

## Licensing Committee

Monday, 18 December 2017

10.00 am at the

Civic Offices, St Nicholas Way, Sutton, SM1 1EA



To all members of the Licensing Committee:-

Chair: Councillor Mary Burstow  
Vice-Chair Councillor Samantha Bourne  
Councillors: David Bartolucci, Richard Clifton, Margaret Court, Marlene Heron,  
Miguel Javelot, Richard Marston, Nali Patel, Nighat Piracha,  
Paul Wingfield, Tony Shields, Moira Butt and Graham Whitham

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**PLEASE NOTE:** Any decision taken at this meeting does not become definitive until 10am on the third working day after the meeting. Any four members of the Council may notify the Chief Executive by then if they require a decision to be reviewed by the appropriate committee at its next meeting. Please contact the Committee Services representative shown on the front page for further information.

Niall Bolger  
Chief Executive  
Friday, 8 December 2017

Enquiries to: Charles Yankiah, Committee Services Officer Tel.: 020 8770 4990 |  
Email: [committeeservices@sutton.gov.uk](mailto:committeeservices@sutton.gov.uk)

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# **A G E N D A**

- 1. APOLOGIES FOR ABSENCE AND DECLARATION OF SUBSTITUTES**
- 2. DECLARATION OF INTERESTS**
- 3. MINUTES OF THE PREVIOUS MEETING** 1 - 2

To approve as a correct record the Minutes of the meeting held on 25 September 2017.
- 4. REVIEW OF CUMULATIVE IMPACT POLICIES** 3 - 6

This report introduces the further analysis relating to these areas, given in a supplementary report prepared by the Safer Sutton Partnership Service.

*Appendix to follow*
- 5. REVIEW OF SPECIAL TREATMENT LICENSING** 7 - 12

This report outlines a proposal to review the current process and procedure in implementing the provisions of the London Local Authorities Act 1991 with the aim of providing a consistent approach across the Shared Environment Service.

*Appendix to follow*
- 6. ANY URGENT ITEMS**

Any urgent items brought forward at the direction of the Chair, who has approved the reason for the urgency.

**LICENSING COMMITTEE****25 September 2017 at 10.00 am**

**MEMBERS:** Councillor Mary Burstow (Chair), Councillor Samantha Bourne (Vice-Chair) and Councillors David Bartolucci, Richard Clifton, Margaret Court, Marlene Heron, Richard Marston, Nighat Piracha, Paul Wingfield and Tony Shields

**ABSENT** Councillor(s) Miguel Javelot, Nali Patel, Moira Butt and Graham Whitham

**7. APOLOGIES FOR ABSENCE**

Apologies were received from Councillors Nali Patel, Moira Butt, and Graham Whitham. Councillor Richard Clifton apologised that he would need to leave the meeting early, and Councillor Marlene Heron apologised for lateness.

**8. MINUTES**

The minutes of the meeting held on 12 June 2017 were agreed and signed as a correct record.

**9. DECLARATION OF INTERESTS**

There were no declarations of interest.

**10. UPDATE ON REVIEW OF THE SPECIAL POLICY ON CUMULATIVE IMPACT**

David Kingstone, Licensing and Environmental Compliance Team Leader, presented the report to update the Committee on the review of the special policy on cumulative impact, in particular the proposal to consider reducing the number of cumulative impact zones in the borough. Hannah Russell from the Safer Sutton Partnership took the committee through Appendix A, a report prepared by the Safer Sutton Partnership Service which analysed a variety of data streams that the committee had previously agreed would assist with the review.

Committee members asked questions surrounding known problem areas in their wards, and David Kingstone responded to confirm that the report had sought to identify areas where it was known that violence and anti-social behaviour was clearly linked with the consumption of alcohol. Nick Cloke, Lead Officer for Licensing, responded to a question from Councillor Paul Wingfield to confirm that the cumulative impact policy aimed to encourage those applying for licenses to address the concerns that the council had in problem areas, and that the review sought to ensure that the policy was not preventing the desired improvement around town centres, in particular increased restaurant economy and entertainment venues. It was clarified following concerns raised by Councillor Bartolucci, that the policy would not be based on the number of premises in certain

areas, but rather the issues in the problem hotspots, and that an application within an identified zone would not be automatically rejected but rather that there would be a stricter set of criteria for an applicant to meet.

Members raised concerns about how to prevent alcohol related anti-social behaviour beyond a policy on cumulative impact, and discussed whether a policy could be tailored to particular areas in the borough with different needs and different types of premises. Nick Cloke advised that the police had access to “designated public place orders” to prevent street drinking. The Chair requested that the Borough Commander be approached to respond further regarding

The Chair summarised that there were two areas that the committee were most concerned about, in Cheam North and Sutton Green and officers were asked to consider the evidence base for these areas in greater detail. David Kingstone advised that the revised Statement of Licensing Policy could become more robust and request more of applicants across the whole borough via a wider review of the whole policy, which the Committee could consider seeking.

**Resolved** that the Licensing Committee:

Considered the evidence provided in the analysis report together with additional information supporting the analysis provided verbally at the meeting, and identified that the review of the Special Policy on Cumulative Impact should aim to reduce the number of off licenses selling alcohol in the borough, to encourage an increase in restaurants, and to focus on reducing anti-social behaviour in the area. Officers were requested to consider further evidence around concerns about Cheam North from Tesco Express in North Cheam to beyond Victoria House, and the area surrounding Sutton Green as far as Oakhill Road, and to report back to the next Committee meeting.

**11. ANY URGENT BUSINESS,**

There was no urgent business brought forward.

The meeting ended at 11.20 am

Chair: .....

Date: .....

<b>Report to:</b>	Licensing Committee	<b>Date:</b>	18 December 2017
<b>Report title:</b>	Review of the Special Policy on Cumulative Impact		
<b>Report from:</b>	Mary Morrissey, Strategic Director of Environment, Housing and Regeneration		
<b>Ward/Areas affected:</b>	Borough Wide		
<b>Chair of Committee/Lead Member:</b>	Councillor Mary Burstow		
<b>Author(s)/Contact Number(s):</b>	David Kingstone, Licensing & Environmental Compliance Team Leader 020 8770 5162 / 07342 055767		
<b>Corporate Plan Priorities:</b>	<ul style="list-style-type: none"> <li>• An Open Council</li> <li>• A Fair Council</li> </ul>		
<b>Open/Exempt:</b>	Open		
<b>Signed:</b>		<b>Date:</b>	8 December 2017

## 1. Summary

- 1.1 The Licensing Committee considered a report updating on the review of the special policy on cumulative impact at this Committee in September.
- 1.2 That report included an analysis report prepared by the Safer Sutton Partnership Service which incorporated analysis of a variety of crime types, ambulance call out data, key stakeholder viewpoints and other factors.
- 1.3 The Committee identified that the review of the Special Policy on Cumulative Impact should aim to reduce the number of off licences selling alcohol, encourage an increase in restaurants and to focus on reducing anti-social behaviour in the Impact areas.
- 1.4 Members requested that further evidence be considered around their concerns about parts of North Cheam and also the area surrounding Sutton Green, in order to assist the Committee with their consideration of Cumulative Impact Areas in the Borough.
- 1.5 This report introduces the further analysis relating to these areas, given in a supplementary report prepared by the Safer Sutton Partnership Service which is included at **Appendix A**.



## **2. Recommendations**

The Licensing Committee is recommended to:

- 2.1 Consider the evidence provided in the supplementary analysis report together with the original analysis report and identify any areas where evidence supports a Special Policy on Cumulative Impact.
- 2.2 Agree the process for progressing with a draft Special Policy on Cumulative Impact, should the evidence support such a Policy, with reference to the options set out at paragraphs 5.1 to 5.3 of this report.

## **3. Background**

- 3.1 Members may recall from the report presented in September that recommendations stemming from the original analysis report prepared by the Safer Sutton Partnership indicated that evidence was available to support the retention of two of the existing cumulative impact areas, and extending those to incorporate a slightly wider area.
- 3.2 This report asks members to consider whether evidence supports the inclusion of part of North Cheam and an area around Sutton Green should be subject to the Special Policy on Cumulative Impact.
- 3.3 It is recommended that the remainder of the existing zones should be removed on the basis that evidence indicates there is less of a concentration of licensed premises and / or the impact of those premises on the licensing objectives is reduced.

## **4. Issues**

- 4.1 A cumulative impact policy places a greater responsibility upon applicants to demonstrate to the satisfaction of the Licensing Authority that their application will not add to the negative cumulative impact of premises in the area.
- 4.2 Removal of areas to which the Cumulative Impact Policy applies does present a risk of businesses seeking to apply for licences or variations to existing licences in these areas, where the additional responsibility upon applicants will no longer apply.
- 4.3 However, the absence of a special policy does not prevent any responsible authority or other person making representations on an application for the grant or variation of a licence on the grounds that the premises will give rise to a negative cumulative impact on one or more of the licensing objectives.



- 4.4 Areas where a Cumulative Impact Policy is applied, but is unsupported by evidence are liable to challenge by licence holders or applicants where decisions are refused on the basis of cumulative impact, and such decisions are less likely to be upheld.

## **5. Options**

- 5.1 Having identified areas where a policy on Cumulative Impact might apply, preparation of a draft Policy is relatively straightforward, however any change to or addition of a Special Policy on Cumulative Impact must be subject to consultation and Members are invited to consider the options for moving this work forward.
- 5.2 One option would be delegate the task of drawing up a draft policy to Officers in consultation with the Chair. This policy would then be published for consultation in January 2018. with the results presented for consideration and agreement of a final policy at the Committee meeting in March 2018 (noting that the Policy must be approved by Council before it comes into effect).
- 5.3 Alternatively, a draft policy could be prepared and brought to the next Committee meeting in March for approval, followed by a period of consultation and the results of that consultation being brought to the first Committee of the new municipal year following the local elections.
- 5.4 Members may also consider any other arrangement for progressing the development of the draft Policy for consultation.

## **6. Impacts and Implications**

### Financial

- 6.1 The costs of conducting the review of Cumulative Impact Policies will be borne through existing budgets, so there are no direct financial implications.

### Legal

- 6.2 The Statutory Guidance states that once adopted, Cumulative Impact Policies should be reviewed regularly to assess whether they are needed any longer or if those which are contained in the Council's Statement of Licensing Policy should be amended.

## 7. Appendices and Background Documents

Appendix letter	Title
A	Supplementary Analysis of Data by Safer Sutton Partnership

Background documents
Data Analysis by Safer Sutton Partnership presented to Licensing Committee on 25 September 2017

Audit Trail		
Version	Final	Date: 6 December 2017
Consultation with other officers		
Finance	No	N/A
Legal	Yes	
Equality Impact Assessment required?	No	N/A



<b>Report to:</b>	Licensing Committee	<b>Date:</b>	18 December 2017
<b>Report title:</b>	Review of Special Treatment Licensing		
<b>Report from:</b>	Mary Morrissey - Strategic Director of Environment, Housing and Regeneration		
<b>Ward/Areas affected:</b>	Borough Wide		
<b>Chair of Committee/Lead Member:</b>	Councillor Mary Burstow		
<b>Author(s)/Contact Number(s):</b>	David Kingstone, Licensing and Environmental Compliance Team Leader, 020 8770 5162/07342 055 767 Nick Cloke, Lead Officer Licensing, 020 8770 5622/07736 338733		
<b>Corporate Plan Priorities:</b>	<ul style="list-style-type: none"> <li>• An Open Council</li> <li>• A Fair Council</li> <li>• A Smart Council</li> </ul>		
<b>Open/Exempt:</b>	Open		
<b>Signed:</b>		<b>Date:</b>	7 December 2017

## 1. Summary

- 1.1. Premises where special treatments are provided must be licensed under the London Local Authorities Act 1991 (the 'Act').
- 1.2. The Act allows the Council to prescribe the terms, conditions and restrictions it deems appropriate with regard to the licensing process.
- 1.3. The Act provides for applications for the grant of a licence, together with those seeking to renew, transfer or vary an existing licence, to be made. The Council has the ability to refuse any application and, in specific circumstances, can revoke a licence.
- 1.4. This report outlines a proposal to review the current process and procedure in implementing the provisions of the London Local Authorities Act 1991 with the aim of providing a consistent approach across the Shared Environment Service.

## 2. Recommendations



The Licensing Committee is recommended to:

- 2.1 Agree the proposed revised process and procedure;
- 2.2 To adopt the revised standard conditions for Special Treatment Premises Licenses; and
- 2.3 Agree that the above changes will take effect on the 01 April 2018

### **3. Background**

- 3.1. Persons providing premises where special treatments are offered must hold a licence under the London Local Authorities Act 1991.
- 3.2. The Act provides a mechanism for the Council to prescribe the terms, conditions and restrictions it deems appropriate with regard to the licensing process. This includes the setting of fees at a level to fully recover its costs in administering and enforcing the licensing regime. Applications for the grant, renewal, transfer or variation of a licence to be made. The Council is entitled to refuse any application that meets any of the grounds set out in the Act, and can in specific circumstances revoke a licence.

#### Special Treatments

- 3.3. Under Section 4 of the Act 'Special Treatments' are defined as those therapies and cosmetic treatments where there is a degree of physical contact with a customer, such as massage, acupuncture, manicure, piercing and tattooing. A licence is required where the treatment is offered for gain or reward. The Act does provide for a number of exemptions, including where treatments are provided by medical practitioners, dentists and in certain cases bona fide members of a body of health practitioners.
- 3.4. Since the introduction of the Act many new types of treatments have come onto the market and a judgement must always be made as to whether they fall within the definition of a special treatment. A London wide group of licensing professionals fully assesses new treatments and therapies and periodically produces a list of those deemed to fall within the remit of the Act.

#### Fee Structure

- 3.5. Under Section 7(6) of the Act an applicant for the grant, renewal or transfer of a licence shall pay a reasonable fee determined by the Council. This also includes applications for variation of a licence which are covered in a later section. Following recent case law, any fee charged by a local authority for a licence or authorisation must be split into two parts so that the applicant pays a fee:



- 3.6. On making the application, the cost of the authorisation procedure and formalities; and
- 3.7. On the application being successful, a further fee to cover the costs of the running and enforcement of the licensing regime.

#### Conditions

- 3.8. Under Section 10 of the Act a local authority may make regulations prescribing standard conditions applicable to all, or any class, of licences. The Act lays out a number of areas that such conditions should relate (although these are not to be taken as exclusive) and includes:-
  - The qualifications of the persons giving special treatments;
  - The safety of any equipment used in connection with the special treatment and the way in which the treatment is given;
  - The cleanliness and hygiene of the premises and equipment;
  - The maintenance of public order and safety.
- 3.9. A copy of the proposed standard conditions are given at Appendix A.

#### **4. Issues**

- 4.1. When issuing a licence we currently list the individual treatments on the licence alphabetically. This process is time consuming and it can lead to confusion, treatments can be known by more than one name for example. Other treatments, for example massage, can have a number of variants yet when it comes to inspection we use the same standard. With new treatments continuously coming onto the market we are always one step behind taking this approach.
- 4.2. The current fees do not offer full cost recovery for the work carried out by the shared service in licensing premises and carrying out enforcement.
- 4.3. The standard conditions that attach to a licence were last reviewed in 2012. At that time it was agreed that there should be a set of standard conditions that attach to all licenses, with additional subject specific conditions being added in respect of particular areas of practice.
- 4.4. These conditions no longer reflect the current view on required controls on special treatments therapies, are felt, in places, to be unnecessarily long and do not reflect current Government thinking on regulatory control.

#### **5. Options Considered**

- 5.1. A review of the licensing processes carried out in Kingston and Sutton has been undertaken and it is proposed that a single system of licensing will be implemented



in both Boroughs. The review has produced the following options for the regime moving forward:

- 5.2. Special Treatments to be grouped into 8 categories. These will be inspected against and specified on the premises licence when issued, and a premises will be able to provide any treatment falling within the general category (i.e. massage);
- 5.3. The current fee structure to be revised so as to provide a single set of fees across the Service that are clear, current and reflect the proposed revised regime. Premises will be split into 3 bands based on the risk of the treatment being offered and the time taken to inspect and carry out enforcement action.
- 5.4. The current standard conditions have been revised to provide a single set of conditions that are clear, current, and enforceable. As well as removing the conditions that duplicate other legislation amendments include:
- 5.5. Addition of new conditions placing the responsibility on the licence holder to ensure that the practitioners under their control are qualified and competent and that records of training are held at the premises.
- 5.6. Existing conditions requiring proof of age have been tightened to require proof of age to be provided by any person who appears to be under the age of 25.
- 5.7. The conditions for all types of premises have been brought together in one document to reduce duplication and to assist the businesses.
- 5.8. The removal of some prescriptive conditions, transferring responsibility to the licence holder to ensure that they are adhering to best practice.
- 5.9. Finally we will take the opportunity to update the application forms used by the council and to revise the information given on our webpages.

## **6. Impacts and Implications**

### Financial

- 6.1. In calculating the proposed fees officers have taken into account the requirements of the EU Service Directive and the Supreme Court rulings in the Hemming case relating to apportionment and fairness of fees.
- 6.2. Fees have been calculated by assessing the time it takes for each step in the process from receipt of application to determination and issue of a licence. The perceived cost for the compliance and enforcement function carried out by Officers in relation to the Special Treatment regime has also been assessed, based on current working practices.



- 6.3. It has been identified that the Council has not been recovering its own costs relating to the special treatment regime for a number of years, with the result that the proposed fees for certain Special Treatment licence types will be increasing. Some premises, those offering low risk treatments, will find their fees reducing slightly.
- 6.4. The responsibility for fee setting lies with Environment and Neighbourhoods Committee, and the new fees are due to be presented for approval in February 2018.

#### Legal

- 6.5. The 'split' fee structure proposed is in line with the Supreme Court decision in R (on the application of Hemmings t/a Simply Pleasure Ltd and others v Westminster City Council [2015] UKSC 25 and the subsequent ECJ ruling of November 2016
- 6.6. Any person aggrieved by the imposition of a condition on their licence has the legal right to appeal to the Magistrates Court.

#### **Appendices and Background Documents**

<b>Appendix letter</b>	<b>Title</b>
A	Standard Conditions for Special Treatment Premises

<b>Background documents</b>
None

<b>Audit Trail</b>		
Version	Final	Date: 6 December 2017
<b>Consultation with other officers</b>		
Finance	No	N/A
Legal	Yes	Saima Khan
Equality Impact Assessment required?	No	N/A

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