</p>	 <p><b>TOWER HAMLETS</b></p>
<p><b>Report of:</b> Will Tuckley, Chief Executive</p>	<p><b>Classification:</b> Unrestricted</p>
<p><b>Late Night Levy</b></p>	

<b>Lead Member</b>	Councillor Asma Begum, Cabinet Member for Community Safety
<b>Originating Officer(s)</b>	David Tolley – Head of Environmental Health and Trading Standards
<b>Wards affected</b>	All wards
<b>Key Decision?</b>	N/A
<b>Community Plan Theme</b>	A Safe and Cohesive Community

### **Executive Summary**

Full Council agreed to adopt the provisions set out in the Police Reform and Social Responsibility Act 2011 to raise a late night levy from all those premises that are permitted to sell alcohol after midnight.

The decision to introduce the levy was made on the 20<sup>th</sup> January 2017 with an implementation date of the 1<sup>st</sup> June 2017.

A Judicial Review was launched by the Association of Licensed Multiple Retailers (ALMR) against the introduction of the levy in Tower Hamlets.

On advice from Legal Services, the Chief Executive, in accordance with Part 2 of the constitution, Article 12.06(c)(ii) has exercised his emergency delegated power to rescind the implementation date of the late night levy of the 1<sup>st</sup> June 2017.

The Council is then to re-consult on the introduction of the levy with a proposed implementation date of the 1<sup>st</sup> January 2018.

The outcome of the Consultation will be brought back to full Council in September for consideration and decision as to whether or not to adopt the levy.

## **Recommendations:**

Council is recommended to:

1. Note the use of the delegated powers by the Chief Executive under part 2 of the constitution, Article 12.06( c )(ii) due to an emergency or extreme urgency whether or not reserved to the Council to enable the commencement date of the late night levy to be rescinded. The reason being that there was not a full Council meeting between the service of the Judicial Review application from ALMR and the 1<sup>st</sup> June.
2. Note the proposed new commencement date of the 1<sup>st</sup> January 2018 and the further re-consultation the outcome of which will be brought back to full Council for further consideration and decision as to whether or not to adopt the levy.

### **1. REASONS FOR THE DECISIONS**

- 1.1 To avoid a matter of litigation, where advice received by Legal Services is that the Council may not be successful in defending its decision to introduce the late night levy (LNL) in the Borough.
- 1.2 The use of the Chief Executive's delegation under part 2 of the constitution, Article 12.06(c)(ii) has avoided this additional expenditure and has provided the Council to re consider this matter after a further consultation.

### **2. ALTERNATIVE OPTIONS**

- 2.1 The Council could have determined to contest the case, however considerable financial expenditure may have been committed without a realistic prospect of a successful outcome.

### **3. DETAILS OF REPORT**

- 3.1 A Judicial Review (JR) was launched by the Association of Licensed Multiple Retailers (ALMR) against the Council bringing in the late night levy on the 1<sup>st</sup> June 2017. The grounds of appeal by ALMR are:
  - a) the consultation process was unlawful in that the requirement to consult on the selected implementation date of the LNL is a mandatory requirement. The proposed date was not consulted.
  - b) Consultation documents were worded in such a way to suggest that if the LNL were adopted it would only impact on premises selling after midnight,

whereas it will impact on all premises “authorised” to sell alcohol after midnight, regardless of whether they do so.

c) The legislation is not compatible with the European Parliament Services Directive which permits the free movement of services i.e. the LNL is a charge and is disproportionate and likely to dissuade entry into a service activity.

d) The LNL infringes Article 34 of the Treaty on the Functioning of the European Union that provides that quantitative restrictions on imports and all measures having equivalent effect shall be prohibited between Member States.

3.2 Leading Counsel’s opinion was that the Council would be likely to lose the JR on points a) and b) above.

3.3 It was therefore subsequently agreed by the Chief Executive following advice from the Monitoring Officer to exercise his delegated authority under part 2 of the constitution, Article 12.06(c)(ii).

3.4 This delegated power permits the Chief Executive to take any executive decision whether or not reserved to Council in a case of emergency or extreme urgency and to report to Council afterwards. He has agreed to do this as the implementation for date for the late night levy needed rescinding and there is no appropriate Council meeting where such a decision could be taken before the implementation date.

3.5 The exercise of this emergency delegated power will prevent the Council having to fund a JR which it has been advised that it has no prospect of success.

3.6 In addition, a new commencement date of the 1<sup>st</sup> January 2018 for the commencement of the late night levy has been determined and a further re-consultation will be undertaken, the outcome of which will be brought back to September’s Council for further consideration and a decision as to whether or not to adopt the levy.

#### *Background to the Late Night Levy*

3.7 The Police Reform and Social Responsibility Act 2011 has introduced the provision for Councils to impose a late night levy for the sale of alcohol within their area.

3.8 The Regulations governing the introduction of the levy set the amount of levy that can be imposed in relation to the rateable value of the property; how the levy should be divided amongst the Metropolitan Police and Council; and the type of activities that the levy can be spent on within the Council. The levy is set by Government depending on the rateable value of the property that is

licenced to retail alcohol. The levy is collected at the same time as the licence fee.

- 3.9 The levy enables the Council to raise a contribution from late opening alcohol suppliers towards managing the night-time economy. It is a provision which the Council has the power to adopt, but the levy must cover the whole of the licensing authorities' area (i.e. the whole borough). The Council can also choose the period during which the levy applies every night, between midnight and 6.00am, but it must be the same for every day. There is also a possibility for specific exemptions and reductions to be granted with regards to the levy payment.
- 3.10 The aim of the levy is to empower Councils to charge businesses that supply alcohol late into the night, for the extra costs that the night-time economy generates for police and Councils (as licensing authorities). The Government consider it is right for businesses which profit by selling alcohol in the night time economy to contribute towards the costs of managing the night-time economy.
- 3.11 If the Council chooses to introduce the levy in their area, all licensed premises which are authorised to sell alcohol within the levy period will be able to make a free minor variation to their licence before the levy is introduced, so as to avoid the levy.
- 3.12 The Metropolitan Police would receive approximately 70% of the net levy revenue. The net levy revenue amount would be less deduction by the Council for such items as the collection of payments, procedure for implementation of the levy and publication of its statutory statement. It is estimated that this will be in the region of £50,000. MOPAC have agreed to have their allocation spent within the Borough through the current partnership arrangements.
- 3.13 The Council must allocate their proportion of the net levy amount on the following activities:
  - 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
- 3.14 Based on the current number of premises opening between midnight and 6am, and using midnight as the point the levy commences, the estimate for the additional income would be in the region of £350,000. It must be noted that this is an estimate only and is dependent on the exemptions and

reductions that may be granted. This figure will vary if premises apply to reduce their operating hours. The provision of free minor variations during the lead to the introduction of the levy would therefore have an impact on the estimate.

- 3.15 It must be noted that the annual fee, without the levy component is set by Government depending on the rateable value of the property.
- 3.16 Other London Borough's such as Camden and Islington have also introduced a Late Night Levy.
- 3.17 Initial reports from Islington, who introduced the levy in November 2014, are that it has had a positive impact on reducing incidents related to late night drinking and thus improved the night time economy.
- 3.18 The Council as the Licensing Authority must consider the desirability of introducing a levy in relation to the costs of policing and other arrangements for the reduction or prevention of crime and disorder.
- 3.19 The introduction of the levy will contribute to the Council's overall strategy in reducing anti-social behaviour within the Borough and will enable further projects to be undertaken to reduce impacts on residents and to ensure that visitors to the Borough have an enhanced safe experience.
- 3.20 The Metropolitan Police and the Council would have to determine how they would wish to spend their allocation and detail the additional work that would be carried out to police the night time economy. Projects that could be funded through the Partnership include:
  - Taxi Marshalls
  - Street Pastors
  - Street Cleaning
  - Enforcement Initiatives – Night time enforcement officers
  - Personal Safety Initiatives
  - Health Care Facilities
  - Additional Police or private security
  - Financial support could be provided to assist schemes that promote improved management of licenced premises, such as Best Bar None or Pub Watch.

#### **4. COMMENTS OF THE CHIEF FINANCE OFFICER**

- 4.1 The report notes the Chief Executive's exercise of delegated authority to delay the implementation of the late night levy from the 1<sup>st</sup> June 2017 following a judicial review application. It is a recommendation of this report that further consultation is undertaken on the levy and subject to the outcome, a proposed date of 1<sup>st</sup> January 2018 is set for implementation.
- 4.2 The fee for the introduction of a levy is set by the Government and the amount payable will be determined by the rateable value of the property where the alcohol is sold. The Council as the licensing authority can retain up to 30 per cent of the net levy revenue, but must pay at least 70 per cent to the police. The portion of the net levy revenue due to the police can be amended in future levy years. This decision must be subject to consultation in the same way as a decision to introduce the levy.
- 4.3 The introduction of the levy will generate estimated annual Income of £350,000 based on the current operating hours of the premises selling alcohol after midnight. The cost to the Council of administering the levy is expected to be £50,000 which will be revenue neutral, i.e. the cost of any additional services including any potential reduction in the levy offered to businesses, will be met from the levy and will not impact the General Fund.
- 4.4 The income generated from the levy has been earmarked for allocation to projects funded through a pooled budget administered by the Council through the Community Safety Partnership. The projects will deal with managing the effects of the late night economy in support of community safety objectives. As agreement is yet to be made on the projects to be funded through the Partnership, the delay implementing the levy is not expected to have any significant impact other than the revised timeframe for the pooled budget to be set up.

## **5. LEGAL COMMENTS**

- 5.1 In determining whether to adopt a LNL a consultation process is mandatory.
- 5.2 The Police Reform and Social Responsibility Act 2011 - provides by section Section 132(1) of the Act that, "Where a licensing authority decides under section 125 that the late night levy is to apply in its area, it must also decide - (a) the date on which the late night levy requirement is first to apply.
- 5.3 Section 134(1) of the Act provides that, "Regulations must make provision as to the procedure to be followed by a licensing authority in relation to any proposal for - (a) a decision under section 125(2) that the late night levy requirement is to apply in the area of the licensing authority ..." and Section 134(2) provides that, "Regulations under this section must, in particular - (a) require the licensing authority, where it proposes to make any decision mentioned in subsection (1), to consult the following about the proposal - (i) the relevant local policing body; (ii) the relevant chief officer of police; (iii) holders of relevant late night authorisation ...".

- 5.4 Section 134(3) provides that, "In the case of a proposal that the late night levy requirement should apply to the area of a licensing authority, the consultation about the proposal required under subsection (2)(a) must include consultation about the matters to be decided under section 132(1)".
- 5.5 The legislation is clear that where a licensing authority is considering a proposal to adopt a LNL in its area it must consult about the matters to be decided under section 132(1), the first of which is the date on which the LNL is first to apply. As such the requirement to consult on the selected implementation date of the LNL is a mandatory statutory requirement. The proposed date of commencement of the late night levy was never consulted upon and therefore the original consultation was flawed.
- 5.6 The original consultation papers sent stated as follows: "*The Council is formally consulting on the introduction of a late night levy for premises that sell alcohol after midnight*" and "*If introduced, the levy will apply to any licensed premises that sell alcohol who operate within the set times of the levy, this applies to alcohol sales both on and off the premises.*" The on-line version however was correct and more detailed and referred to premises that were authorised to sell and not just those that actually sell alcohol after midnight. The consultation documents were worded in such a way as to be potentially misleading.
- 5.7 The determination to stop the introduction of the LNL based on the original consultation and to re-consult was a necessary one from a legal perspective to (a) ensure that the legal requirements were all met and (b) in order to ensure that no persons affected were accidentally inadvertently impacted by the wording of the first consultation.
- 5.8 The scheme of delegation within the Council's constitution permits the Chief Executive to take any executive decision whether or not reserved to Council in a case of emergency or extreme urgency and to report to Council afterwards. There was sufficient urgency in the circumstances to warrant the use of those powers.

## **6. ONE TOWER HAMLETS CONSIDERATIONS**

- 6.1 This decision has not affected the Equalities Assessment undertaken previously.

## **7. BEST VALUE (BV) IMPLICATIONS**

- 7.1 This decision will prevent litigation fees on a matter that is unlikely to be successful

## **8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT**

- 8.1 There are no environmental impacts with regards to this matter

**9. RISK MANAGEMENT IMPLICATIONS**

9.1 This decision has reduced the risk of expenditure for the Council, the risk has been managed.

**10. CRIME AND DISORDER REDUCTION IMPLICATIONS**

10.1 One of the key licensing objectives is to prevent licensed premises from being a source of crime and disorder. The adoption of the levy and assists with crime and disorder reduction by providing funding for joint projects through the Community Safety Partnership. Therefore this decision protects the intention to fund projects through the late night levy.

**11. SAFEGUARDING IMPLICATIONS**

11.1 The adoption of the levy may provide additional funding for safe guarding projects such as underage drinking, supporting the Community Alcohol Partnership and Best Bar None schemes.

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**Linked Reports, Appendices and Background Documents**

**Linked Report**

None

**Appendices**

None

**Background Documents – Local Authorities (Executive Arrangements)(Access to Information)(England) Regulations 2012**

None

**Officer contact details for documents:**

N/A