


Cabinet 10 January 2017	 TOWER HAMLETS
Report of: Will Tuckley, Chief Executive and Acting Corporate Director, Communities, Localities, Culture	Classification: Unrestricted
Late Night Levy Consideration – post consultation	

Lead Member	Councillor Shiria Khatun, Deputy Mayor and Cabinet Member for Community Safety
Originating Officer(s)	Andy Bamber – Service Head David Tolley – Head of Environmental Health and Trading Standards
Wards affected	All wards
Key Decision?	Yes
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 sell alcohol between a nominated period between midnight and 6.00am.

Members previously requested that the Environmental Health and Trading Standards Service should consult on the adoption of the LNL.

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.

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

Recommendations:

The Mayor in Cabinet is recommended to:

1. Recommend to Full Council the adoption of the Late Night Levy
2. Recommend to Full Council that if the decision is to adopt the levy the commencement period should be the 1st October 2017.
3. Recommend to Full Council that the commencement time should be from midnight
4. Recommend to Full Council that the income from the levy, less collection costs, should be allocated through the Community Safety Partnership.
5. Recommend to Full Council that Members of the Best Bar None Scheme receive a 30% reduction from the levy.
6. Recommend to Full Council that the following premises would be exempt from the levy:
 - Premises with overnight accommodation
 - Theatres and Cinemas
 - Bingo Halls
 - Community Amateur Sports Clubs
 - Community premises
 - Premises opening past midnight for New Years Eve only
7. Recommend to Full Council 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 Strategy 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 Cabinet 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, 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.
- 3.4 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 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. MOPAC 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 May 2016 there are 386 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 is has undertaken a consultation for their proposal to introduce a levy in August/September 2016.
- 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.
- 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 £350,000. This figure will vary if premises apply to reduce their operating hours. The Council is able to deduct 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.

Consultation

- 3.21 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. The consultation ran from 15th February to 15th May 2016.
- 3.22 A total of 157 responses were received from the on line survey, 70% being members of the public, 26% being Licensed Premises (including some only licensed for Late Night Refreshments), and the remainder from non-licensed businesses.
- 3.23 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. These responses were from licensees, residents and residents' associations, trade organisations, solicitors and national companies.
- 3.24 This brings the total responses received to 172. Appendix 5 summarises the responses from letters, emails etc. and the comments raised and list of attendees at the two public meetings.
- 3.25 The online consultation showed that 62% 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.
- 3.26 A graphical breakdown of all the results from the online survey can be found in Appendix 6.

Statutory Exemptions Proposed

- 3.27 Chart D in appendix 6 shows the results relating to proposed statutory exemptions. Most of the proposed exemptions were agreed with; however 4 of these were disagreed with in the consultation. These were:
- Exemption for Bingo Hall,
There are currently none of these within the borough.
 - 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)
 - Exemptions for Business Improvement Districts BIDs

There are currently none of these within the borough. BIDSs are district led partnerships created through ballots process via businesses within the district and operate via a levy charge. There are currently none within the borough and Councils can veto BID proposals made by residents/businesses if they are likely to conflict to a significant extent with an existing policy.

- Best Bar None (BBN) awarded premises provide 30% reduction. This is a voluntary scheme aimed to raise standards in Licensing and Health and Safety. It is likely that the offer of a financial reduction may drive businesses to join these schemes thus increasing participation. Not giving this exemption is likely to have a detrimental effect on these voluntary schemes.

Where the money raised should be spent?

- 3.28 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 crime and disorder.
- 3.29 In terms of the other responses received 1 out of the 15 (this includes the public meeting as one response) agreed the revenue should be invested in prevention of crime and disorder and cleaning of relevant highways and land.

Additional Comments Raised

- 3.30 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.
- 3.31 The majority of comments made were that the Late Night Levy (LNL) would be detrimental to small businesses within the borough and detrimental to the late night economy. A number also stated the Levy charge should be higher as it was felt that it could not be enough to cover adequately addressing issues caused by the late night drinking. Some also felt that the levy should start earlier than 00:00 hours.

Metropolitan Police

- 3.32 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 addition support to address the increased enforcement requirements that are generated by the night time economy.

MOPAC

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

Incidents

- 3.34 Since the consultation, the statistics of incidents linked to licensed premises within the borough between the hours of 00:00 and 06:00 have been updated. Maps a to f in Appendix 8 show that for 2015/16 the number of incidents reported to police and Council had increased since 2014/15.

Premises to be affected

- 3.35 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

- 3.36 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
 - Theatres and cinemas
 - Bingo Halls
 - Community Amateur Sports Clubs
 - Community Premises
 - New Year's Eve premises only
- 3.37 An Equalities Impact Assessment has been carried out and is detailed at Appendix 10.

4. COMMENTS OF THE CHIEF FINANCE OFFICER

- 4.1 The report considers the consultation undertaken by the Council to the adoption of powers under the Police Reform and Social Responsibility Act 2011 for the introduction of a late night levy, and determines how the additional income is to be utilised.

- 4.2 If a late night levy is introduced the fee will be 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 must pay at least 70 per cent of the net levy revenue to the police. The Council as the licensing authority can choose to amend the portion of the net levy revenue that will be given to the police 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 Council as the licensing authority will be able to retain up to 30 per cent of the net levy revenue to fund services it provides to tackle late night alcohol-related crime and disorder and services connected to the management of the night-time economy. Specifically, these activities must have regard to the connection with the supply of alcohol during the late night supply period and related to arrangements for:
- the reduction of crime and disorder;
 - the promotion of public safety;
 - the reduction or prevention of public nuisance; or
 - the cleaning of any relevant highway or relevant land in the Council area.
- 4.4 Income of up to £350,000 is expected to be generated from the Levy based on the current operating hours of the premises selling alcohol between midnight and 6am. The cost to the Council 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.
- 4.5 In order to ensure that the income generated from the Late Night Levy is used to support community safety objectives, it is proposed that a pooled budget administered by the Council be established and allocated to the Community Safety Partnership for that purpose.

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 3.34 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 October 2017 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 a detailed equality impact assessment is in Appendix 6.

6. ONE TOWER HAMLETS CONSIDERATIONS

- 6.1 The Equalities Impact Assessment has been reviewed in respect of this policy and no adverse issues have been identified.

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: 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