

<p>Decision Report Cover Sheet</p> <p>Council</p> <p>20 September 2017</p>	 <p>TOWER HAMLETS</p>
<p>Report of: Ann Sutcliffe, Acting Corporate Director, Place</p>	<p>Classification: Unrestricted</p>
<p>To reconsider the Late Night Levy consultation</p>	

Lead Member	Councillor Asma Begum, Cabinet Member for Community Safety
Originating Officer(s)	Roy Ormsby – Divisional Director – Public Realm David Tolley – Head of Environmental Health and Trading Standards
Wards affected	All wards
Community Plan Theme	A Safe and Cohesive Community

Executive Summary

To consider whether a Late Night Levy (LNL) should be applied to those premises in the Borough that are authorised sell alcohol between a nominated period between midnight and 6.00am.

A further consultation has taken place after the Council was threatened with a Judicial Review after agreeing to adopt the levy on the 1st June 2017.

The consultation sought views on the following matters:

- If a levy should be introduced
- The commencement time that the levy shall be applied between midnight and 6.00am
- Views of the Mayor’s Office for Policing and Crime (MOPAC) for the introduction of a levy and seek agreement that the levy will be allocated within the Community Safety Partnership.
- To consult on any exemptions or reductions that may be applied to businesses.
- To determine, if the levy is to be adopted, it will commence on the 1st January 2018

Consultation was carried out by engaging with the public and businesses and variety of other groups, this report considers the consultation responses.

Recommendations:

Council is recommended to:

1. Adopt the Late Night Levy
2. If the decision is to adopt the levy, the commencement of the levy shall be from the 1st January 2018.
3. Agree that the commencement period of the levy should be from midnight every night.
4. Agree that the income from the levy, less collection costs, should be allocated through the Community Safety Partnership.
5. Agree that Members of the Best Bar None Scheme receive a 30% reduction from the levy.
6. Agree that the following premises would be exempt from the levy:
 - Premises with overnight accommodation where alcohol is supplied only to persons staying at the premises during midnight to 6am for consumption on the premises
 - Theatres and Cinemas: this exemption applies if alcohol is served during the levied hours 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
 - Bingo Halls
 - Community Amateur Sports Clubs: These are clubs registered as Community Amateur Sports Clubs (CASC)
 - Community premises: these are premises that form part of the church hall, chapel hall, village hall, parish hall, community hall or other similar buildings.
 - Premises opening past midnight for New Years Eve only: applicable to premises which are authorised to sell alcohol between midnight and 6am, only applies on New Years day
7. Agree that the following licenced premises would not be exempt from the levy, as :
 - Country Village Pubs
 - Premises in Business Improvement Districts
 - Premises that receive a small business rate relief

1. REASONS FOR THE DECISIONS

- 1.1 The Council can agree to impose an additional financial levy on licensed premises that retail alcohol within the Borough, in order to make a contribution to the cost of managing the night time economy.
- 1.2 The income raised by the levy will be used to compliment the Councils Anti-Social Behaviour Blueprint and is intended to be managed through the Community Safety Partnership.
- 1.3 If a levy is determined to be adopted the proposal will need to be agreed at full Council.

2. ALTERNATIVE OPTIONS

- 2.1 The Council can determine to not to introduce a levy.

3. DETAILS OF REPORT

- 3.1 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.
- 3.2 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.
- 3.3 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. 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.
- 3.4 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.
- 3.5 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.

- 3.6 The Metropolitan Police (MOPAC) will receive 70% of the revenue. The net levy revenue amount due to MOPAC is reduced by the cost of collecting the payments, implementing the levy and publicising the statutory statements. MOPAC have agreed to have their allocation spent within the Borough through the current partnership arrangements.
- 3.7 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
- 3.8 The estimate from the income of the LNL is detailed in Appendix 1, it must be noted that this is an estimate only and is dependent on the exemptions and reductions that may be granted. The provision of free minor variations during the lead to the introduction of the levy would have an impact on the estimate presented in this **Appendix 1**. As of June 2017 there are 310 licences that could be affected, pending applications for minor variations, the exemptions agreed and licence holders joining the Best Bar None scheme.
- 3.9 The increase in annual fee for the licence holder is shown in **Appendix 2**. It must be noted that the annual fee, without the levy component is set by Government depending on the rateable value of the property.
- 3.10 Other London Borough's such as Camden and Islington have also introduced a Late Night Levy and Hackney has undertaken a consultation with a proposal to introduce the levy on the 1st November 2017.
- 3.11 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.
- 3.12 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.
- 3.13 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. It also supports the recently adopted *Anti-social behaviour – A blue print for local action in Tower Hamlets*.
- 3.14 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

3.15 Based on the current number of premises opening between midnight and 6am, and using midnight as the point the levy commences, the additional income would be in the region of £293,377. This figure will vary if premises apply to reduce their operating hours. The Council is able to deduct from the income the costs of applying and collecting the levy and it is estimated that this will be in the region of £50,000.

Considerations

3.16 There are potential operational and efficiency benefits for the local community extending to the Ambulance Service, local accident and emergency provision in hospitals, the Courts and wider justice system and the Local Economy resulting from a more effectively managed night time economy brought about by the additional resource generated by the scheme.

3.17 The legislation dictates how a levy is to be introduced and notices to be displayed at the appropriate time. Thereafter, on an annual basis, a Council as the Licensing Authority must publish before the beginning of the year a statement of its estimate of the amount of deductions permitted under regulation to be made in respect of the year. At the end of the year, a statement of the net amount of levy payments for the year showing actual deductions will need to be published.

3.18 The estimated proportion of the net levy must be paid to the Metropolitan Police at the start of the levy year.

3.19 As the levy does not apply to Temporary Event Notifications, it is possible that licence holders will apply for (TENS), rather than pay the additional charge for the levy. This potentially reduces the regulatory control Licensing Officers would have over the premises as premises licence conditions are not automatically transferred to the TENS. Under this regime a premises can have 12 events or 21 days-worth of TENS within a rolling twelve months, involving less than 500 persons.

3.20 The Council is not committed to adopting the Late Night Levy after undertaking a consultation. It is committed to making a determination though.

However, if it does it would have to provide clear justified reasons why it feels that a levy is required. Any decision of this nature undertaken by the Council is open for Judicial Review. The recorded crime data would support the justification for the levy. See Appendix 8

Consultation

- 3.22 The main method of consultation was to direct residents and businesses to complete an online survey which was accessed via the Council's website, **Appendix 3**. All 1134 affected licensed premises were written to. The consultation ran from 24th May 2017 to midnight on 23rd August 2017.
- 3.23 A total of 52 responses were received from the on line survey, 78% being members of the public, 21% being a Business/Commercial Entity.
- 3.24 As well as the online survey, the Council also received responses via email, letters and through two public meetings as a result of directly writing to licensees and interested groups, **Appendix 4** lists the groups consulted. These responses were from licensees, a resident, trade organisations, and national companies.
- 3.25 This brings the total responses received to 71. **Appendix 5** summarises the responses from the attendees at the two public meetings and written responses.
- 3.26 The online consultation showed that 73% of those who completed the survey were in favour of the Council's proposal to introduce the Levy. Comparing this to the other results summarised in Appendix 5 where most responders were not being favour of the proposal. Most of the respondents were Licensees, Trade Associations or companies with Licensed Premises in the borough.
- 3.27 A graphical breakdown of all the results from the online survey can be found in **Appendix 6**.

Statutory Exemptions Proposed

- 3.28 Chart D in Appendix 6 shows the results relating to proposed statutory exemptions. Most of the proposed exemptions were agreed with; however 2 of these were disagreed with in the consultation. These were:
- Exemption for Country Village Pubs
There are currently none of these within the borough.
(The definition of a country pub is that are solely designated in rural settlements with a population less than 3000)
 - Overnight accommodation
Hotels/hostels where alcohol is supplied only to persons staying at the premises during midnight to 6am for consumption on the premises
(This exemption is not applicable to any premises which serve alcohol to members of the public who are not staying overnight at the

premises, such as a hotel bar which can be accessed by the general public.)

Where the money raised should be spent?

- 3.29 Chart E in Appendix 6 identified that the majority of respondents to the online survey wanted the revenue raised by the levy to be spent on prevention of Public Nuisance and prevention of Crime & Disorder
- 3.30 In terms of the other responses including the public meetings agreed the revenue should be invested in prevention of crime and disorder and cleaning of relevant highways and land.

Additional Comments Raised

- 3.31 A number of additional comments were raised during the consultation from both members of the public, licensee, companies, and trade associations etc. These are listed in **Appendix 7**.
- 3.32 The majority of comments made were that the Late Night Levy (LNL) would be detrimental to small/independent businesses within the borough and is detrimental to the late night economy as it can be seen as an unfair blanket tax because it does not differentiate between responsible and irresponsible businesses. A number also stated the Levy charge should start at 23:00/23:30, which is not possible as the levied hours a Council can choose are set between 00:00 and 06:00 hours. Other comments receiving a high majority agreed that with the polluter pays principal of the Levy, whilst others particularly the Business and Trade Organisations said that it would be a detriment to the Late Night Economy. The Business and Trade Organisations also mention the House of Lords Select Committee Report on the Licensing Act 2003, and suggests that Councils should consider use Business Improvement Districts (BIDs) as an alternative to the Late Night Levy.

Metropolitan Police

- 3.33 The Chief Inspector for Tower Hamlets supports the Council's proposal stating that if introduced, this would enable the Community Safety Partnership Board to consider and fund initiatives offering additional support to address the increased enforcement requirements that are generated by the night time economy.

MOPAC

- 3.34 MOPAC has agreed to this arrangement because both Islington and Camden, who have introduced a Late Night Levy, has similar agreement in place.

Tower Hamlets Clinical Commissioning Group

3.35 Tower Hamlets Clinical Commissioning Group who are part of the NHS support the Council's proposal stating that they were pleased on the proposal to tackle issues around the sale of alcohol after midnight and support for street police safety in the borough. They welcomed the opportunity to share their views on the proposal and discussed how the levy could help to reduce the number of alcohol-related A&E attendances late at night and during the early hours, as well as benefitting the health and wellbeing of the wider population of Tower Hamlets.

Incidents

3.36 **Appendix 8** demonstrates the incidents that have been reported to the Police and Council, linked to licensed premises during 2016/17 at hourly intervals. The majority of incidents were occurring between midnight and 1 am.

Premises to be affected

3.37 **Appendix 9** shows a table of the estimated number of premises type/usage that are likely to be affected by the introduction of a late night levy. The total number of premises will vary in relation to the estimated income due to the time frame of running the reports.

Late Night Levy Proposal

3.38 If the levy was to be adopted by the Council the following would be recommended to Members.

- The levy commences at midnight for all premises that retail alcohol
- Members of Business-led schemes to receive a 30% reduction – Best Bar None only
- The following licenced premises not to be exempt
 - Country Village Pubs
 - Business Improvement Districts
 - Small Business Rate Relief premises not to receive a reduction
- The following activities would be exempt from the levy
 - Premises with overnight accommodation – see 3.28 above
 - Theatres and cinemas .This exemption applies if alcohol is served during the levied hours 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
 - Bingo Halls
 - Community Amateur Sports Clubs: these are clubs registered as Community Amateur Sports Clubs (CASC)
 - Community Premises: These are premises that form part of the church hall, chapel hall, village hall, parish hall, community hall or other similar buildings.

- Premises open late for New Year's Eve applicable to premises which are authorised to sell alcohol between midnight and 6am, only applies on New Years day
- 3.39 An Equalities Analysis Quality assurance Checklist has been carried out and is detailed at **Appendix 10**.

4. COMMENTS OF THE CHIEF FINANCE OFFICER

- 4.1 The report seeks adoption of the Late Night Levy scheme by the Council from midnight of the 1st January 2018. The introduction of the levy will generate estimated annual Income of £293,377 based on the current operating hours of the premises selling alcohol after midnight. This figure will vary as it is dependent on premises not changing operating hours. 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.
- 4.2 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 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. The delay implementing the levy is not expected to have any significant impact other than the timeframe being revised for the pooled budget to be set up to be administered through the Partnership.

5. LEGAL COMMENTS

- 5.1 The late night levy ("the levy") is a power, conferred on licensing authorities by provision in Chapter 2 of Part 2 of the Police Reform and Social Responsibility Act 2011. This power allows licensing authorities to charge a levy to persons who are licensed to sell alcohol late at night in the authority's area, as a means of raising a contribution towards the costs of policing the late-night economy.
- 5.2 The levy must cover the whole of the licensing authority's area. However, the Council will also choose the period during which the levy applies every night,

between midnight and 6am, and decide what exemptions and reductions should apply from a list set out in regulations.

- 5.3 If the Council chooses to introduce the levy in its area, then all licensed premises which are authorised to supply alcohol in the levy period will be affected although the Council does have the discretion to offer an exemption from the levy. All other relevant premises that do not wish to operate in the levy period will be able to make a free minor variation to their licence before the levy is introduced.
- 5.4 The Council also has the discretion to offer a 30% reduction from the levy to premises that are either a member of a relevant best practice scheme or in receipt of Small Business Rate Relief and have a rateable value of less than £12,000. The report proposes the reduction for Best Bar None awarded premises but no reduction for premises in receipt of Small Business Rate Relief. In considering such reduction, the best practice scheme must meet the criteria specified in the Late Night Levy (Expenses, Exemptions and Reductions) Regulations 2012 as follows:
- A clear rationale as to why the scheme's objectives and activities will, or are likely to, result in a reduction of alcohol-related crime and disorder;
 - A requirement for active participation in the scheme by members; and
 - A mechanism to identify and remove in a timely manner those members who do not participate appropriately.
- 5.5 With regard to the levy revenue, the police will receive 70% of the net levy revenue. The Council can retain up to 30% of the net levy revenue to fund other activities besides policing and the split proposed is 70%/30%.
- 5.6 There are restrictions on the types of services that licensing authorities can fund with the levy revenue to ensure that levy is spent on tackling alcohol related crime and disorder and services connected to the management of the night-time economy. The Council can deduct permitted administration, collection and enforcement costs from the gross levy revenue.
- 5.7 As to consultation, the Council firstly has to discuss the need for a levy with Mayor's Office for Policing and Crime (MOPAC) and the relevant chief officer of police and which has been undertaken. The Licensing Authority then decided to move to the next stage in the process and which was to consult on its proposal to introduce a late night levy. The consultation document is required to state the Council's intention to introduce a levy, its proposed design (including the late night supply period and proposed exemption and/or reduction categories) and the services that the licensing authority intends to fund with its share of the levy revenue.
- 5.8 The consultation must comply with the following common law criteria:
(a) it should be at a time when proposals are still at a formative stage;
(b) the Council must give sufficient reasons for any proposal to permit intelligent consideration and response;

- (c) adequate time must be given for consideration and response; and
- (d) the product of consultation must be conscientiously taken into account.

5.9 Consultation has been carried out as referred to in paragraphs 3.22 through to 3.36 of the report and the responses set out in Appendices 5 to 7 to the report and paragraphs (a) to (c) above has been complied with. Cabinet must now take full and proper account of the consultation responses in deciding whether to recommend to full Council the introduction of the levy and if so, the design of that levy.

5.10 If the Council decides to adopt the levy it must notify the Chief Officer of Police and all holders of licences which permit the supply of alcohol within the late night supply period. The Home Office Amended Guidance on the Late Night Levy recommends that the start date of the levy is set no less than three (3) months after the notifications are sent. This will allow sufficient time for holders with a relevant late night authorisation to make a free variation to their licence to reduce their licensed hours to avoid operating within the late night supply period and thus avoid paying the levy. The date proposed being 1st January 2018 will comply with this Guidance.

5.11 Pursuant to Local Authorities (Functions and Responsibilities) (England) Regulations 2000, powers and functions relating to late night levy requirements cannot be the responsibility of the Executive. This is therefore a function of full Council unless it has been delegated by it. This function has not been delegated and therefore the final decision about the introduction of the levy will be for full Council. Therefore, the Mayor in Cabinet can only recommend adopting the levy to Full Council. The Levy however, does not fall within the Council's Budget and Policy Framework Procedure Rules and it is not a matter that is specified budget and policy framework as set out in Part 2, Article 4 of the Constitution.

5.12 When making decisions, the Council must have due regard to the need to eliminate unlawful conduct under the Equality Act 2010, the need to advance equality of opportunity and the need to foster good relations between persons who share a protected characteristic and those who do not (the public sector equality duty). A proportionate level of equality analysis is required to discharge the duty and an Assurance Checklist is in Appendix 10.

6. ONE TOWER HAMLETS CONSIDERATIONS

6.1 The Equality Analysis Quality Assurance Checklist has been completed in respect of this policy in order to comply with our Public Sector Equality Duty and no adverse issues have been identified, but will be kept under review.

7. BEST VALUE (BV) IMPLICATIONS

7.1 The adoption of levy will enable the Council to impose an additional fee on those that contribute to some of the costs of managing the night time economy.

8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

8.1 There are no environmental impacts with regards to this scheme.

9. RISK MANAGEMENT IMPLICATIONS

9.1 There are no risk management issues with the scheme.

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.

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.

Linked Reports, Appendices and Background Documents

Linked Report

None

Appendices

Appendix One: Estimated Income
Appendix Two: Increased fee estimate
Appendix Three: Consultation document
Appendix Four: Consultees
Appendix Five: Public Meeting responses and written responses
Appendix Six: On line survey responses
Appendix Seven: Additional Comments
Appendix Eight: Hot Spot Maps
Appendix Nine: Estimate of numbers of premises type affected by the levy
Appendix Ten: Equalities Assessment

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

None

Officer contact details for documents:

N/A