

LICENSING COMMITTEE	AGENDA ITEM No. 4
21 JANUARY 2013	PUBLIC REPORT

Cabinet Member(s) responsible:	Councillor Peter Hiller – Cabinet Member for Neighbourhoods, Housing and Planning	
Contact Officer(s):	Peter Gell, Strategic Regulatory Services Manager Adrian Day, Licensing Manager Kerry Leishman, Licensing Development Officer	Tel. 453419 Tel. 454437 Tel. 453502

CUMULATIVE IMPACT POLICY, LATE NIGHT LEVY & EARLY MORNING RESTRICTION ORDERS

RECOMMENDATIONS	
FROM : Strategic Regulatory Services Manager	Deadline date: April 2013
The Committee is requested to:	
<ol style="list-style-type: none"> 1. Determine whether Officers should proceed with a review of the Statement of Licensing Policy to include a Cumulative Impact Policy within the Operation CAN-do area, due to the increasing concerns of Council Officers, Responsible Authorities and the local community of the impact on the Licensing Objectives; and 2. Note the contents of the report and agree to the further work required to identify what the viable options are when introducing Early Morning Restriction Orders and a Late Night Levy following initial consultation with the Chief Officer of Police and the Cambridgeshire Police and Crime Commissioner. 	

1. ORIGIN OF REPORT

- 1.1 This report is as a result of initial concerns from officers of the council, Responsible Authorities and the local community within the Operation CAN-do area, of the impact on the promotion of the Licensing Objectives due to the perceived saturation of licensed premises within the specific area of the city.
- 1.2 The Licensing Act 2003, as amended by the Police Reform and Social Responsibility Act 2011, (“the 2011 Act”) gives a Licensing Authority the power to make an Early Morning Restriction Order (“EMRO”) if it considers it appropriate for the promotion of the Licensing Objectives. The 2011 Act also conferred on Licensing Authorities a power to introduce a Late Night Levy (“LNL”) enabling authorities to charge a levy to persons who are licensed to sell alcohol late at night.

2. PURPOSE AND REASON FOR REPORT

- 2.1 To consider and note the contents of the report and to seek authority to consult with those bodies specified in Section 5(3) of the Licensing Act 2003 as to the implementation of a Cumulative Impact Policy (CIP) within the Operation CAN-do area attached as **Appendix A**, with a view to coming back to the Licensing Committee for a decision on whether to recommend to Council to adopt a CIP.
- 2.2 To outline the new powers available to Peterborough City Council to make Early Morning Restriction Orders (EMROs) and to outline the new powers to Peterborough City Council to impose Late Night Levies (LNLs) to enable the Licensing Committee to make an informed decision as to whether to authorise the future work as required when deciding on the implementation of either or/and EMROs and LNLs.
- 2.3 This is for the Committee to consider under its terms of reference No. 2.4.1.7 “ to monitor and review policy relating to licensing matter and make recommendations to Cabinet or Council as appropriate in relation to any proposed changes.

3. **TIMESCALE**

Is this a Major Policy Item?	YES (if approved, will form part of the Statement of Licensing Policy)
Date for Relevant Council Meeting	April 2013

4. **BACKGROUND OF CUMULATIVE IMPACT POLICY**

- 4.1 Cumulative impact is not specifically mentioned in the Licensing Act 2003, but means, in the guidance issued under s.182 of the Act, the potential impact on the promotion of the Licensing Objectives of a significant number of licensed premises that are concentrated in one area and is a proper matter for the Licensing Authority to consider in developing its Statement of Licensing Policy. This should not be confused with the issue of “need” which relates to the commercial demand for licensed premises and is not a matter for the Licensing Authority in discharging its licensing functions or for its Statement of Licensing Policy.
- 4.2 Any CIP implemented would be an amendment to Peterborough City Council’s Statement of Licensing Policy and would need to be reviewed regularly to assess whether they are needed any longer or if those which are contained in the CIP should be amended.
- 4.3 A CIP may be implemented for a designated area (or areas) where the Licensing Authority considers it appropriate to deal with problems arising from licensed premises in that area. These problems may not necessarily be experienced in the vicinity of such premises.
- 4.4 In some areas, where the number, type and density of premises selling alcohol is high or exceptional, serious problems of nuisance and disorder may be arising or have begun to arise outside or some distance from those premises.
- 4.5 Such problems generally occur as a result of large numbers of drinkers being concentrated in an area, for example when leaving premises at peak times or when queuing at fast food outlets or for public transport.
- 4.6 Queuing in itself may lead to conflict, disorder and anti-social behaviour. Moreover, large concentrations of people may also increase the incidence of other criminal activities such as drug dealing, pick pocketing and street robbery.
- 4.7 Variable licensing hours may facilitate a more gradual dispersal of customers from premises. However, in some cases the impact on surrounding areas of the behaviour of the customers of all premises taken together will still be greater than the impact of customers of individual premises.
- 4.8 The effect of adopting a CIP of this kind is to create a rebuttable presumption that applications for the grant or variation of premises licences or club premises certificates, which are likely to add to the existing cumulative impact, will normally be refused subject to certain limitations, following relevant representations, unless the application can demonstrate in the operating schedule that there will be no negative cumulative impact on one or more of the Licensing Objectives. If an application does not attract representations, it is deemed granted.
- 4.9 Where applications are refused under the CIP, appeals may be made to the Magistrate’s Court which could, if it chose to do so, exercise its discretion to grant the application or depart from the CIP (though the court would be expected to give reasons for doing so). Furthermore, the establishment of a CIP is susceptible to judicial review.
- 4.10 Any problems experienced with individual premises in a designated area would still need to be dealt with by way of a review. The CIP cannot be used as justification for removing an existing licence, or reducing the hours authorised by that licence. It should therefore be noted that implementation of a CIP should not be expected to reduce problems arising from the night-time economy; rather, it should prevent problems from increasing further, and should be used in tandem with other strategic and enforcement tools available.

4.11 It should be noted that the Police Reform & Social Responsibility Act 2011 contains various provisions that have recently added to or changed the powers previously held by Licensing Authorities. They include the power for Licensing Authorities to make representations against applications and call for their own reviews. Such amendments change the scope that Licensing Authorities have in dealing with problems arising from specific licensed premises and the night time economy as a whole, therefore any consideration to implement a CIP should be seen in this wider context.

5. IMPLEMENTATION OF A CIP

5.1 The steps to be followed in considering whether to adopt a CIP within the Statement of Licensing Policy are outlined below:

- Evidence must be collated to support the decision to implement a CIP, including justification of the designation of a specific area(s) of saturation within the city;
- On the basis of the evidence, the Licensing Authority should produce a draft CIP to be considered initially by the Licensing Committee regarding whether to proceed;
- A full public consultation would be required;
- Following consultation, the draft CIP may be amended following representations, and should again be considered by the Licensing Committee regarding whether to recommend to Full Council to adopt;
- A date to commence the CIP must be agreed and subsequently publicised.

6. EVIDENCE TO SUPPORT THE CUMULATIVE IMPACT POLICY

6.1 Evidence would need to be collated to ensure that the CIP could stand up to judicial review. This could come from the Police, Environmental Protection, Community Safety or even Accident and Emergency figures.

6.2 The evidence would need to demonstrate that the problems being experienced are resulting from, or significantly attributed to, a pocket of licensed premises in any one area; but not specifically attributable to any licensed premises. Many other authorities that have implemented a CIP (as of February 2012 there were 158 CIP's implemented by other Licensing Authorities*) have used 2 years' worth of evidence to support their case.

6.3 Statistical evidence in support of a CIP might include but is not restricted to:

- An overview of licensed premises in a potential designated area, including a breakdown of nightclubs, pubs, takeaways etc;
- Proximity of licensed premises in a potential designated area(s);
- Levels of recorded crimes, showing a breakdown into types of crimes, levels of crime throughout the week and a breakdown of times of day;
- Levels of noise complaints;
- Potential of overall crimes and noise complaints that occur in potential designated area(s);
- Hotspot maps detailing crimes and noise complaints; and
- Accident and Emergency information or statistics.

6.4 The evidence gathered would naturally help to define which area(s) would need to be designated under the CIP; many authorities have used public roads as the defining boundary for the area(s) and would also identify the types of licensed premises to be included.

6.5 Following a recent review of service complaints received by the Licensing and Pollution Control Teams in relation to licensed premises in particular, officers of the council expressed concern over the perceived saturation of licensed premises within the Operation CAN-do area as indicated on Map 1 attached at **Appendix B**.

6.6 At the time of writing this report there are 119 licensed premises in the Operation CAN-do area, situated as indicated on Map 2 attached at **Appendix C**. 93 premises have the authorisation to sell alcohol of these 39 are off sales only, 31 are both on and off and 23 are on sales only. Of the remaining 26 premises, 2 are community halls and the rest are late night refreshment establishments (with the majority being takeaways).

6.7 Statistics compiled by the Safer Peterborough Partnership recently identified that within the Operation CAN-do area ASB behaviour recorded with an alcohol and drug related tags has seen a year on year increase as attached at **Appendix D**. It is advisable when interpreting these figures as

pro-active multi-agency operations will have an impact on the increased numbers It should be noted however that whilst there is an increase in the area as a whole which could be indicative of a concentrated growth; which may continue in the future, it could also be attributed to the confidence in reporting issues due to the increased awareness of Operation Can Do.

7. EARLY MORNING RESTRICTION ORDERS

7.1 EMROs are designed to address recurring problems such as high levels of alcohol-related crime and disorder in specific areas at specific times; serious public nuisance; and other instances of alcohol-related anti-social behaviour which is not directly attributable to specific premises.

7.2 An EMRO:

- Applies to the supply of alcohol authorised by premises licences, club premises certificates and temporary event notices;
- Applies for any period beginning at or after 12am and ending at or before 6am. It does not have to apply on every day of the week, and can apply for different time periods on different days of the week;
- Applies for a limited or unlimited period (for example, an EMRO could be introduced for a few weeks to apply to a specific event);
- Applies to the whole or any part of the Licensing Authority's area;
- Will not apply to any premises on New Years Eve (defined as 12am to 6am on 1 January every year);
- Will not apply to the supply of alcohol to residents by accommodation providers between 12am and 6am, provided the alcohol is sold through mini-bars and/or room service; and
- Will not apply to a relaxation of licensing hours by virtue of an order made under section 172 of the 2003 Act.

7.3 An EMRO can apply to the whole or part of the Licensing Authority's area. The area may, for example, comprise a single floor of a shopping complex or exclude premises which have clearly demonstrated to the Licensing Authority that the licensable activities carried on there do not contribute to the problems which form the basis for the proposed EMRO.

7.4 If the Licensing Authority already has a CIP in its statement of licensing policy, it should consider the relationship between the CIP and proposed EMRO area, and the potential overall impact on its local licensing policy.

7.5 If the Licensing Authority introduces an EMRO, it will apply to premises licences, club premises certificates and temporary event notices that operate within the specified EMRO period. Licensing Authorities will be required to advertise the proposal to make the EMRO and demonstrate that they have evidence to justify doing so, as well as considering representations, before its introduction.

7.6 The proposed EMRO when advertised should include a short summary of the evidence and manner in which representations can be made in the document as well as details of the proposed EMRO. The proposal must be advertised for at least 42 days ("days" means a period made up of any days and not only working days). The Licensing Authority must publish the proposal on its website and in a local newspaper. If no newspaper exists, it must be published in a local newsletter, circular or similar document. The Licensing Authority must also send a notice of the proposal to all affected people in its area. They are:

- Holders of (and applicants for) premises licences or club premises certificates to which the proposed EMRO would apply;
- Premises users in relation to TENs to which the proposed EMRO would apply;
- Those who have received a provisional statement in respect of a premises to which the proposed EMRO would apply

7.7 Licensing Authorities must, moreover, display a notice of the proposal in the area to which EMRO would apply, in a manner which is likely to bring the proposal to the attention of those who may have an interest in it.

7.8 Those who are affected by a proposed EMRO, Responsible Authorities or any Other Person have 42 days in which to make relevant representations. To be considered relevant, a representation must:

- Be about the likely effect of the making of the EMRO on the promotion of the Licensing Objectives;
- Be made in writing in the prescribed form and manner, setting out the EMRO to which it relates and the nature of the representation;
- Be received within the deadline; and
- If made by a person other than a Responsible Authority, not be frivolous or vexatious.

Representations can be made in relation to any aspect of the proposed EMRO. If a Licensing Authority decides that a representation is not relevant, it should consider informing the person who has made the representation.

7.9 Others may also wish to make representations about the proposed EMRO. These persons could include, but are not limited to:

- Residents;
- Employees of affected businesses;
- Owners and employees of businesses outside of the proposed EMRO area; and
- Users of the late night economy.

7.10 If a relevant representation or representations are received, the Licensing Authority must hold a hearing to consider them (unless the authority and anyone who has made representations agree that this is unnecessary). The Licensing Authority should consider, based on the number of relevant representation received by it and any other circumstances it considers appropriate, whether to hold the hearing over several days, which could be arranged to take place other than on consecutive working days.

7.11 The following key points apply in relation to a hearing about a proposed EMRO:

- The hearing must be commenced within 30 working days, beginning with the day after the end of the period during which representations may be made;
- The hearing does not have to take place on consecutive working days, if an authority considers this to be necessary to enable it to consider any of the representations made by a party or if it considers it to be in the public interest;
- A Licensing Authority must give its determination within 10 working days of the conclusion of the hearing; and
- The authority is not required to notify those making representation of its determination so that the determination may be put before the full council of the authority to decide whether or not to make an EMRO.

7.12 As a result of the hearing, the Licensing Authority has three options:

- To decide that the proposed EMRO is appropriate for the promotion of the Licensing Objectives
- To decide that the proposed EMRO is not appropriate for the promotion of the objectives and therefore that the process should be ended;
- To decide that the proposed EMRO should be modified. In this case, if the authority proposes that the modified EMRO should differ from the initial proposal in relation to the area specified, any day not in the initial proposal in relation to the area specified, the authority should advertise what is in effect a new proposal to make an EMRO in the manner described above, so that further representations are capable of being made.

7.13 If the Licensing Authority is satisfied that the proposed order is appropriate for the promotion of the Licensing Objectives, its determination must be put to the full council for its final decision.

8. LATE NIGHT LEVY

8.1 The decision to introduce the late night levy (“the levy”) is an option available to all Licensing Authorities in the whole of their respective areas. 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, regardless of the size and nature of the premises.

8.2 The decision to introduce the levy is for the Licensing Authority to make. The Licensing Authority is expected to consider the need for a levy with the chief officer of police and crime commissioner (“PCC”) for the police area in which it is proposed the levy will be introduced.

- 8.3 The Licensing Authority will decide the design of the levy. This includes the late night supply period, any exemptions or reductions that may apply and the proportion of the revenue (after the Licensing Authority's costs are deducted) which will be paid to the PCC, with the remainder being retained by the Licensing Authority to fund other activities as set out in paragraph 8.15.
- 8.4 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 full considered prior to implementation.
- 8.5 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.
- 8.6 The late night supply period must begin at or after midnight and end at or before 6am. The period can be for any length of time within these parameters but must be the same every day.
- 8.7 The Licensing Authority should discuss the need for a levy with the relevant PCC and the relevant chief officer of police. The Licensing Authority will then decide whether to move to the next stage in the process and consult on its proposals to introduce a late night levy. The consultation document will 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.
- 8.8 The Licensing Authority will publish the consultation online and in a local newspaper. It will 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 will 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.
- 8.9 The Licensing Authority (committee) will assess the consultation responses and make a final decision about whether to introduce (or vary) the levy, and, if so, its design. The decision to introduce the levy, and its design, will then be put to the full council to approve.
- 8.10 If the levy is introduced, all licensed premises which are authorised to supply alcohol in the levy period will be affected. 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.
- 8.11 The amount of the levy will be set at a national level. The charge is calculated according to rateable value. This system applies to the existing licence fee and the levy charge will be collected alongside the annual licence fee. The following charges will apply to the levy:

Rateable Value bands (based on the existing fee bands)	A No rateable value to £4,300	B £4,301 to £33,000	C £33,001 to £87,000	D £87,001 to £125,000	E £125,001 and above	D X 2 Multiplier applies to premises in category D that primarily or exclusively sell alcohol	E X 3 Multiplier applies to premises in category E that primarily or exclusively sell alcohol
Annual levy charge	£299	£768	£1,259	£1,365	£1,493	£2,730	£4,440

- 8.12 The levy will not apply to Temporary Event Notices (TENS).
- 8.13 Licensing Authorities will have discretion to offer an exemption from the levy to the following categories of premises and schemes:
- (a) Premises with overnight accommodation
 - (b) Theatres and Cinemas

- (c) Bingo halls
- (d) Community Amateur Sports Clubs ('CASCs')
- (e) Community premises
- (f) Country Village pubs
- (g) Business Improvement Districts ('BIDS')
- (h) New Years Eve

Premises will have to meet specific criteria to be considered for these exemptions

- 8.14 The net levy revenue must be split between the Licensing Authority and the relevant PCC. The Licensing Authority must pay at least 70 per cent of the net levy revenue to the police. The Licensing Authority can choose to amend the portion of the net levy revenue that will be given to the PCC in future levy years. This decision must be subject to consultation in the same way as a decision to introduce the levy.
- 8.15 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 local authority area.
- 8.16 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. As set out in paragraph 8.4 any financial risk relating to the levy revenue, such as lower than expected revenue or higher than expected costs, rests at a local level.

9. ANTICIPATED OUTCOMES

- Further research into the application of Cumulative Impact Policies, Late Night Levy and Early Morning Restriction Orders.
- Formal consultation on the review of the Statement of Licensing Policy to include a CIP in respect to the Op Can Do area.
- Proposals on licensing policy changes in respect of the above to be brought back to the licensing committee.

10. REASONS FOR RECOMMENDATIONS

- To comply with the statutory requirements regarding amendments to the statement of licensing policy in order to include a cumulative impact policy with a view to making sustainable improvements in the Op Can Do area.
- To explore the new powers conferred to the Licensing Authority in the form of EMROs and LNLs.

11. ALTERNATIVE OPTIONS CONSIDERED

Retain the status quo

12. IMPLICATIONS

12.1 Financial

There will be costs associated with undertaking a public consultation.

12.2 Legal

Legal Services will be required to ensure that the decision making process is implemented in accordance with the Licensing Act 2003, and will also be required to provide legal support

throughout the preliminary investigations and any subsequent decisions made pertaining to the implementation of either and/or EMROs and LNLs.

11. BACKGROUND DOCUMENTS

Used to prepare this report, in accordance with the Local Government (Access to Information) Act 1985)

- 11.1 The Licensing Act 2003
Amended guidance issued under section 182 of the Licensing Act 2003
The Police Reform and Social Responsibility Act 2011

* Research conducted by Poppleston Allen Solicitors