

Item: 8	Classification: Open	Date: 21 June 2007	Meeting Name: Licensing Committee
Report Title:	The Licensing Act 2003 - Cumulative Impact & Saturation Policies		
Ward(s) or groups affected:	All		
From:	Strategic Director of Environment and Housing		

RECOMMENDATIONS

1. That having had regard to the information and submissions contained within this report, the Licensing Committee decides whether formal consultation in accordance with section 5(3) of the Licensing Act 2003 should commence on the issue of whether a special "saturation" policy should be included within the Council's Statement of Licensing Policy in respect of any of the following five areas
 - a) Shad Thames;
 - b) The Elephant & Castle;
 - c) Camberwell;
 - d) Peckham; and
 - e) Herne Hill.
2. That, in the event that the Committee should decide under 1. above that formal consultation should commence in any one or more of the areas a) to e), the Committee also confirm for the purposes of the consultation
 - a) The proposed geographical boundary of each area; and
 - b) The classes of premises that the policy should apply to.

BACKGROUND INFORMATION

3. In July 2006 Southwark commenced a mid-term review of its statement of licensing policy. The review considered a number of matters that had come to light in the first six months of operation under the new Licensing Act 2003.
4. The review considered whether evidence existed that showed that the impact of licensed premises on the licensing objectives relating to prevention of crime and disorder and nuisance was so great in any area of the borough, that consideration should be given to the introduction of a local saturation policy. The policy is aimed at controlling the further growth of licensed premises of a similar nature in that area. This matter had been first considered when the original Southwark Statement of Licensing Policy was drafted in the summer of 2004. No evidential basis for any saturation policy had been identified at that time.
5. Responses to the consultation exercise which took place as part of the mid-term review of the policy in 2006, proposed a number of areas where saturation policies might be considered to be appropriate. The proposed areas were Shad Thames; the Elephant & Castle; Camberwell; Peckham; and Herne Hill. Current police crime statistics and information from the Council's environmental health noise nuisance team's nuisance complaints database were reviewed. Again, at that point in time, evidence did not provide a basis for the introduction of any saturation policy.

6. The revised Southwark Statement of Licensing Policy was approved by Council Assembly on 24 January 2007. In approving the revised policy Council Assembly noted "That no proposals are made for consideration of saturation zones at this time but that relevant authorities will continue to monitor the situation in regard of each of the suggested areas raised for consideration under the policy consultation, set out in (the) report". It was agreed that if the position should change and it was found at any time that new evidence did indicate that any saturation policy might be warranted then the Licensing Service would report the matter back to Council Assembly for further consideration.
7. A full report on the background to saturation policies was brought to the Licensing Committee on 15 February 2007. At that meeting the Committee directed that the evidential basis for saturation policies in any of the 5 areas raised under the June 2006 consultation be revisited and that further submissions be invited from community representative bodies within each of the areas.
8. This report collates the information obtained and presents this back to the Committee for consideration as to whether, in the Committee's view, there is now sufficient basis for formal consultation on the introduction of a saturation policy (as required by Section 5(3) of the Licensing Act 2003) to be undertaken in any of the areas concerned.

MATTER FOR CONSIDERATION

Overview of assessment on behalf of Safer Southwark Partnership

9. An analysis of Southwark's police and ambulance data pre and post the introduction of the Licensing Act 2003 within four of the areas under examination is presented as Appendix A to this report. Herne Hill could not be afforded proper consideration due to the absence of information relating to Lambeth. A summary of some of the headline information relating to Southwark as a whole is given in table 1 below.
10. The analysis firstly considers the position regarding VAP offences (violence against the person covering ABH, common assault, GBH, harassment, murder, offensive weapons and "other violence") within each of the areas. It notes that "currently police data does not reliably record when violence has occurred as a result of or in conjunction with alcohol consumption" and that it is therefore "impossible to accurately assess alcohol related violence in Southwark or, indeed, London as a whole." In order to address this and capture incidents that are likely to be related to alcohol the report specifically focuses on those offences that took place between 23.00 and 03.59. Table 1 shows that VAP levels across Southwark fell in the six-months following the introduction of the Licensing Act (December 2005 to June 2006) and then rose in the following six month period to a level fairly consistent with that in the directly comparable six month period the year previously, suggesting the earlier fall may be attributable to seasonal variation. The report does note that within these figures there was a rise in common assaults. As common assaults are relatively minor offences it may be argued that the overall levels of serious violence have decreased since the introduction of the Act.
11. The analysis secondly considers calls made to the police regarding disturbances in licensed premises, disorder or rowdiness. Again the period between 23.00 and 03.59 was examined. The table shows that across Southwark, calls underwent a large reduction when comparing levels post the introduction of the Act (December 2005 to June 2006 and June 2006 to December 2006) to those prior to the Act (June to November 2005).

12. The analysis thirdly considers information on ambulance pick-ups (in the absence of data from accident and emergency). The table shows an increase in this category within the six month period following the introduction of the Act (December 2005 to June 2006) but figures returned to a pre-licensing act level thereafter.

Category	June to November 2004	December 2004 to May 2005	June to November 2005	December 2005 to June 2006	June 2006 to November 2006
VAP (Recorded instances taking place between 23.00 and 03.59)			640	591	657
Calls to police regarding disturbances in licensed premises, disorder or rowdiness between 23.00 and 03.59			1285	1182	833
Ambulance pick-ups between 23.00 and 03.59	155	177	147	145	

Table 1

13. The report concludes that the available information does not indicate that the Licensing Act 2003, and the changes that it made possible in licensed trading hours, has had a detrimental effect on Southwark or the four potential saturation areas dealt with in detail. It goes on to propose that more qualitative research, such as discussions with residents and businesses in these areas should be carried out to inform decisions regarding saturation policies.

Overview of assessment on behalf of Southwark Noise and Air Quality Team

14. The Council's Noise & Air Quality Team have separately carried out some noise complaint mapping exercises looking at data available over the past 5 years.
15. This exercise identified those licensed premises in and around the areas under examination that have given rise to complaint of noise nuisance over the past 5 years. The exercise also identified the number of complaints received in each case.
16. The exercise has revealed that across Southwark the % of noise nuisance complaints received by the Team relating to the operation of licensed premises is small (around 3.5% of the overall total- some 1600 of 45000 (2002 – 7).
17. The exercise has clearly identified that within the five areas under consideration a number of individual premises have given rise to the bulk of the concerns. Where this has occurred appropriate action will have been or will be being taken in each case. In no area, however, does the information generated support the imposition of a saturation policy.

Shad Thames

18. For the purposes of this exercise the Shad Thames area has been defined by the following boundary – Tower Bridge Road to Tooley Street to Shad Thames including the river frontage and the moored vessels.
19. Within this area there are 34 premises that hold premises licences under the Licensing Act 2003 enabling the provision of either the sale or supply of alcohol and / or the provision of regulated entertainment and / or the provision of late night refreshment. This includes 16 restaurants / cafes, 7 public houses / bars and 6 vessels.
20. Table 2 below summarises the information relating to the Shad Thames area provided under the assessment supplied by the Safer Southwark Partnership at Appendix A.
21. Each of the three categories reported upon show low and (with the exception of ambulance pick-ups) falling levels of activity. The analysis does not appear to indicate that the Licensing Act 2003 has had a detrimental effect upon this area.
22. The police have separately commented that Shad Thames has seen a growth in licensed premises and visitors without significant crime and anti-social behaviour linked to alcohol and a saturation policy is not recommended within this area.

Category	June to November 2004	December 2004 to May 2005	June to November 2005	December 2005 to June 2006	June 2006 to November 2006
VAP (Recorded instances taking place between 23.00 and 03.59)			4	3	1
Calls to police regarding disturbances in licensed premises, disorder or rowdiness between 23.00 and 03.59			11	11	8
Ambulance pick-ups between 23.00 and 03.59	0	0	0	1	

Table 2

23. The noise mapping exercise shows that over the past 5 years 9 of the licensed premises within the area have given rise to a total of 85 noise nuisance complaints with 1 premises being responsible for 64% of these complaints. These figures would suggest that the situation is considerably improved by appropriate action against specific premises rather than the introduction of broad policy.
24. This area was initially proposed for consideration as to the introduction of a saturation policy by the Shad Thames Residents Association. Correspondence from the Association is repeated at Appendix B.

The Elephant & Castle

25. For the purposes of this exercise the Elephant & Castle area has been defined by the following boundary – Starting at the junction of Southwark Bridge Road and Borough Road following the railway line southwards cross New Kent Road to Elephant Road into Walworth Road. Then south down Walworth Road to Hampton Street. From Hampton Street / Howell Walk to Newington Butts, Kennington Lane, Brook Drive, Hayles Street, St George’s Road, Garden Row, London Road, Thomas Doyle Street and back to the starting point.
26. Within this area there are 38 premises that hold premises licences under the Licensing Act 2003 enabling the provision of either the sale or supply of alcohol and / or the provision of regulated entertainment and / or the provision of late night refreshment. This includes 11 restaurants / cafes, 6 public houses / bars and 4 grocers authorized for alcohol sales.
27. Table 3 below summarises the information relating to the Elephant & Castle area provided under the assessment supplied by the Safer Southwark Partnership at Appendix A. The summary shows that recorded instances of VAP have remained fairly constant throughout the six months prior to the introduction of the Act (June to November 2005) and the two following six month periods, with ABH, harassment and common assault being the most common forms.
28. Similarly, calls to the police regarding disturbances in licensed premises, disorder, or rowdiness remained reasonably steady across the same periods although a temporary increase was shown in the six months immediately after the introduction of the Act (December 2005 to June 2006).
29. The position regarding alcohol related ambulance pick-ups between 23.00 and 03.59 has shown a decrease in the periods leading up to the introduction of the Act followed by an increase in the six months after the introduction of the Act (December 2005 to June 2006).
30. The analysis does not appear to indicate that the introduction of the Licensing Act 2003, and the changes it made possible in licensed trading hours, has had a detrimental effect on the Elephant and Castle area. The police have separately commented that regeneration and recent club closure in the Elephant and Castle would achieve ongoing reductions without a saturation policy at this stage.

Category	June to November 2004	December 2004 to May 2005	June to November 2005	December 2005 to June 2006	June 2006 to November 2006
VAP (Recorded instances taking place between 23.00 and 03.59)			47	44	48
Calls to police regarding disturbances in licensed premises, disorder or rowdiness between 23.00 and 03.59			25	33	27

Ambulance pick-ups between 23.00 and 03.59	6	4	2	4	
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Table 3

31. The noise mapping exercise has shown that over the past 5 years 11 of the licensed premises within the area have given rise to a total of 80 noise nuisance complaints with 2 premises being responsible for 70% of these complaints. These figures would suggest that the situation is considerably improved by appropriate action against specific premises rather than the introduction of broad policy.
32. This area was initially proposed for consideration as to the introduction of a saturation policy under the June 2006 mid-term policy review, by ACTION for Elephant & Castle (having taken views from its local partnership network) and the Draper Residents Association. Correspondence from the Association is repeated at Appendix C1. During the preparation of this report local Ward Councillors Kirsty McNeill and Martin Seaton have assisted in forwarding views of local residents on to this Service. The formal submissions of two local residents are included in Appendix C2 and C3. Two other residents have raised concerns about the previous operation of a premises situated outside of the Elephant and Castle. One resident has commented “that it is a shame that the number of pubs have declined”.

Camberwell

33. For the purposes of this exercise the Camberwell area has been defined by the following boundary – Starting in Camberwell New Road at the junction with Wyndham Road from Wyndham Road to Camberwell Road, Bowyer Place, Edmund Street, Benhill Road, Wilson Road, Graces Road, Graces Mews, Camberwell Grove (via alley), Grove Lane, De Crispigny Park, Denmark Hill cross Lambeth Coldharbour Lane, Denmark Road, Flodden Road and Camberwell New Road to the start.
34. Within this area there are 76 premises that hold premises licences under the Licensing Act 2003 enabling the provision of either the sale or supply of alcohol and / or the provision of regulated entertainment and / or the provision of late night refreshment. This includes 22 restaurants / cafes, 20 public houses / bars and 12 grocers authorized for alcohol sales.
35. Table 4 below summarises the information relating to the Camberwell area provided under the assessment supplied by the Safer Southwark Partnership at Appendix A. The summary shows that recorded instances of VAP remained constant throughout the three recorded periods, being the six months prior to the introduction of the Licensing Act 2003 and the two six month periods following its introduction. While this may indicate that the introduction of the Act did not in itself have an adverse effect on figures these remained at a high level.
36. Calls to the police regarding disturbances in licensed premises, disorder, or rowdiness remained constant across the six months prior to the introduction of the Act (June to November 2005) and the six months following (December 2005 to June 2006) but then saw a considerable reduction in the second six month period after the introduction of the Act (June to November 2006).

37. The position regarding alcohol related ambulance pick-ups between 23.00 and 03.59 remained fairly constant but at the highest level of the four areas for which figures are available.
38. The analysis does not appear to indicate that the introduction of the Licensing Act 2003, and the changes it made possible in licensed trading hours, has had a detrimental effect on the Camberwell area but the figures would appear to demonstrate that Camberwell does appear to have crime and disorder issues that may be potentially related to alcohol. The police have separately commented that Camberwell is a challenging environment and best evidence indicates a relationship to the number and management of licensed premises in those areas and thus consideration of a saturation policy is supported.

Category	June to November 2004	December 2004 to May 2005	June to November 2005	December 2005 to June 2006	June 2006 to November 2006
VAP (Recorded instances taking place between 23.00 and 03.59)			44	44	48
Calls to police regarding disturbances in licensed premises, disorder or rowdiness between 23.00 and 03.59			112	111	64
Ambulance pick-ups between 23.00 and 03.59	10	11	12	9	

Table 4

39. The noise mapping exercise has shown that over the past 5 years 21 of the licensed premises within the area have given rise to a total of 119 noise nuisance complaints with 2 premises being responsible for 42% of these complaints. These figures would suggest that the situation is considerably improved by appropriate action against specific premises rather than the introduction of broad policy.
40. This area was initially proposed for consideration as to the introduction of a saturation policy under the June 2006 mid-term policy review, by ACTION for Camberwell (having taken views from its local partnership network). Additional correspondence has been received on this matter has been received from the Camberwell Society and this is provided at Appendix D1. During the preparation of this report local Ward Councillor Ian Wingfield has assisted in forwarding views of local residents on to this Service. The formal submissions of one local resident and a local school are included as Appendix D2 and D3. Councillor Wingfield has also forwarded copies of considerable past correspondence from local residents concerning licensing issues across 5 separate licensed premises in the area.

Peckham

41. For the purposes of this exercise the Peckham area has been defined by the following boundary – Starting Peckham High Street at the junction with Sumner Avenue moving via Sumner Avenue to Jocelyn Street then across Peckham Hill Street to Goldsmith Road. Travelling south down Meeting House Lane to Consort Road, to Bournemouth Road and into Rye Lane. Then Choumert Road, Bellenden Road North and back across to the junction of Peckham High Street with Sumner Avenue.
42. Within this area there are 44 premises that hold premises licences under the Licensing Act 2003 enabling the provision of either the sale or supply of alcohol and / or the provision of regulated entertainment and / or the provision of late night refreshment. This includes 9 restaurants / cafes, 9 public houses / bars and 6 grocers authorized for alcohol sales.
43. Table 5 below summarises the information relating to the Peckham area provided under the assessment supplied by the Safer Southwark Partnership at Appendix A. The summary shows that recorded instances of VAP fell by more than one-third in the six months after the introduction of the Act (December 2005 to June 2006). The second 6 month period after the introduction of the Act (June to November 2006) saw a subsequent rise but to a level below that for the directly comparable period in the previous year. Notably recorded incidents of ABH halved (13 down to 6) from June / November 2005 to June / November 2006, leaving harassment as the most common form of VAP in Peckham in the last reported period with 8 reports.
44. Conversely, calls to the police regarding disturbances in licensed premises, disorder, or rowdiness rose in the six month period following the introduction of the Act (June to November 2005) and then saw a drastic reduction in the second six month period (June to December 2006)
45. The position regarding alcohol related ambulance pick-ups between 23.00 and 03.59 has shown a slight and slow increase across the period June 2004 to May 2006.
46. The analysis does not appear to indicate that the introduction of the Licensing Act 2003, and the changes it made possible in licensed trading hours, has had a detrimental effect on the Peckham area. However, the police have separately commented that as with Camberwell, Peckham is a challenging environment and best evidence indicates a relationship to the number and management of licensed premises in those areas and thus consideration of a saturation policy is supported.

Category	June to November 2004	December 2004 to May 2005	June to November 2005	December 2005 to June 2006	June 2006 to November 2006
VAP (Recorded instances taking place between 23.00 and 03.59)			33	20	28
Calls to police regarding disturbances in licensed premises, disorder or rowdiness between 23.00 and			55	67	34

03.59					
Ambulance pick-ups between 23.00 and 03.59	1	2	3	3	

Table 5

47. The noise mapping exercise has shown that over the past 5 years 13 of the licensed premises have given rise to a total of 107 noise nuisance complaints with 3 premises being responsible for 63% of these complaints. These figures would suggest that the situation is considerably improved by appropriate action against specific premises rather than the introduction of broad policy.
48. This area was initially proposed for consideration as to the introduction of a saturation policy under the June 2006 mid-term policy review, by ACTION for Peckham (having taken views from its local partnership network). Local ward Councillor Barrie Hargrove has since indicated his support for consideration of saturation policy in this area.

Herne Hill

49. For the purposes of this exercise the Herne Hill area has been defined by the following boundary – starting at Herne Hill Station moving eastwards along half Moon lane as far as Carver Road. Then southwards down Norwood Road to the junction with Croxted Road and incorporating an area of Lambeth.
50. Unfortunately, it has not been possible to report on VAP offences nor disturbance in licensed premises within this area. It is understood that neither Lambeth police nor Lambeth Council have had any direct approaches for the introduction of a policy nor possess any evidence, quantitative or qualitative, that there are issues that need to be addressed in this way. Without additional information covering the Lambeth area the overall situation is hard to quantify.
51. However, it is estimated that within this area there are in excess of 30 premises that hold premises licences under the Licensing Act 2003 enabling the provision of either the sale or supply of alcohol and / or the provision of regulated entertainment and / or the provision of late night refreshment.
52. The noise mapping chart provided at Appendix F shows that over the past 5 years 2 of the licensed premises within the Southwark part area of Herne Hill have given rise to a total of 2 noise nuisance complaints. These figures would suggest that there are few issues in this area.
53. This area was initially proposed for consideration as to the introduction of a saturation policy under the June 2006 consultation by the Dulwich Society and the Stradella and Springfield Residents Association. Correspondence from the Dulwich Society is repeated at Appendix E1. A new submission from the Stradella and Springfield Residents Association is provided at Appendix E2. Correspondence from the Herne Hill Society is attached at Appendix E3. It should be noted that recently local ward councillors have raised concerns with the numbers and growth of licensed premises within the area.

Cumulative impact and saturation policies under the Guidance to the Licensing Act 2003 issued by the Department of Culture Media and Sport

54. The Committee received a very full report on cumulative impact and saturation policies at the meeting of 15 February 2007. However, a few points are worth repeating here.

- a) Saturation policies dealing with cumulative do not feature within the Licensing Act 2003. The concept was introduced by the Guidance to the Act issued by the DCMS in July 2004;
- b) Cumulative impact deals with the potential impact on the promotion of the four licensing objectives (prevention of crime and disorder, prevention of nuisance, safety and protection of children from harm) of a significant number of licensed premises concentrated in one area;
- c) Where the licensing authority is satisfied that it is appropriate and necessary to include an approach to cumulative impact in its licensing policy statement it may adopt a special policy of refusing new licences whenever it receives relevant representations about the cumulative impact on the licensing objectives from responsible authorities and interested parties which it concludes after hearing those representations should lead to refusal;
- d) There should be an evidential basis for the decision to include a special policy within the statement of licensing policy;
- e) Before taking such a decision the authority is compelled to consult with those bodies set out in section 5(3) of the Act;
- f) No policy may undermine the right of any individual to apply under the terms of the 2003 Act for any of the variety of available permissions and have that application considered upon its own merits;
- g) Matters of need are not licensing concerns;
- h) It would not normally be justifiable to adopt a special policy on the basis of a concentration of shops, stores or supermarkets selling alcohol for consumption off the premises. Special policies will address the impact of a concentration of licensed premises selling alcohol for consumption on the premises, which may give rise to large numbers of people who have been drinking alcohol on the streets in a particular area.
- i) The effect of adopting a special policy of this kind is to create a rebuttable presumption that applications for new premises licences or club premises certificates or material variations will normally be refused, if relevant representations to that effect are received, unless it can be demonstrated that the operation of the premises involved will not add to the cumulative impact already being experienced. Applicants will need to address the special policy issues in their operating schedules in order to rebut such a presumption. However, a special policy must stress that this presumption does not relieve responsible authorities or interested parties of the need to make a relevant representation before a licensing authority may lawfully consider giving effect to its special policy. If no representation is received it would remain the case that any application must be granted in the terms that are consistent with the operating schedule submitted; and
- j) Once adopted, special policies should be reviewed regularly to assess whether they are needed any longer or need expanding;

Process for adopting a policy

55. In summary, the steps to be followed in identifying whether to adopt a special policy within the statement of licensing policy are:

- a) Identification of concern about crime and disorder or public nuisance;
- b) Consideration of whether it can be demonstrated that crime and disorder and nuisance are arising and are caused by the customers of licensed premises, and if so identifying the area from which problems are arising and the boundaries of that area; or the risk factors are such that the area is reaching a point when a cumulative impact is imminent;

- c) Consultation with those specified by section 5(3) of the 2003 Act as part of the general consultation required in respect of the whole statement of licensing policy;
- d) Subject to that consultation, inclusion of a special policy about future premises licence or club premises certificate applications from that area within the terms of this Guidance in the statement of licensing policy; and
- e) Publication of the special policy as part of the statement of licensing policy required by the 2003 Act.

Proposals for public consultation exercises

56. Before determining any special policy dealing with cumulative impact the licensing authority is required under section 5(3) of the Act to consult with
- a) The chief officer of the police for the licensing authorities area;
 - b) The fire authority for that area;
 - c) Such persons as the licensing authority considers to be representative of holders of premises licences issued by that authority;
 - d) Such persons as the licensing authority considers to be representative of holders of club premises certificates issued by that authority;
 - e) Such persons as the licensing authority considers to be representative of holders of personal licences issued by that authority; and
 - f) Such persons as the licensing authority considers to be representative of businesses and residents in its area.
57. In accordance with the Cabinet Office Better Regulation Code of Practice on Consultation it is recommended that any consultations authorized today run for 12 weeks, commencing 9 July 2007 and closing 28 September 2007.
58. It is proposed that consultations will include
- a) Direct letter drops with questionnaire to each party listed under paragraph 56 a) to f) as applicable to the area concerned;
 - b) An item on the agenda of the relevant Community Council;
 - c) A public meeting organized to take place and advertised within the area concerned; and
 - d) Such initiative as may be decided to be the proper actions to suit the needs of the local community as agreed with Social Policy Unit.
59. Consultation should raise the following questions
- a) Whether, upon consideration of the information circulated, the introduction of a special policy dealing with cumulative impact is necessary and appropriate?
 - b) If so
 - i) Whether the proposed boundaries of the area are appropriate? and
 - ii) Whether the proposed classes of premises to which the policy should apply are appropriate?
 - c) If not what other steps are considered to be appropriate and necessary to deal with the issues raised? and
 - d) Other comments and observations.

COMMUNITY IMPACT STATEMENT

60. This matter is raised for further consideration in pursuit of this authorities desire to ensure that the leisure and night-time economy is able to operate without undue impact upon the Southwark community.
61. Any further progression of this matter will be with the full involvement of local stakeholders and with due regard to all relevant matters.

RESOURCE IMPLICATIONS

62. Resources necessary to pursue any progression of saturation policies will be redirected from the Licensing Service.

CONSULTATIONS

63. No formal consultation has been undertaken in preparation of this report, although submissions have been invited from community representative bodies for the Committee's consideration. This report follows on as a development from the review of the Council's statement of licensing policy which was subject of full public consultation in the summer of 2006. Should the Committee consider that information presented to it today warrants consideration of a saturation policy in any area then formal consultation will be carried out within the area concerned in accordance with the Act. This consultation will include representatives of the local licensed trades and community representatives including the local Community Council(s).
64. It should be noted that during the preparation of this report two submissions were received which, in one case, concerned the current position in the Old Kent Road and, in another, concerned the position in Southampton Way – both areas outside of the 5 areas under consideration today. The Committee may wish to consider the inclusion of consideration of the Old Kent Road and Southampton Way areas in any future general public consultation on the licensing policy. The next consultation exercise is scheduled to take place later this year following the release of revised guidance on the Licensing Act 2003 by the Department of Culture Media and Sport and in accordance with the responsibility placed upon the Council to review its policy in full every three years.

SUPPLEMENTAL ADVICE FROM OTHER OFFICERS

Borough Solicitor

LEGAL COMMENTS

Cumulative Impact and Saturation Policies

65. The Licensing Act 2003 does not, in itself, provide for saturation policies. However, Section 4 of the Act provides that in carrying out its functions a licensing authority must have regard to "the guidance" issued by the Secretary of State under Section 182 of the Act. The guidance acknowledges that saturation policies are a proper matter to be taken into account when drafting a Licensing Policy.
66. In considering whether a statement of licensing policy should include a saturation policy in respect to an area, the licensing authority should consider the Cumulative Impact of licensed premises, in the particular area concerned.
67. Cumulative Impact is defined in the guidance at paragraph 3.13 as "the potential impact on the promotion of the licensing objectives of a significant number of licensed premises concentrated in one area".

68. Paragraph 3.14 of the guidance states that “it is...important that applicants, responsible authorities and interested parties should know through the statement of licensing policy, whether the licensing authority already considers that a particular concentration of licensed premises in a particular part of its area is considered to be already causing a cumulative impact on one or more of the licensing objectives”.

Evidence

69. Paragraph 3.17 of the guidance makes it clear that any decision to include a saturation policy within the statement of licensing policy should have an evidential basis which demonstrates that the cumulative impact of licensed premises in an area is having an impact on crime and disorder and/or nuisance.
70. Such preliminary evidence has been sought from the Police and Southwark Council's Noise and Air Quality Team in respect of the areas listed in paragraph 1 of the report. This evidence is produced in paragraphs 18-53 of the report.

Consultation

71. Section 5(3) of the Act requires that before formulating any such policy the licensing authority must first consult with the local Police, fire service and representative bodies of local residents, businesses and premises licence holders. Whether an area is nearing saturation point should be one of the issues on which local residents are consulted (guidance at paragraph 3.14).

The Decision To Include Saturation Policy

72. The decision to include a saturation policy should only be made where, after considering the available evidence and consulting those individuals and organizations listed in Section 5(3) of the Act, the licensing authority is satisfied that it is appropriate and necessary to include an approach to cumulative impact in the statement of licensing policy (guidance at paragraph 3.16).

The Effect of Adopting a Special Policy

73. The adoption of a special policy will create what is known as a “rebuttable presumption” that applications for new premises licences and applications for variations of existing premises licences within the area to which the special policy applies, will normally be refused where relevant representations are received from “responsible bodies” or “interested parties”.
74. It must be stressed that for this special policy to take effect it will still be necessary for representations to be made. It will not be possible to refuse to grant applications without representations nor will it be possible to seek to impose conditions.
75. If no representation is received in respect of applications within the special policy area, it will remain the case that an application must be granted in the terms that are consistent with the operating schedule submitted by the applicant as part of the application.
76. In areas where any special policy is introduced applicants will be expected to provide sufficient information in their operating schedules to address the special policy issues in order to rebut the presumption of refusal. Applicants will need to demonstrate why the operation of the premises will not add to the cumulative impact being experienced.

Limitations

77. There are limitations associated with special policies. Most important of these are:-

- a) It would not normally be justifiable to adopt a special policy on the basis of a concentration of shops, stores or supermarkets selling alcohol for consumption off the premises;
- b) A special policy should never be absolute, i.e. cannot have a blanket policy to refuse all applications but rather a rebuttable presumption that they will be refused. Each application will have to be considered on its own merits and should only be refused if the licensing authority can show that the grant of the application would undermine the promotion of the licensing objectives and, that necessary conditions would be ineffective in preventing the problems involved;
- c) Special policies should never be used as a ground for revoking an existing licence or certificate;
- d) Special policies should not include provisions for a terminal hour in a particular area; and
- e) Special policies must not impose quotas that would restrict the consideration of any application on its individual merits.

Further Considerations

78. Once adopted, special policies should be reviewed regularly to assess whether they are needed any longer or require expansion.

79. Members should note that the statement of licensing policy must not be inconsistent with the provisions of the 2003 Act and must not override the right/s of any individual as provided for in that Act. Nor must the statement of licensing policy be inconsistent with obligations placed on the Council under any other legislation, including human rights legislation. Members should also note that the Council has a duty under Section 17 of the Crime and Disorder Act 1998, when carrying out its functions as a licensing authority under the 2003 Act, to do all it reasonably can to prevent crime and disorder within the Borough.

80. The 2003 Act provides that the functions of the licensing authority, except those relating to the making of the statement of licensing policy, are to be taken or carried out by its licensing committee. The licensing committee may delegate these functions to sub-committees or to licensing authority officials in appropriate cases. The Council has delegated its licensing functions in accordance with the 2003 Act as set out in its Constitution (2006/07) at Part 3G.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Licensing Act 2003 DCMS Guidance to the Act Secondary Regulations Southwark Statement of Licensing Policy	Southwark Licensing, C/O Environmental Health & Trading Standards, The Chaplin Centre, Thurlow Street, London, SE17 2DG	Name: Mrs Kirty Read Phone number: 020 7525 5748

APPENDICES

No.	Title
Appendix A	Analysis on behalf of Safer Southwark Partnership
Appendix B	Submission by the Shad Thames Residents Association
Appendix C1	Submission from the Draper Residents Association
Appendix C2	Submission from David Martin
Appendix C3	Submission from Sandy Newborn
Appendix D1	Submission from the Camberwell Society
Appendix D2	Submission from Sally Ann Oliver
Appendix D3	Submission from the Sacred Heart School
Appendix E1	Submission from the Dulwich Society
Appendix E2	Submission from the Stradella and Springfield Residents Association
Appendix E3	Submission from the Herne Hill Society

AUDIT TRAIL

Lead Officer	Jonathon Toy, Head of Community Safety and Enforcement	
Report Author	Richard Parkins, Health Safety & Licensing Manager	
Version	Draft	
Dated	12 June 2007	
Key Decision	No	
Consultation with other Officers / Directorates		
Officer Title	Comments sought	Comments included
Director of Legal and Democratic Services	Yes	Yes