

Committee: Licensing Committee

Date: 28 February 2013

Agenda item: 6

Wards: All

Subject: Changes to the Licensing Act

Lead officer: Marc Dubet, Environmental Health (Pollution & Licensing) Manager

Lead member: Cllr Nick Draper, Cabinet Member for Community & Culture

Forward Plan reference number: N/A

Contact officer: Marc Dubet, EH (Pollution & Licensing) Manager

Recommendations:

1. That Early Morning Restriction Orders and Light Night Levies are not introduced at the present time.
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1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1 The purpose of this report is to discuss Early Morning Restriction Orders and Late Night Levies

DETAILS

2.1

Under the amendments to the Licensing Act 2003, local authorities have new powers to make Early Morning Restriction Orders (EMROs) and impose Late Night Levies (LNLs). EMROs and LNLs apply only to premises selling alcohol by retail between the hours of midnight and 6am and both can only apply if formally adopted by the authority. EMROs can be applied to certain areas within the borough, whereas the a LNL applies borough wide.

2.2

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. They provide licensing authorities with an additional tool to shape and determine local licensing, and to address specific problems caused by late night drinking.

An EMRO applies to premises that supply alcohol authorised by premises licences, club premises certificates and temporary event notices. The following restrictions would apply to EMRO:

- They can be made 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;

- They apply for a limited or unlimited period (for example, an EMRO could be introduced for a time limited period for a specific event);
- They apply to the whole or any part of the licensing authority's area;
- They do not apply to any premises on New Year's Eve (defined as 12am to 6am on 1 January every year);
- They will not apply to the supply of alcohol to residents by hotel/B&B accommodation providers between 12 am and 6am, provided the alcohol is sold through minibars and/or room service.

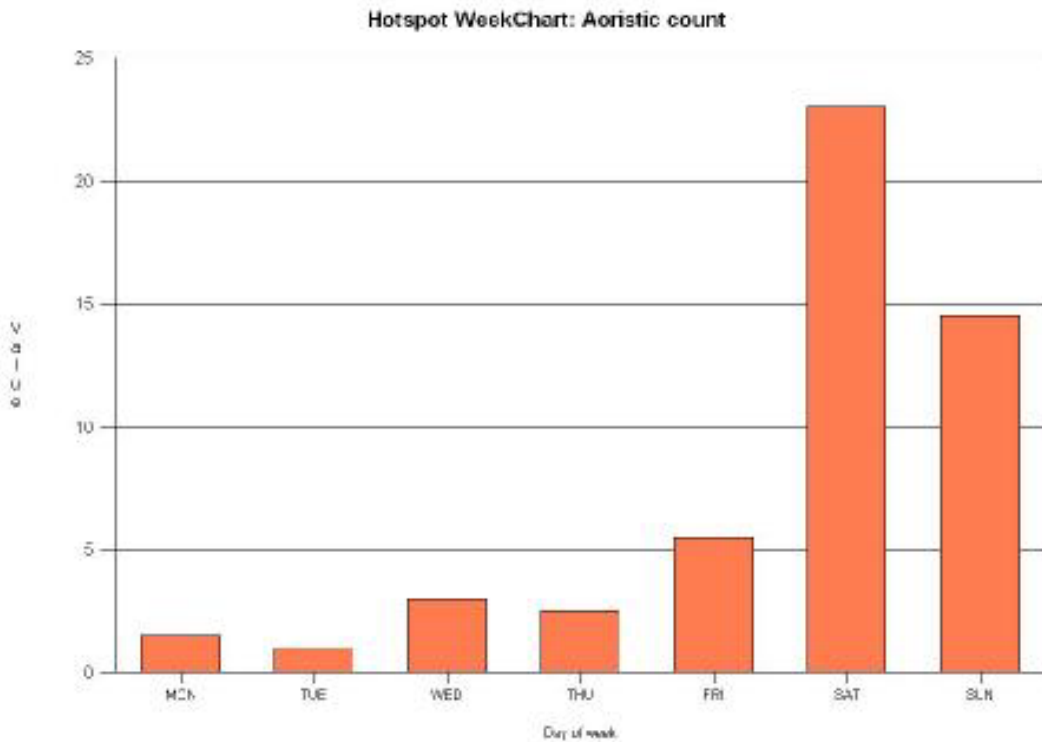
- 2.3. The licensing authority will need to evidence base any decision in requiring an EMRO, together with any representations received. The licensing authority should be satisfied that it has sufficient evidence to demonstrate that its decision is appropriate for the promotion of the licensing objectives. This requirement should be considered in the same manner as other licensing decisions similar to the determination of applications for the grant of premises licences.
- 2.4 Before introducing an order the licensing authority should consider whether other measures may address the problems that they have identified as the basis for introducing an EMRO. The licensing authority should consider the potential burden that would be imposed on premises within an area which do not necessary contribute to crime and disorder problems eg restaurants as there is no exemptions on the type of premises within in an EMRO. Other measures that could be taken instead of making an EMRO could include:
- reviewing licences of specific problem premises;
 - encouraging the creation of partnership working initiatives such as Purple Flag.
- 2.5 Once the licensing authority has identified a problem in a specific area attributable to the supply of alcohol at a number of premises, and has sufficient evidence to demonstrate that it is appropriate for the promotion of the licensing objectives, it can propose making an EMRO. The licensing authority should first decide on the matters that must be the subject of the proposal. These are include the following:
- the days (and periods on those days) on which the EMRO would apply;
 - the area to which the EMRO would apply;
 - the period for which the EMRO would apply (if it is a limited period); and
 - the date from which the proposed EMRO would apply.
- 2.6 In order to understand the level of crime and disorder in Merton associated with licensed premises, recent crime data from the Police has been collected over a three month period. Analysis of the data indicated that there were 90 crimes in public houses, licensed clubs and restaurants recorded on the Police Crime Reporting Information System (CRIS) between 01/09/2012 –30/11/2012 in Merton. Of these, 51 of these offences took place inside or outside licensed premises in the Cumulative Impact Zones (CIZ)

In Wimbledon Town Centre, 22 offences were associated with 11 bars; 14 offences were associated with 2 clubs; 7 offences from 7 restaurants; and 1 offence from 1 cinema.

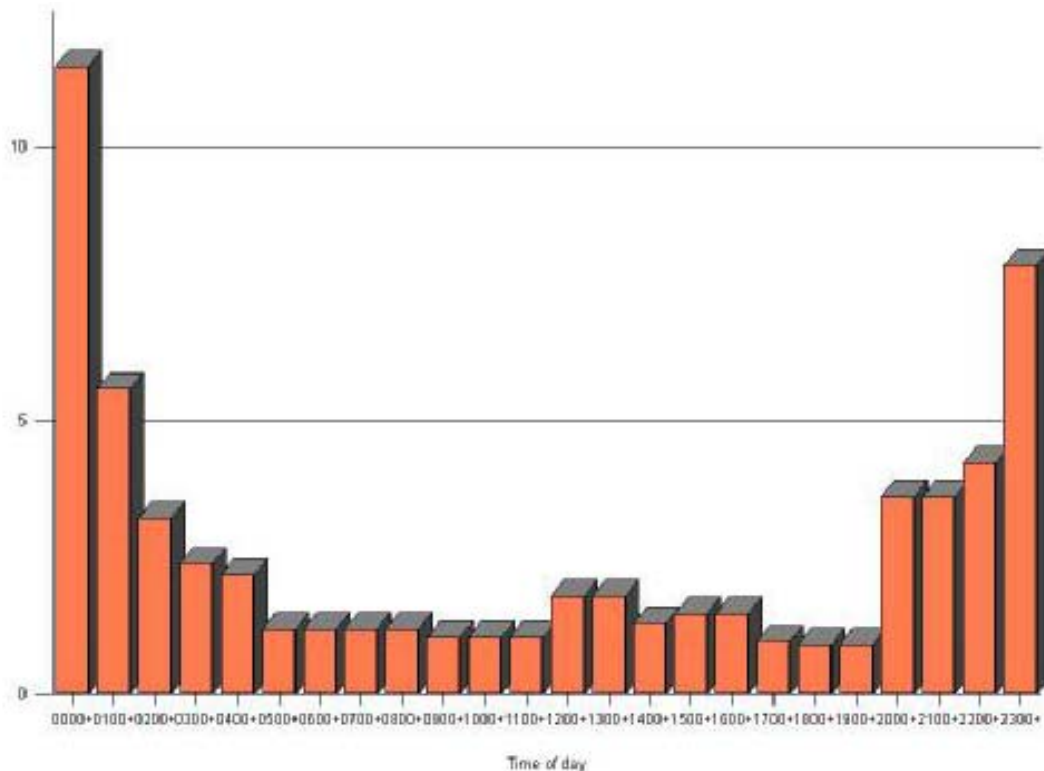
In Wimbledon Village, 6 offences were associated with 4 bars, and 2 offences from 2 restaurants.

19 offences were recorded in September 18 in October and 14 in November.

The peak days of offences occurring is over the weekend – Saturday and Sunday, with Friday being the third most common.



The peak times for offences to occur are typically during the evenings and early hours of the morning, between 8pm and 5am, with a high point between 11pm and 1am.



- 2.7 The crime data received from the Police can mostly be attributed to specific premises which would be best dealt on an individual basis as opposed to putting extra controls on all premises, most of which are well run. Individual premises where there have been crime and disorder issues have and will be continued to be dealt with on individual basis through reviews and other enforcement.
- 2.8 The LNL will empower Local Authorities to charge businesses that supply alcohol late into the night for the extra enforcement costs that the night time economy generates for the police and licensing authorities. A LNL, once administration costs had been removed, only permits the Council to retain 30% share of the levy, with the police receiving the remaining 70%. The police are under no obligation to spend the additional money on late night policing in the borough. The levy if brought in would affect 70 premises in the borough but 24 of these would be exempt, as they are in the Wimbledon Town Centre Business Improvement District.
- 2.9 The levy must apply to the whole of the licensing authority's area. It will apply to all premises licence holders (on and off-trade) situated in the licensing authority's area. Any such premises licence holder will be liable to pay the levy, regardless of whether the premise licence is actually operating during the period.
- 2.10 The Chief Inspector at Wimbledon Police station does not think there will be any real profit from the introduction of a LNL scheme, which could be used to provide additional policing resources in Merton, and was also of the opinion

that premises holders will apply for a free variation of their licence, in order to avoid paying the levy.

With regards to EMRO's, the Police have advised that they do not have the evidence from crime statistics in Wimbledon Town Centre, to request an EMRO at the present time. The Police see any reduced closing times on licensed premises would most likely happen in Wimbledon Town Centre. However, they are aware there is already a Cumulative Impact Zone in force, which is aimed at guarding against the expansion of licensed premises in terms of hours and numbers of premises. The Police see that EMROs may appeal to the Council and local residents, as a means of bringing back hours, but this would most likely have a detrimental effect on the businesses in the Town Centre.

No adverse comments were received from Planning Enforcement. The Head of Safer Merton would like EMRO's and the LNL to be introduced.

2.11 **Benefits of introducing a Late Night Levy (LNL).**

The LNL is to provide additional funding to provide additional resources for policing the night time economy. Funds generated by the local authority must be used by the Council for the reduction or prevention of crime and disorder; the promotion of public safety; the reduction or prevention of public nuisance and/or the cleaning of any highway or relevant land.

2.12 **Dis-benefits of introducing a Late Night Levy (LNL).**

The LNL will not necessary provide additional resources in Merton as the levy is paid centrally to the Metropolitan Police. The LNL would be split 70/30 between the Police and the Council. Once the administration costs have been deducted the estimated amount of money that would be left for the local authority is likely to be less than £10k and will therefore not meet the additional work that is likely to put on officers. Government guidance has recommended, 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.

If a LNL is adopted it is anticipated that a number of premises would vary their licences to negate paying such a levy, especially having regard to the current economic climate, and it is likely to have a detrimental effect on the night time economy. There are no provisions for an appeal against a decision to introduce a LNL. However, there will be an option to instigate a judicial review which would be determined by the High Court

2.13 **Benefits of introducing an Early Morning Restriction Order (EMRO)**

An EMRO is a powerful tool to deal with crime and disorder in a specific area in the Borough where there is evidence attributable to the supply of alcohol from a number of licensed premises,

2.14 **Dis Benefits of introducing an Early Morning Restriction Order (EMRO)**

An EMRO is likely to have a detrimental impact on the night time economy in these areas. The Council must also be careful not to disadvantage or place unnecessary burdens on business.

Merton already has two Cumulative Impact Zones that are aimed at guarding against the expansion of licensed premises in terms of hours and numbers of premises and therefore an EMRO may be considered inappropriate in these areas.

It would likely take 6 months to introduce EMRO, as the authority has to advertise and hold a hearing. Any determination for an EMRO will need to be ratified by full Council. There are no provisions for an appeal against a decision to introduce an EMRO. However, there will be an option to instigate a judicial review that would be determined by the High Court.

2.15 **Conclusions**

The LNL is not likely to deliver any real additional resources to the Police or the Council. 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.

EMRO's are a powerful tool to bring back hours of licensed premises selling alcohol in specific areas in borough where there are crime and disorder issues. The Police at the present time do not have the evidence to request that an EMRO is introduced.

Both the above new measures if introduced could disadvantage businesses that and possibly could affect the night time economy in Town Centres in the borough.

3 **ALTERNATIVE OPTIONS**

Other control measures to promote the licensing objectives could be any one of the following. It should be noted that many of the below measures are already operating within the borough:

- positive measures to create a safe and clean town centre environment in partnership with local businesses, transport operators and other departments of the local authority, through Business Improvement Districts (BID); Love Wimbledon; and Purple Flag Initiative's
- the provision of CCTV surveillance in town centres
- the confiscation of alcohol in Controlled Drinking Zones, consideration for which is being given introducing a borough wide restriction.
- the existing ability for the Police, other responsible authorities, or other persons, to seek a review of a premises licence.

4 **CONSULTATION UNDERTAKEN OR PROPOSED**

None for the purposes of this report

5 TIMETABLE

None for the purposes of this report

6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

None for the purposes of this report

7 LEGAL AND STATUTORY IMPLICATIONS

None for the purposes of this report

8 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

These are statutory functions and are applied globally. An equalities impact assessment of the attached policy and other related functions of the Service are undertaken on a regular basis

9 CRIME AND DISORDER IMPLICATIONS

The service has a statutory duty to contribute to the reduction of crime and disorder in Merton under section 17 of the crime and disorder act 1988. The prevention of crime and disorder is also one of the objectives of the council's statement of licensing policy. In determining applications it will be the policy of the service to consider the adequacy of measures proposed to deal with related crime and where appropriate it will attach conditions to permissions and licences to deter and prevent crime and disorder both inside and within the vicinity of the premises.

10 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

All risk and health and safety implications have been considered in arriving at the final package of service plan measures. Risk ratings are determined for specific activities, including the delivery of outcomes, measures and targets in the plan, and are included within the Council's corporate risk management strategy. Identified risks and actions to minimise them are assessed on an annual basis

11 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT

None for the purposes of this report

12 BACKGROUND PAPERS

None for the purposes of this report

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