

Report

Date: 15th July 2016
Report of: Licensing Working Group
Subject: Consideration of the Late Night Levy

Introduction

On the 14th January 2014 the Licensing Committee (the Committee) considered a request from Cabinet that it consider the implementation of a Late Night Levy (LNL). A report was presented to the Committee setting out the powers available to the Licensing Authority in relation to the LNL and Early Morning Restriction Orders (EMROs). This report is set out, together with its appendices, at annex 1.

At the meeting on the 14th January 2014 the Committee resolved:

That a Working Group, formed from Members of the Licensing Committee, be set up to identify options which may reduce the harmful effects of alcohol consumption within the Cheshire East area.

The Working Group set its own project specification in line with the resolution and instruction from the Licensing Committee. As part of this, the Working Group identified a number of other options available in addition to the Late Night Levy, which are:

- Early Morning Restrictions Orders
- Designated Public Place Orders
- Voluntary and best practice schemes
- Any other matter the Group considers appropriate

The project initiation document is set out at annex 2.

The Group has not meet as frequently as anticipated and the initial deadline for completion did slip. The timing of meetings has been frustrated by attempting to co-ordinate the availability of Working Group Members, Officers and proposed attendees. Additionally, the deadline was set with the anticipation that the group would be looking solely at the LNL. The group's plan and aim were extended beyond just the discussion of the LNL and extra time was needed to properly scrutinise all available options and information.

The Working Group has also undergone changes in membership, this has been due to the other commitments of the Members of the group and the local elections in May 2015, both of which resulted in changes in membership.

To help it formulate its recommendations to the Licensing Committee, the Group identified a number of key stakeholders to provide information and evidence. These

stakeholders are set out in the project plan and include; Cheshire Police, CEC Public Health Team, licence holders and trade representatives.

Legal Powers

The Police Reform and Social Responsibility Act 2011 enables Licensing Authorities to determine that the LNL is to apply to the whole of its area. The Licensing Authority can therefore charge a levy to persons who sell alcohol during the 'late night supply period' to raise contributions towards the enforcement cost associated with the night-time economy.

The Police Reform and Social Responsibility Act 2011 also amended the provisions of the Licensing Act 2003 that gives a Licensing Authority the power to make an EMRO if it considers it appropriate for the promotion of the Licensing Objectives. An EMRO restricts the sale of alcohol in a particular area for a specified period between the hours of midnight and 6:00am. This ability to have an EMRO apply to specific areas within the Borough contrasts against the potential inflexibility of the LNL (ie that it can only apply to the whole of the Borough).

The Local Authorities (Functions and Responsibilities) (England) (Amendment) Regulations 2013 confirms that the functions relating to the Late Night Levy and Early Morning Restriction Orders are not to be the responsibility of the Council's Executive and are Licensing Authority functions. Additionally, the Council has previously made provision in its Constitution for all Licensing Authority functions (save for the adoption of the Statement of Licensing Policy which is reserved to full Council by statute) to be discharged by the Licensing Committee.

Summary of Group meetings

7th March 2014

The first meeting was used to elect the Chairman and Vice-Chairman and agree the project plan.

24th March 2014

The working group met to discuss information circulated to Members by email; examples of the different types of voluntary schemes and how they work, Business Improvement Districts, Drinking Banning Orders, and information on action taken by other Licensing Authorities.

12th June 2014

Group Members considered Licensing income and expenditure in a meeting with the Finance Portfolio Holder. Members wanted to establish what the scope was to use current income from fees.

21st August 2014

Members invited Cllr Jos Saunders to provide information on the ways Poynton Town Council had successfully tackled alcohol related anti-social behaviour. Members were keen to identify any examples of good practice that might be extended Borough wide. Cllr Saunders explained to the Working Group that in 2000 Poynton Town Council were concerned with the issues alcohol was causing in the Town. Cllr Saunders explained that the Town Council part funded PCSO posts and provided diversionary activities,

including a youth safety project highlighting the effects of alcohol consumption. The Police's red/yellow card system was also used, with parents being written to or visited. The Community were heavily involved, with local residents taking responsibility to lock parks to reduce their use for underage drinking and anti-social behaviour etc. The Town Council also collated information on problem areas and problem premises. She reported that these activities contributed to a significant reduction in the problems being faced.

22nd September 2014

Meeting with members of the Council's Public Health Team and the Cabinet Member for Health and Wellbeing. The Public Health Team provided information to the Group in advance of the meeting. This information is set out at annex 3. The Working Group is also aware of the pan Cheshire and Merseyside aim to introduce a byelaw implementing a minimum unit price for alcohol.

22nd December 2014

The working Group discussed the use and effectiveness of Cumulative Impact Policies, discussed progress with the Cabinet Member for Localism and Enforcement and considered oral evidence from a representative from Macclesfield Street Angels. The Street Angels representative explained their role and the initiatives they undertake. He also set out his view that the poor reputation that Macclesfield has in relation to alcohol related disorder was unjustified and that in his experience the number of issues faced was quite small. His experience of Macclesfield was also that lack of Policing was not an issue and that door supervisors help to maintain calm.

14th January 2015

The Group met with a solicitor from Poppleston Allen a firm who represent various licensed traders. A representative from the British Institute of Innkeepers was also invited but was unable to attend due to traffic issues. The aim of this meeting was to ascertain the views of the licensed trade. It was confirmed that several Councils were considering or had considered both the LNL and EMROs. Whilst no Council's had implemented an EMRO some Council's had taken forward the LNL. In all cases the Council's evidence and justification for using the powers was rightly fully scrutinised. Some Councils have considered or consulted on the LNL/EMRO and considered that they are not appropriate. The Councils that have taken forward the LNL so far are in the main city locations, locations with a college or university drinking culture, or locations with a dense concentration of licensed premises. (Some examples of areas with a LNL are; Newcastle, Islington and Camden. Examples of Councils who have considered and rejected the LNL are; Leeds, Milton Keynes, Woking,

24th November 2015

A representative from NHS England spoke to the group on the effects of alcohol harm on the NHS. He also stated that locally they do not do as much data recording as possible, but anecdotal information and experience was discussed. The information at annex 4 was also provided in advance of the meeting.

A number of meetings have been organised with Cheshire Police. However, these meetings have been rescheduled or cancelled at the request to the Police due to work commitments. The Police did provide updated information in relation to crime and disorder figures within Cheshire East (annex 5).

Whilst the working group was able to meet and have discussions with a representative from NHS England, we were not able to meet with representatives from the CCGs despite a number of invitations being extended to them.

Evidence considered

Evidence specifically considered has been described in the above section and provided in the relevant annexes. The Working Group has considered both documentary and oral evidence and appropriate weight has been given to each.

Policy considerations

The Council has committed, in its Strategic Plan, to ensuring that the residents of Cheshire East 'live well and for longer' and that we have a 'strong and resilient economy'.

Similarly, the Cheshire East Health and Wellbeing Strategy has a number of key aims linked to alcohol consumption:

- Reduce the levels of alcohol use/misuse by Children and Young People
- Reduce the incidence of alcohol related harm

The Council's current Statement of Licensing¹ confirms that the Council will consider whether a LNL or EMRO is appropriate. This revised Policy together with the Statutory Guidance issued by the Home Office² in respect of the Licensing Act 2003 confirms the key aims involved in the licensing regime:

- protecting the public and local residents from crime, anti-social behaviour and noise nuisance caused by irresponsible licensed premises
- giving the police and licensing authorities the powers they need to effectively manage and police the night-time economy and take action against those premises that are causing problems
- recognising the important role which pubs and other licensed premises play in our local communities by minimising the regulatory burden on business, encouraging innovation and supporting responsible premises
- providing a regulatory framework for alcohol which reflects the needs of local communities and empowers local authorities to make and enforce decisions about the most appropriate licensing strategies for their local area
- encouraging greater community involvement in licensing decisions and giving local residents the opportunity to have their say regarding licensing decisions that may affect them

¹ <http://www.cheshireeast.gov.uk/business/licensing/licensing.aspx>

² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/418114/182-Guidance2015.pdf

National Context

The Licensing Act 2003 came into force throughout England and Wales in 2005. Consequently, in 2015/2016 a number of reports were published looking at the 10 years of regulation under the new legislation and its effect on the consumption of alcohol. Two of the more high profile reports were conducted by the Institute of Alcohol Studies (IAS)³ and the Institute of Economic Affairs (IEA)⁴. Both reports contain a good summary of the reasons for the Licensing Act 2003 coming into being and also explain some of the hopes and fears concerning the change. The reports do come to different conclusions on the effect the Act has had, the current situation in relation the harmful effects of drinking and the impact on stakeholders. Each report provides its own evidence or statistics to support their contentions. Both reports are lengthy and have not been shared for reasons of space.

In 2012 the Home Office carried out a 12 week consultation 'Dealing with the Problems of Late Night Drinking'⁵, inviting views on two measures in the Police Reform and Social Responsibility Act 2011 (2011 Act), the Late Night Levy and Early Morning Restriction Orders. Following this consultation regulations implementing these powers were made on 31st October 2012.

This followed the 2010 'Rebalancing the Licensing Act'⁶ review where the aim was to give greater powers to Councils and local residents.

It has therefore been recognised that the licensing regime did require changing to shift its perspective and that the prospect of a café culture originally envisaged at the time the Licensing Bill was proceeding through Parliament has largely failed.

Where the Licensing Act has been successful is the bringing together of different regulatory and licensing regimes often undertaken by different organisations. This has reduced the burden on businesses as it shifted from a quasi-judicial process to an administrative one.

In 2015 the Office for National Statistics published its 'Examining violent incidents where the victim perceived the offender to be under the influence of alcohol – from the Crime Survey for England and Wales, 2013/14'⁷. This information summarised the general trend across the Country and confirmed the following:

- 53% of violent incidents involving adults were alcohol-related
- Violence was more often alcohol-related in incidents involving male victims
- Alcohol-related violent incidents most commonly involved strangers, followed by acquaintances and incidents of domestic violence
- Violent incidents were more likely to involve alcohol at the weekend
- The proportions of violent incidents that were alcohol-related increased as the evening progressed. Between midnight and 06:00 84% of violent incidents involved alcohol

³ <http://www.ias.org.uk/uploads/pdf/IAS%20reports/rp22032016.pdf>

⁴ http://www.iea.org.uk/sites/default/files/publications/files/Briefing_1505_Drinking%20fast%20and%20slow_web.pdf

⁵ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/157850/consult-response-late-drinking.pdf

⁶ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/157942/alcohol-consultation.pdf

⁷ <http://webarchive.nationalarchives.gov.uk/20160105160709/http://www.ons.gov.uk/ons/rel/crime-stats/crime-statistics/focus-on-violent-crime-and-sexual-offences--2013-14/sty-facts-about-alcohol-related-violence.html>

Some examples of the Councils who have considered the implementation of a LNL are sent out previously in this report. In 2015 Poppleston Allen solicitors published their survey of Local Authorities in England and Wales. The survey was conducted to assess their views on the LNL and EMROs⁸. Their findings confirm that, of those who responded, only 3.4% consider it likely that they will propose to introduce the LNL and 2% consider it likely that they will propose the introduction of an EMRO.

The situation in Cheshire East

Cheshire East is the third biggest unitary authority in the North West and the thirteenth largest in the country. It therefore has a wide breadth of social grades, age profiles and ranges of affluence. Similarly, there are vast areas of the Borough, which are rural and sparsely populated and areas of higher density.

Cheshire East has an estimated population of 372,700⁹, the population density is 3.2 residents per hectare¹⁰, making Cheshire East less densely populated than the North West (5.0 per hectare) and England (4.1 per hectare).

Between the 2001 and 2011 Census, the median age of residents has increased from 40.6 years to 43.6 years. Between the same years, the number of over 65s has increased by 11,700 residents or 26%, which is a greater increase than the North West (15%) and England & Wales (20%).

Life expectancy (LE) in Cheshire East is higher than regional (North West) and the national (England & Wales) averages. LE at birth for females is 83.6 years, compared to 81.8 years in the North-West and 83.1 years nationally¹¹. LE at birth for males is 80.4 years, compared to 78.0 in the North West and 79.4 nationally. There are some fluctuations within the Borough, with areas of greater deprivation being likely to have a lower LE (an example of this would be wards within the Crewe area).

Cheshire Police have provided an updated break down of alcohol crime and anti social behaviour incidents, which are set out at annex 5.

The health perspective in Cheshire East is set out in the information provided by the Public Health Team (annex 3 and 4).

Conclusion

It is inevitable that crime and disorder taking place within the night time economy will be linked to alcohol. What the working group needed to consider is which power(s), if any, are an appropriate and proportionate tool to mitigate and reduce the problems faced.

The group has been unable to collate detailed information and statistics on the harm created by alcohol consumption in Cheshire East, other than mortality rates. This is because the CCGs and Emergency Departments do not record this information.

⁸ <http://www.popall.co.uk/town-guide/survey/default.aspx>

⁹ 2013 Mid-year population estimates, Office for National Statistics, NOMIS, Crown Copyright

¹⁰ 2011 Mid-year population estimates and UK Standard Area Measurements (SAM) 2011, Office for National Statistics, Crown Copyright

¹¹ Life expectancy at birth and at age 65 by local areas in England and Wales, 2011-13, Office for National Statistics. National refers to the figure for England

General information is available, but its evidential merit is open to challenge and may not withstand proper scrutiny. It is therefore incumbent upon the relevant bodies to ensure that proper data is recorded, which would assist in identifying problem areas, problem age groups and specific problem premises. This in turn may lead to enforcement agencies tackling problem premises and ultimately the revocation of licences.

The information provided by Cheshire Police supports the view that there are crime and disorder issues linked to the consumption of alcohol at peak times (ie weekends and in the early hours of the morning). This follows the general trend of moving disorder from a peak at 2330 pre Licensing Act to a later more staggered trend shown post Licensing Act. This trend is explored in both the IAS and IEA reports referenced above. The information from the Police also does not provide any details on the profile of places these issues are taking place. For example, they may be taking place in domestic or non-licensed premises (such as parks or open spaces) rather than in licensed premises or in town centre streets (where it may be more likely linked to pubs or clubs). This will influence how much weight we can attribute to the information when considering a LNL or EMRO both of which impact disproportionately on premises licensed after midnight.

The group was also concerned about the perceived increase in availability of alcohol since the Licensing Act 2003 came into effect. Particular concerns were expressed in relation to the increase in premises licenced for the sale of alcohol off the premises and the interlinked concerns on the availability of low cost alcohol for consumption at home prior to entering the late night economy (for example pre loading). This continues despite a Licensing Act mandatory condition providing a minimum price for alcohol (eg alcohol must not be sold at a cost which is less than the permitted price. The permitted price is achieved by calculating the duty and VAT and increases in correlation with the ABV of the alcohol being sold¹²). This mandatory condition was implemented after the Government did not pursue proposals for a minimum unit price for alcohol, which they consulted on in 2012¹³.

It was also not possible for the group to establish whether the harms (both criminal and health) caused by alcohol consumption were a direct result of drinking taking place in licensed premises or drinking in the home.

The Working Group was interested in the proposals outlined to them by the Council's Public Health Team in relation to Minimum Unit Pricing (MUP). A detailed explanation of this concept together with a history of the Government's stance on this matter is set out at annex 6. It is understood that the progress in this matter has been stalled pending the outcome of the challenge to the legality of the Scottish Government's MUP policy in the European Court of Justice. Whilst the LNL is concerned with the issues of crime and disorder within the late night economy and effectively taxes premises, MUP may well be a more effective tool at tackling problem drinking affecting health by raising the cost to the consumer. The working group would therefore like to encourage the continued consideration of this proposal.

The working group is mindful that the Council should not use a 'steam hammer to crack a nut' and that any problems caused within the late night economy should be rectified by the use of existing powers in the first instance.

¹² <http://www.legislation.gov.uk/ukdsi/2014/9780111109120>

¹³ <https://www.gov.uk/government/consultations/alcohol-strategy-consultation>

These powers would include the review of licensed premises. Members have noted that since the formation of Cheshire East in 2009 there have only been 6 review applications made. This is despite the review process being an opportunity to change the terms of licences for the better or the revocation of licences. It can therefore be construed that this is:

1. a power that is under used
2. that there is insufficient information or evidence to cause a review
3. that there are only a few problem premises within Cheshire East where a review has been considered appropriate

The Council's Statement of Licensing Policy does contain a specific section on the review of premises. In light of the relatively small number of review applications received, the next review of the Statement of Licensing Policy will consider extending the detail and content of this section. The section could be improved by explaining the review process and what can be achieved at any hearings together with suggestions for the type of evidence or information that could be used to support a review. It is hoped that further clarification will help alleviate any reluctance on the part of responsible authorities or local residents to call reviews where it is appropriate to do so.

The Working Group has also taken into consideration the inflexibility of the LNL. It is not possible to target the LNL to specific areas within the Borough. It must be applied throughout our area. Its implementation would potentially impact upon areas within Cheshire East that are not causing any problems to the late night economy. Central Government and Regulatory Delivery (part of the Department for Business, Innovation & Skills) have recognised this limitation and as they move forward with their Modern Crime Prevention Strategy¹⁴ changes to the process may be made.

Recommendations

The working group recommends that the Licensing Committee resolves that the implementation of the Late Night Levy or an Early Morning Restriction Order is not appropriate at this time.

The working group further recommends:

1. That prior to the adoption of the Council's next Statement Licensing Policy any policy review should consider areas that may benefit from designation as a 'Cumulative Impact Area'
2. That the Licensing Team continues to support the Police in promoting and extending their Arc Angel project
3. That the Licensing Team contributes to the work being undertaken across Cheshire and Merseyside to support the introduction of Minimum Unit Pricing

The working group considers that the above recommendations are proportionate and appropriate responses to the identified and evidenced issues that face Cheshire East. However, should the situation deteriorate it may be appropriate to reconsider

¹⁴

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/509831/6.1770_Modern_Crime_Prevention_Strategy_final_WEB_version.pdf

the implementation of either a Late Night Levy or an Early Morning Restriction Order. Similarly, any reconsideration might also be considered in light of the Central Government's proposals to amend the LNL to increase its flexibility and improve its use as a directed tool.

The group would like to express thanks to all those who provided information or attended meetings in order to help and support us in our work.