

THE LATE NIGHT LEVY**LICENSING COMMITTEE****21 JUNE 2017****CLASSIFICATION:****Open****If exempt, the reason will be listed in the main body of this report.****WARD(S) AFFECTED****All Wards****GROUP DIRECTOR, NEIGHBOURHOODS AND HOUSING****KIM WRIGHT**

1. INTRODUCTION

- 1.1 On 4 April 2016 the Licensing Committee considered a report on the powers to introduce the late night levy (“the LNL”). The Committee recommended that the Council should hold a consultation.
- 1.2 On 20 July 2016 the Council resolved to consult on a proposal to introduce the Late Night Levy (“the LNL”). This has been prepared to provide the Licensing Committee with an update on the position following the consultation.

2. RECOMMENDATION(S)

2.1 The Licensing Committee is asked:

- (i) **to note the contents of the report and appendices.**
- (ii) **to make a recommendation on whether or not the Council should introduce the late night levy.**

3. BACKGROUND

- 3.1 Established under the Police Reform and Social Responsibility Act 2011, the LNL is a provision enabling licensing authorities to charge a levy to persons who are licensed to sell alcohol in the local area late at night. The revenue raised is then used as a contribution towards the costs of policing the late night economy.
- 3.2 The LNL can only apply to premises licensed to sell alcohol between the hours of midnight and 6am and must apply to the whole area covered by the licensing authority.
- 3.3 The LNL is paid annually by each premises licence holder to the local authority. After deductions for introducing and administering the levy, the rate of the revenue split will be at least 70% to the Police, with the remainder being retained by the Licensing Authority.
- 3.4 The local authority must use its portion of the LNL on activities, which must be related to mitigating the impact of the supply of alcohol 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 relevant land in its area.
- 3.5 Before introducing the LNL, the Authority must consider the desirability of introducing the scheme and can demonstrate this by the level of crime

Annual Levy Charge	£299	£768	£1259	£1365	£1493	£2730	£4440
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* Multiplier applies to premises in band D that primarily or exclusively sell alcohol.

** Multiplier applies to premises in band E that primarily or exclusively sell alcohol.

4.2 In addition to the above, a licensing authority may also offer a reduction of up to 30% to:

- Premises that are in receipt of Small Business Rate Relief and have a rateable value of £12,000 or less. The reduction is only available to premises that supply alcohol for consumption on the premises; and
- Operators who hold membership of a suitable best practice scheme designed to reduce alcohol related crime and disorder.

The possible revenue that could be raised by the LNL

4.3 Table 2 sets out the possible levy that could be raised if a levy were to be introduced in Hackney. It should be noted that these figures were calculated in 2016 and will need to be updated prior to a formal decision by the Council.

Band	Number of premises	Band Fee	Estimated Maximum Income
A	17	£299	£5,083
B	268	£768	£205,824
C	72	£1,259	£90,648
D	17	£1,365	£23,205
E	25	£1,493	£37,325
Total	399		£362,085

4.4 There are 399 premises that are authorised to sell alcohol between 00:01 and 06:00. Figure 1 shows that these premises are spread across the borough and that the majority of which are in non-domestic rateable value band B. If applied for the period, possible maximum income would be £362,085.

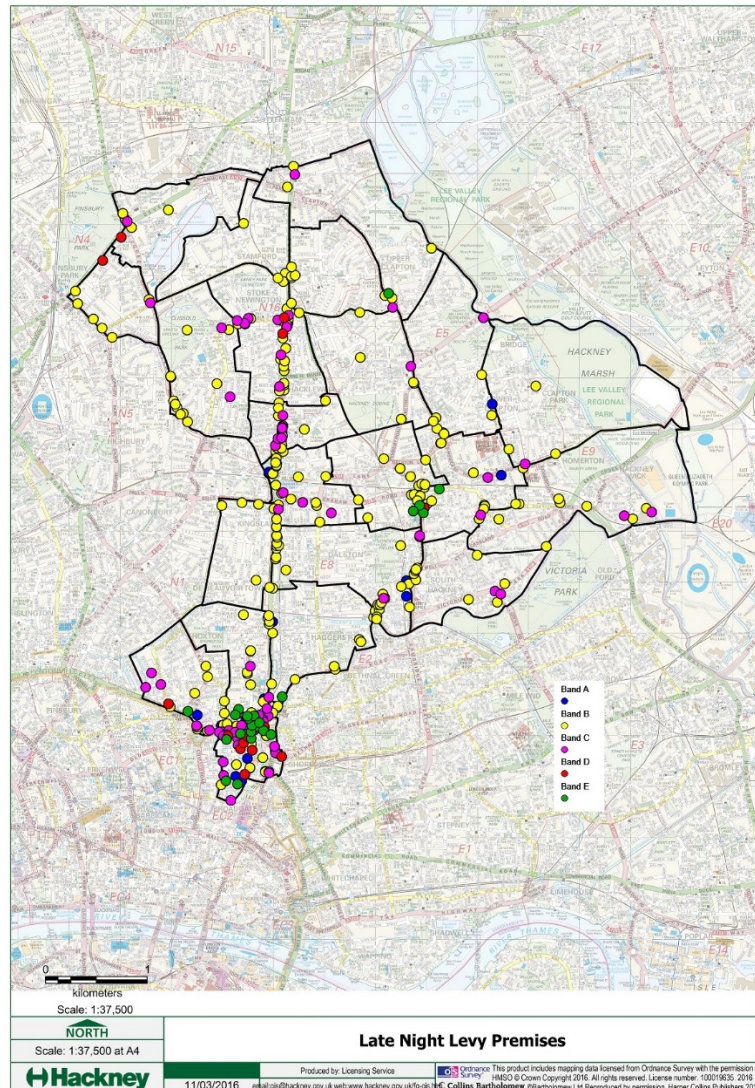


Figure 1. Late Night Levy premises

4.5 It should be noted that in the event of an LNL being implemented, operators would be able to apply for a free minor variation to reduce their hours for the sale of alcohol to take them outside the late night supply.

5. LATE NIGHT LEVY REVENUE

5.1 A key element of the LNL is the requirement that ‘a specified proportion’ of at least 70% of any net revenue collected must be paid to the Police. This appears to have made the introduction of a LNL unattractive in many areas, along with there being no requirement for the Police to use the income in the area in which it was collected.

5.2 However, in March 2015, the Home Office published amended guidance on the LNL. Para 1.41 recommends “...that the licensing authority should use its existing partnership with the police to discuss the police intentions for their share of the levy revenue. We also recommend that the PCC should consider allocating funds raised from the levy back to local commanders to allow the revenue to be spent on tackling alcohol-related

crime and disorder in the area in which the levy was raised. There is no bar to making a local agreement between licensing authority and the PCC to vary the percentage split by allocating some or all of the PCC's share of the revenue back to local authority initiatives if the PCC so chooses."

- 5.3 In London, this would mean that, subject to agreement from the Mayor's Office for Policing and Crime (MOPAC), the net revenue of the LNL may be pooled and a collaborative arrangement made between the Authority and the Police to oversee the use of the funds. It is considered best practise to have licensees represented on the board as well as the police and council.
- 5.4 A number of authorities have already put in place measures that mean the Authority effectively has greater control over the net revenue and that all (or almost all) of this revenue is spent on the management and policing of the night time economy.

Newcastle

- 5.5 An LNL was introduced in November 2013. The income is still 70/30 between Northumbria Police and the City Council. However, an agreement was made that the income would be pooled and spent within the city of Newcastle upon Tyne. The agreement also includes the establishment of an LNL to supervise the use of the revenue and that licensees will be represented on the Board.

Islington

- 5.6 Islington introduced the LNL in November 2014. The Council agreed with the MOPAC that the net amount of levy payments will be pooled and an LNL Board established to oversee the use of funds.

Camden

- 5.7 Camden Council decided to introduce the LNL on 25 January 2016. It has proposed a similar arrangement in that all revenue received is used as a single fund between the Council and police, a proposal supported by Camden police, to be agreed through discussion with the MOPAC.

6. CONSULTATION

- 6.1 The statutory consultation commenced on 13 February 2017 and concluded on 7 May 2017. A total of 1124 letters were sent to relevant persons. Also enclosed with the letter was the statutory notice of the consultation, some background information and details of the online consultation. A statutory notice appeared in the Hackney Gazette on 23 February 2017. A summary document was also prepared and paper copies of the consultation questions were made available.

- 6.2 The Council consulted on a late night supply period commencing 00:01 and concluding at 06:00. It was proposed that no exemptions or reductions would apply.
- 6.3 A total of 71 responses were received during the consultation period. This consisted of 62 survey responses and 9 open-ended submissions sent direct to the Licensing and Technical Support Service. A report with analysis of the consultation is appended to this document.

7. MATTERS FOR CONSIDERATION

- 7.1 The Policing and Crime Act 2017 came into effect on 3 April 2017. Subsequent provisions of the legislation are yet to commence. However, these will introduce amendments to the LNL provisions. These changes are:
- An authority will be able to apply the LNL to a specific area or part of its area rather than the whole of the authority area as at present.
 - An authority will be able to apply the LNL to premises that are authorised only to provide late night refreshment. For example, late night takeaways.
 - It will be possible to apply varying requirements in various parts of the authority area which will allow different late night supply periods.
 - Authorities will be required to publish information on how funds raised through the levy are spent.
- 7.2 On 25 May 2016 the House of Lords appointed an ad hoc Select Committee to undertake post-legislative scrutiny of the Licensing Act 2003. The Select Committee looked in detail at a number of areas of the Act and considered evidence from a significant number of key stakeholders in the process.
- 7.3 The Select Committee concluded its scrutiny on 4 April 2017. Its findings were particularly critical of the LNL provisions, with the Select Committee concluding:
- “...We believe on balance that it has failed to achieve its objectives, and should be abolished. However we recognise that the Government’s amendments may stand some chance of successfully reforming the Levy. We recommend that legislation should be enacted to provide that sections 125 to 139 of the Police and Social Responsibility Act 2011 and related legislation should cease to have effect after two years unless the Government, after consulting local authorities, the police and others as appropriate, makes an order subject to affirmative resolution providing that the legislation should continue to have effect.*
- “If the Government, contrary to our recommendation to abolish the Late Night Levy, decides to retain it, we further recommend that Regulations be made under section 131(5) of the Police Reform and Social*

Responsibility Act 2011 amending section 131(4) of the Act, abolishing the current 70/30 split, and requiring that Late Night Levy funds be divided equally between the police and local authorities...”

7.4 The Government is yet to respond to the Select Committee. However, in its response, the Local Government Association (LGA) said:

“We disagree that the Late Night Levy should be scrapped as it has helped to address the shortfall in income that otherwise prevents councils from putting innovative ideas into practice. We would urge more time to be given to consider the effectiveness of late night levies applied to premises in more localised “hotspots”, rather than across whole local authority areas...”

7.5 Other matters will also need to be considered ahead of the introduction of the LNL:

- Having considered the consultation comments, does the negative impact being experienced between 00:01 and 06:00 in the Borough warrant the introduction of the LNL??
- Would Hackney be able to reach agreement with MOPAC to pool any revenue collected?
- If a management board were to be established, how would this be established? What would be its terms of reference?
- How many licence holders would seek a variation to avoid paying the LNL therefore reducing the estimated gross income? An estimated 1% of licence holders sought a reduction in Islington.
- If any exemptions and deductions would apply locally. The Council consulted on there being no exemptions or deductions applied.

7. NEXT STEPS

7.1 The decision to introduce a levy must be made by Full Council. If the Licensing Committee recommends that the Council introduce the LNL, the decision will be made on 26 July 2017.

8. COMMENTS OF THE CORPORATE DIRECTOR OF FINANCE AND RESOURCES

8.1 This report seeks the Licensing Committee to make a recommendation on whether or not the Council should introduce the late night levy. The amount of the Late Night Levy (LNL) is set at National Level and will be collected alongside the annual licence fee.

8.2 The Licensing service estimated in 2016 that the existing 399 premises that are authorised to sell alcohol between midnight and 6am, would generate a maximum gross income of £362,085 (see paragraph 4) from a late night levy. The potential income, in the event of a levy being implemented, may reduce if operators apply to vary their hours to

operate outside the levy period. Income would also reduce if the Council applies exemptions or reductions on certain occasions. These are explained in paragraphs 4.2.

- 8.3 The Council would be entitled to retain up to 30% of income receipts after deducting administration costs and exemptions. The eventual percentage allocation and the use of the Police's income share will be agreed in negotiations with the Chief Police Officer and MOPAC.
- 8.4 The current cost of the Night Time Economy is managed within the existing Council service budgets. If the Late Night Levy is adopted by the Council, the income received will fund additional expenditure incurred in managing the scheme.

9. COMMENTS OF THE DIRECTOR OF LEGAL SERVICES

- 9.1 The introduction of the Police Reform and Social Responsibility Act 2011 ("the 2011 Act") allowed the Council to raise revenue to tackle the problems of crime and disorder that are caused by the night time economy by imposing a Late Night Levy ("the Levy") on those premises that are licensed for alcohol sales between midnight and 6.00 am. The powers to introduce the Levy come specifically within the 2011 Act and not by way of an amendment to the Licensing Act 2003.
- 9.2 Any levy imposed currently applies to all those in borough that hold a licence to supply alcohol for the hours that the Levy will operate from. However, Local authorities do have a discretion as to the hours when the Levy can start and finish, which is restricted to those hours specified above.
- 9.3 The legislation states that no less than 70% of the revenue raised must be given to the local policing body for the purpose of reducing or preventing crime and disorder. The accompanying regulations stipulate that the revenue retained by the Local Authority, which can be no more than 30 per cent, must be used on matters relating to crime and disorder, public safety, public nuisance and the cleaning of any relevant land or highway as a result of the NTE.
- 9.4 As set-out within paragraph 5 of the report, the 2011 Act does not prohibit the Local Authority and Police agreeing a separate agreement relating to the funds raised for the Police.
- 9.5 The regulations governing the application and administration of the Levy sets out the recoverable revenue, which is determined by the rateable value of the premises as set out in the fee band within the table at paragraph 4.1. Following the initial payment the Levy is paid on an annual basis. There are certain occasions when the level of payment is adjusted, for example when a licence lapses due to insolvency or death.

The Local Authority also has discretion on whether to adjust a payment if a licence is surrendered.

- 9.6 The exemptions and reductions regulations sets out what types of premises the Local Authority has the discretion to exclude from the Levy or to apply a reduction.
- 9.7 The application and administration regulations state that should any Local Authority decide to introduce a Levy, following the prerequisite consultation procedure, those holding an alcohol licence for the relevant hours can decide to opt out of the Levy by varying their licence before the Levy takes effect. No application fee will be payable for those making any such variation application.
- 9.8 The Policing and Crime Act 2017 has also amended the provisions relating to the Levy as set-out at paragraph 7.1 of the report. However these changes have not taken effect as yet and will require secondary legislation to do so. If these changes are introduced and the Council decides that they wish to amend any approved Levy following the consultation that concluded on 7th May 2017 the Local Authority will need to re-consult and follow the same procedural requirements that are required for introducing the Levy.
- 9.9 The Council's consultation has been carried out in line with the statutory provisions relating to the introduction of the Levy and in accordance to the guidance produced by the Government's Cabinet Office Consultation Principles. These principles do not displace the general principles derived from case law as to how consultations should be conducted. Those principles, known as the "Gunning principles" and are as follows;
- Consultation should occur when proposals are at a formative stage;
 - Consultations should give sufficient reasons for any proposal to permit intelligent consideration;
 - Consultations should allow adequate time for consideration and response;
- 9.10 Following the consultation coming to an end the Local Authority must conscientiously consider the consultation responses, or a summary of them, before taking its decision.
- 9.11 If the Levy is to be introduced it must be approved by Full Council pursuant to Schedule 1 of The Local Authorities (Functions and Responsibilities) (England) Regulations 2000.
- 9.12 Should the Council decide to introduce the Levy the local authority must comply with the following procedural requirements;
- placing a notice of the relevant decision along with the necessary details as to the proposed levy (should this be the Council's

decision) on the website and in the local newspaper with a copy of the decision (with the necessary details) also being sent to police and affected licensees

APPENDICES

Appendix 1 – Report on the Consultation.

Appendix 2 – Table of open ended responses received.

EXEMPT

Not applicable.

BACKGROUND PAPERS

None

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