

# LICENSING COMMITTEE (LICENSING ACT 2003 FUNCTIONS)

## Agenda Item 26

Brighton & Hove City Council

<b>Subject:</b>	<b>Late Night Levy and Early Morning Restriction Orders update</b>		
<b>Date of Meeting:</b>	<b>6 March 2014</b>		
<b>Report of:</b>	<b>Head of Regulatory Services</b>		
<b>Contact Officer:</b>	<b>Name:</b>	<b>Tim Nichols</b>	<b>Tel: 29-2163</b>
	<b>Email:</b>	tim.nichols@brighton-hove.gov.uk	
<b>Ward(s) affected:</b>	<b>All</b>		

### FOR GENERAL RELEASE

#### 1. PURPOSE OF REPORT AND POLICY CONTEXT

- 1.1 This report sets out to update the Licensing Committee on the proposed policy position of Brighton & Hove City Council as licensing authority concerning the Late Night Levy (LNL) and Early Morning Restriction Orders (EMROs).

#### 2. RECOMMENDATIONS:

- 2.1 That the licensing committee notes the contents of this report.
- 2.2 That licensing committee agrees to implement the Late Night Levy in Brighton & Hove only as a last resort and when relating to the Crime and Disorder licensing objective.
- 2.3 That the licensing committee agrees to implement Early Morning Restriction Orders in Brighton & Hove only as a last resort relating to disorder or nuisance.

#### 3. CONTEXT/ BACKGROUND INFORMATION

- 3.1 Power to impose levy  
The Early Morning Restriction Order was an uncommenced power within the Licensing Act 2003, reintroduced by the Police Reform and Social Responsibility Act 2011 (PRSRA) at Part 2, section 119.
- 3.2 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 (“the 2011 Act”) as part of “Rebalancing the Licensing Act”. This enables 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. The decision to introduce the levy is an option available to all licensing authorities in the whole of their respective areas.

### 3.3 Test.

The levy is a power and some licensing authorities will not consider that it is appropriate to exercise it. The licensing authority may wish to decide whether or not it believes it has a viable proposal to introduce the levy before incurring the costs of the formal consultation process. At this stage, some licensing authorities may decide that the levy will not generate enough revenue to make it a viable option in their area.

### 3.4 Rationale

When considering whether to introduce a levy, licensing authorities should note that any financial risk (for example lower than expected revenue) rests at a local level and should be fully considered prior to implementation.

### 3.5 Officers have run calculations to estimate potential income in order to advise the Council, Sussex Police or Police and Crime Commissioner (PCC), if requested. The Council's costs in administration should be recoverable. However, challenges include:

- Complexity and short term service pressure of setting up and collection.
- Variable factors in predicting income (variations, exemptions, reductions).
- Competing demands on limited funds: policing, taxi marshals, safe space, street pastors, cleansing.
- Fairness: The Home Office said the levy would not target individual premises but is applicable over the licensing authority's administrative area. The levy applies to the whole area of the authority. It cannot be imposed on part of the area only. The local Licensees Association and National Association of Licensed Multiple Retailers opines that LNL will not counter unmanaged home pre-loading and the off trade; possibly aggravating the phenomena. Other main issues include potential increase in antisocial behaviour, unfairness between licensees based on geography and divisive measures that reduce partnership spirit between the trade and responsible authorities. Legal challenge might reasonably be expected.
- Police contribution is not hypothecated. PCC is under no obligation to reinvest police contribution in the area paying the LNL. The PCC policing strategy would determine resource allocation. The police are not statutorily required to apply the funds to the supply of policing during the late night supply period, or to provide extra policing during that period or to reinvest in the same geographical area as collection. The proportion of the net levy receipts are paid by the licensing authority to the local policing body determined by the licensing authority and must be at least 70% of the net levy receipts. There may be perception of injustice with suburban licensed premises subsidising policing city centre problems or urban licensed trade subsidising rural Sussex policing strategy.

### 3.6 The levy will be payable by the holders of any premises licence or club premises certificate ("holders"), in relation to premises in the authority's area, which authorise the sale or supply of alcohol on any days during a period (the "late night supply period") beginning at or after midnight and ending at or before 6am.

### 3.7 The licensing authority must consider the desirability of introducing a levy in relation to the matters described in section 125(3) of the Police Reform and Social Responsibility Act 2011. These matters are the costs of policing and other

arrangements for the reduction or prevention of crime and disorder, in connection with the supply of alcohol between midnight and 6am.

- 3.8 Following consultation with the PCC and Chief Officer of Police, the licensing authority would then decide whether to move to the next stage in the process and consult on its proposal to introduce a late night levy. The consultation document would state its 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.
- 3.9 The licensing authority would publish the consultation online and in a local newspaper. It would also send written details to the PCC, the relevant chief officer of police and all premises licence and club premises certificate holders whose authorisations permit the supply of alcohol during the period when it is proposed the levy would apply. The consultation is intended to be targeted at those affected by the levy, particularly businesses, the police, residents and other interested parties. The consultation process, including the period, is expected to be proportionate and targeted, so that the type and scale of engagement is relative to the potential impacts of the proposal.
- 3.10 The licensing authority would assess consultation responses and make a final decision about whether to introduce the levy and, if so, its design. The decision to introduce the levy, and its design, would then be put to the full council to approve.
- 3.11 If the full council approved the introduction (or variation) of the levy, it is recommended that the licensing authority notifies adjoining authorities and it would be helpful if licensing authorities also notified the Secretary of State for transparency purposes, via the Home Office.
- 3.12 The LNL does not apply to Temporary Event Notices (TENs), so some premises might take up their full TEN entitlements to avoid the levy. Currently within the cumulative impact area premises appear to heavily rely on TENs. There is concern that the temporary event notice provision and further deregulation measures in the current Home Office consultation are and may further be used to avoid the stricter licensing policies and controls. LNL also does not apply to entertainment or late night refreshment providers.
- 3.13 The Regulatory Impact Assessment published by the Home Office for the LNL suggests that the Council might use its contribution (<30%) for:
  - Late night street wardens – in Brighton and Hove there are voluntary, unpaid street pastors trained at the authorities' expense.
  - Late night taxi marshals – in the city the city centre ranks are marshalled, currently funded by Sussex Police and public health
  - Late night CCTV – currently provided in John Street suite.
- 3.14 Some strategic considerations for the council are: economic effects of the levy on operators, on local economy and local employment; the existence of night safe and the BCRP for the reduction of crime and disorder and the cost of and effect on scheme for operators; the current alternative means of reducing crime and disorder (licensing policy, Operation Marble, etc.); fairness of passing the burden

to operators rather than their being borne by the community at large; Police capacity to fund crime prevention and fairness of non-town centre operators funding town centre policing.

- 3.15 A licensing authority can deduct the costs it incurs in connection with the introduction or variation, administration, collection and enforcement of the levy, prior to the levy revenue being apportioned between the police and licensing authority. Regulations have prescribed descriptions of expenses which may be deducted. Any financial risk relating to the levy revenue, such as lower than expected revenue or higher than expected costs, rests at a local level. These 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 PCC, 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; and
  - the cost of processing applications for a variation in relation to the introduction of the levy.

As previously reported above, officers have run programmes to estimate income with different late night supply periods but it is difficult with variables: volume of minor variations, confidence in getting rateable values and multipliers, trade response to different 'witching' hours, accuracy over exemptions and reduction categories and calculating. It is doubtful that we would know BCRP nightsafe premises or small business rate relief recipients.

- 3.16 It is estimated that there are approximately 110 premises open until 0100, approximately 122 premises open until 0200, approximately 51 premises open until 03.00, approximately 18 premises open until 04.00, approximately 16 premises open until 05.00, approximately 13 premises open until 06.00 and approximately 73 premises which are open 24 hours (13 of these are for residents only). Seven of the licences were for time limited events.
- 3.17 Appendix 1 shows the timeline for LNL's and EMROs in other areas.
- 3.18 Appendix 2 shows the method of calculating the number of premises within the different hours, what their rateable value is etc.

#### **4 ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS**

- 4.1 Officers are not recommending adoption of these powers; previously committee has not ruled out application of the levy.

#### **5 COMMUNITY ENGAGEMENT & CONSULTATION**

- 5.1 Alcohol Programme Board, Licensing Strategy Group, finance and legal services.

#### **6. CONCLUSION**

- 6.1 The Alcohol Programme Board support this measured approach to the consideration and monitoring of Late Night Levy and Early Morning Restriction Orders.

## 7. FINANCIAL & OTHER IMPLICATIONS:

### Financial Implications:

- 7.1 Officers are concerned about the number of free Minor Variation Applications that would have to be dealt with. The Home Office Impact Assessment (IA) states "There may be other costs in administering the levy, such as sending out a levy invoice, but these processes will be done in tandem with the existing licence fee regime and will not constitute a new cost". Page 17 of the IA "Enforcement" states "There will not be any significant cost in enforcement costs. The late night levy can be collected alongside the annual licence fee and contain negligible new costs". The licensing authority will only be able to keep up to 30% of income collected (after administration costs have been taken out) but this will have to be used as specified. Officers are concerned that introduction of EMROs or LNL will necessitate a large amount of work not already carried out, possibly requiring more staff.

*Finance Officer Consulted: Steven Bedford*

*Date: 18/02/14*

### Legal Implications:

- 7.2 Legal implications are contained within the body of this report. There is no appeal to challenge the introduction of a levy. Any challenge would be by way of a judicial review. Legal challenge might reasonably be expected.

*Lawyer Consulted: Rebecca Sidell*

*Date: 18/02/14*

### Equalities Implications

- 7.3 There are no direct equalities implications.

### Sustainability Implications:

- 7.4 There are no direct sustainability implications.

### Any Other Significant Implications:

- 7.5 Public health is not a licensing consideration. Evidence based policy supports the local economy and retail industry.

## **SUPPORTING DOCUMENTATION**

### **Appendices:**

1. Timeline for introduction of LNLs and EMROs in other areas.
2. Calculation sheets.

### **Documents in Members' Rooms**

1. None.

### **Background Documents**

1. None.

## Late night levy development around England &amp; Wales:

- Blackpool: considering 3 am EMRO. This has been deferred twice (March and Aug) 10 December – Blackpool deferred EMRO decision again. 10 February, Blackpool decided not to implement a late night levy.
- Hartlepool: started consultation for a 2 am EMRO. This was delayed in April and later refused.
- Islington: Council considering LNL but seeking commitment from the police for 70% contribution hypothecated for the night-time economy policing in Islington, and not the wider London area. Islington begins LNL consultation 13 November
- Milton Keynes: police requested a 1am to 6am LNL. The police have made commitment to use their contribution for the late-night economy policing. This was deferred, rejected, reconsidered and approved then rejected by Full Council.
- Newcastle-upon-Tyne consulting on a midnight to 6am LNL. Newcastle are the first authority to introduce a LNL as of 1 November 2013.
- Northampton considering EMRO. This was scrapped 19 June.
- Norwich considering EMRO – decision delayed 17 October
- Plymouth: pre-consultation on LNL and EMRO with the police (taking informal views from stakeholders) (to 20 March 2013)
- Leeds considering LNL. On 19 December 2013, the Executive Board agreed that Leeds does not pursue the introduction of a Late Night Levy; that Officers within Licensing work with partners, including the licensing trade, to develop and enhance the various existing voluntary initiatives and that the Executive Board reiterates its openness to support a BID which includes an element of initiatives to manage the night time economy. This decision was referred back to their Licensing Committee.
- Woking considering LNL and EMRO – both rejected 16 October
- York considering LNL 0000 – 0600
- Bristol considering LNL and EMRO
- Liverpool considering LNL
- Cheltenham adopting LNL wef 1 April 2014 from midnight to 0600.
- City of London considering LNL
- Camden considering LNL and EMRO
- Tameside considering LNL
- Chelmsford considering LNL
- Cheshire East considering LNL
- Lambeth considering LNL and EMRO
- Chesterfield confirmed they are not considering EMRO Sept
- Harrow – cancelled EMRO hearing 9 October
- Kingston – rejected EMRO 18 October
- Barnsley, Forest Heath, Lewisham, Manchester, Sunderland, Swindon, Watford and West Lancashire are all at the informal interest or pre-consultation stage for EMRO.
- Nottingham are consulting on a late night levy which would be from 00.01 to 06.00.

Article in Publican in April: survey of LA's show 78% say no to LNL, 77% say no to EMROs.

Premises that are open:					
latest hour	number of prem	amount raised	notes	observations	
	1	115	5 licences revoked/surrendered		
	2	128	6 licences revoked/surrendered		
	3	54	3 licences revoked/surrendered		
	4	20	2 licences revoked/surrendered		
	5	18	2 licences revoked/surrendered		
	6	14	1 licence revoked/surrendered		
24 hour		73	4 licences revoked/surrendered		13 licences are for residents
Total		422			

#### Notes

Licensing authorities will have the discretion to offer an exemption from the levy to the following categories of premises and schemes:

- Premises with overnight accommodation
- Theatres and cinemas
- Bingo halls
- Community Amateur Sports Clubs ('CASCs')
- Community premises
- Country village pubs
- Business Improvement Districts ('BIDs')

#### observations

If a licence has been suspended because of non payment of annual fee, it has been counted as if the licence was active.

6 licences were for time limited activities (e.g. Freshers)

a) Terminal hour	b) number of premises	c) Rateable Value/Cost	d) (b x c)	
01.00 115				
A	8	A 299	2392	
B	70	B 768	53760	
C	22	C1259	27698	
D	4	D1365	5460	
E	11	E 1493	16423	
E + Multiplier	0	E+ 4440	0	
	115		105733	if closing at 01.00
02.00 128 (126 Blanche House is partly 24 hour)				
A	13	A 299	3887	
B	70	B 768	53760	
C	27	C 1259	33993	
D	4	D 1365	5460	
E	14	E 1493	20902	
E+ Multiplier	0	E+ 4440	0	
	128		118002	if closing at 02.00
03.00 54				
A	2	A 299	598	
B	30	B 768	23040	
C	13	C 1259	16367	
D	1	D 1365	1365	
E	5	E 1493	7465	
E + Multiplier	3	E+ 4440	13320	
	54		62155	if closing at 03.00
04.00 20				
A	1	A 299	299	
B	13	B 768	9984	
C	4	C 1259	5036	
D	0	D 1365	0	
E	2	E 1493	2986	
E + Multiplier	0	E+ 4440	0	
	20		18305	if closing at 04.00
05.00 18				
A	0	A 299	0	



a) Terminal hour	b) number of premises	c) Rateable Value/Cost	d) (b x c)	
B	9	B 768	6912	
C	8	C 1259	10072	
D	0	D 1365	0	
E	1	E 1493	1493	
E + Multiplier	0	E+ 4440	0	
	18		18477	if closing at 05.00
<b>06.00 14</b>				
A	0	A 299	0	
B	3	B 768	2304	
C	8	C 1259	10072	
D	1	D 1365	1365	
E	2	E 1493	2986	
E + Multiplier	0	E+ 4440	0	
	14		16727	if closing at 06.00
<b>24.00 73</b>				
A	2	A 299	598	
B	49	B 768	37632	
C	13	C 1259	16367	
D	2	D 1365	2730	
E	7	E 1493	10451	
E + Multiplier	0	E+ 4440	0	
	73		67778	24 hour per day premises

If the terminal hour was set at 1am, the amount collected could be in the region of £407177.00 (everyone open 1,2,3,4,5,6,24hrs)

If it was set at 2am, the amount collected could be in the region of £301444.00 (everyone open 2,3,4,5,6,24hrs)

If it was set at 3am, the amount collected could be in the region of £183442.00 + 67779 = (everyone open 3,4,5,6,24hrs)

If it was set at 4am, the amount collected could be in the region of £53509.00 + 67779 = £121288 (everyone open 4,5,6,24hrs)

If it was set at 5am, the amount collected could be in the region of £35204.00 + 67779 = £102983 (everyone open 5,6,24hrs)

If it was set at 6am, the amount collected could be in the region of £16727.00 + 67778 = £84505 (everyone open 6,24hrs)

**None of the above figures takes account of exemptions.**