

City Council - 12 September 2022

Report of the Chair of the Licensing Committee

Corporate Director/ Director:

Director for Community Protection

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Title: Review of Nottingham City Council Late Night Levy Scheme

Does the report form part of the Budget or Policy Framework?

Yes No

Does this report contain any information that is exempt from publication?

No

Relevant Council Plan Key Outcome:

Clean and Connected Communities	<input type="checkbox"/>
Keeping Nottingham Working	<input type="checkbox"/>
Carbon Neutral by 2028	<input type="checkbox"/>
Safer Nottingham	<input checked="" type="checkbox"/>
Child-Friendly Nottingham	<input type="checkbox"/>
Healthy and Inclusive	<input type="checkbox"/>
Keeping Nottingham Moving	<input type="checkbox"/>
Improve the City Centre	<input type="checkbox"/>
Better Housing	<input type="checkbox"/>
Financial Stability	<input type="checkbox"/>
Serving People Well	<input type="checkbox"/>

1. Summary

- 1.1 Pursuant to minute 5 of Licensing Committee of 8 August 2022, Council (as Licensing Authority) is recommended to revoke its Late Night Levy (LNL) Scheme so that it ceases to apply within the Council's area with effect from 31 October 2022 (being the end of the current levy period).
- 1.2 A consultation on this proposal was carried out between 9 May 2022 and 1 July 2022 and between 20 July 2022 and 3 August 2022. The second consultation period was introduced to allow a public notice to be advertised in the Nottingham Metro in accordance with the Late Night Levy (Application and Administration) Regulations 2012 section 3(b) and the notice was published on the 20 July 2022 and 22 July

2022.

- 1.3 There were a total of 28 consultation responses within the consultation periods. 26 were received from the holders of premises licences issued under the Licensing Act 2003. Responses were also received from Superintendent Kathryn Craner on behalf of Nottinghamshire Police and the Nottinghamshire Police and Crime Commissioner. A further late response was received jointly from the Nottingham Trent Students' Union and the University of Nottingham Students' Union in support of the revocation of the LNL scheme.

2. Recommendations

- 2.1 That the Council's Late Night Levy Scheme be revoked and cease to apply from the end of the current levy period on 31 October 2022 for the reasons outlined in paragraph 3.32 of the report to Licensing Committee of 8 August 2022.
- 2.2 That the Director of Community Protection be authorised to carry out all statutory requirements relating to the notification of this decision.

3. Reasons for recommendations

- 3.1 The pandemic business restrictions' regulations highlighted the financial pressures on businesses and the revocation of the LNL is considered as an approach to reduce that burden. The Invest in Nottingham Business Growth Strategy promotes and supports investment in the city and the LNL costs are considered to be a barrier to incoming or expanding businesses.
- 3.2 The option to remove the LNL annual payments will reduce the financial burden on licensed trade businesses. The hospitality sector has come under severe pressure in the last 24 months during the pandemic because of the restricted trading conditions. This will assist in the viability of existing businesses but also those considering opening in the city which may by virtue of their planned opening hours be liable for the LNL fee. This would support revitalising the economy within this business sector.
- 3.3 Council is required to consider the responses received from the consultation which are detailed more fully in the report to Licensing Committee of 8 August 2022 (which is linked below) which details the reasons for the recommended revocation of the LNL Scheme in paragraph 3.32.

4. Other options considered in making recommendations

- 4.1 To retain the current established arrangements for the Late Night Levy however a formal review was deemed appropriate given the significant financial pressures faced by businesses.
- 4.2 Variation of the LNL Scheme – a vast majority of consultation responses were in favour of revoking the LNL Scheme however, should Council decide to not follow the recommendation but instead wish to consider looking to vary the LNL Scheme, then this can be done but would require further work and a new consultation. The current scheme would remain in place as no changes could be implemented until 31 October 2023. Licensing Committee has however determined that it felt it appropriate to recommend revocation.

5. Background (including outcomes of consultation)

- 5.1 The Police Reform and Social Responsibility Act 2011 empowers Licensing Authorities to charge a LNL to persons licensed to sell alcohol late at night as means of raising a contribution to fund services to tackle late night alcohol-related crime and disorder and services connected to the management of the night-time economy. The LNL is payable by the holders of relevant late night authorisations. These are the holders of any premises licence or club premises certificate in relation to premises in the authority's area, which authorise the sale or supply of alcohol on any days during a period (the "late night supply period") beginning at or after midnight and ending at or before 6am. The levy must be applied throughout the whole of the Council's area although the Council has a discretion in the design of the levy scheme and can provide discounts or exemptions for certain holders of relevant late night authorisations as prescribed by Regulation.
- 5.2 On 14 July 2014 Council approved a LNL scheme that took effect from 1 November 2014. The LNL period therefore runs from 1 November to 31 October each year. The LNL remains in place in the terms agreed in 2014 until such time as it is reviewed or removed following full and open consultation with those parties defined in the Act (Police and Crime Commissioner, Chief Officer of Police, holders of premises licences issued under the Licensing Act 2003 where the scheme applies or will apply).
- 5.3 Although the final decision on matters relating to the LNL lies with Council, Licensing Committee's terms of reference enable it to carry out some functions of the Licensing Authority in relation to LNL. In this regard the Licensing Committee considered a report on 6 May 2022 following which it determined that a public consultation be carried out in respect of a proposal to revoke the LNL.
- 5.4 Following the period of public consultation Licensing Committee again considered the matter and the consultation responses at its meeting of 8 August 2022. It determined that it felt appropriate to recommend to Council that the LNL Scheme be revoked for the reasons outlined in paragraph 3.32 of that report.
- 5.5 Council is asked to have regard to the content of those reports and minutes and the content of the consultation responses to determine if the LNL should be revoked and cease to apply from the end of the current levy period.

Risks for Council

- 5.6 **Finance** – Removal of the levy would reduce funding available for Community Protection Officers working in the Night-Time Economy. However, the 30% of the LNL which the Council retains has only provided a small contribution to offsetting the costs of up to 8 Community Protection Officers (CPOs) and one Senior Community Protection Officer.
- 5.7 **Pressure on Night Time Economy** – The removal of the LNL charges may lead to an increase in premises seeking to open later at night and past midnight with a potential for increased risk of antisocial behaviour/crime. The Nottinghamshire Police and Crime Commissioner is set to receive an additional £13 million in the financial year 2022/2023 to support the recruitment of extra Police Officers to meet a national target of 20,000 by the end of March 2023.

5.8 Any premises wishing to increase the hours it is able to sell alcohol will need to apply for a variation of their premises licence. The police and other persons are able to make representations in appropriate cases if they feel that the promotion of crime and disorder or public nuisance objectives would be undermined by such an application meaning the application would be determined by a Licensing Panel. Although this is a risk, one of the objectives of recommending revocation of the LNL is to reduce burdens on business and encourage trade and the operation of the Licensing regime will itself provide safeguards against businesses which may cause such risks.

6. Finance colleague comments (including implications and value for money)

6.1 Late Night Levy was implemented by Nottingham City Council in 2014 with the purpose to help offset the cost of policing the night-time economy. Upon implementation in 2014, the Business Improvement District (BID) were provided with an exemption, meaning that all licenced premises covered by the BID area would not have to pay the levy which reduced the expected funding – this exemption is circa £0.129m (as advised by the Service) which was higher than originally anticipated. An income saving was put in place of £0.080m against this levy in 2014. The average income being recognised relating to the levy (including allowable expenses) are circa £67k over the years 2015-2020 – partly due to the implementation of the BID exclusion so currently the income target in place is not being met and has a shortfall. This can fluctuate however, with premises joining/leaving the scheme.

6.2 As this levy has remained in place during a period which spanned the periods of Covid 19 lockdown when most late-night operators could not open, the LNL fees were paid for one year only on their behalf by the Council through Additional Restrictions Grant (ARG) funding which was received from Department for Business Energy and Industrial Strategy (BEIS).

6.3 The Council will be required to publish a notice setting out its intention to make a decision that the LNL will cease to have effect in the City. The notice must be publicised and sent to affected licence holders, the Chief Officer of Police and the Police and Crime Commissioner as key stakeholders. The revocation of the Levy will have financial implications for both Nottingham City Council and the Police and Crime Commissioner as the income from the levy is split between them on a 30% and 70% split respectively (excluding an initial £0.022m for allowable expenses to be retained by the Council).

6.4 The LNL can only cease on its anniversary dates and therefore the suggested end date would be 31st October 2022. The cessation of this Levy will leave the current income target unachieved within the Service – which has over the interim years increased to a total of £0.090m. No funding or mitigation has been identified within the Service to offset this income target assuming cessation, as the administration aspects are covered within a centralised Licensing Team. There would be a part year impact in both 2022 and the remaining in 2023 to the end of the final year of levy.

Susan Turner – Senior Commercial Business Partner

7. Legal colleague comments

7.1 Matters relating to the introduction and administration of the LNL are non-executive functions. Under the Council's Constitution Licensing Committee has

the power to consider putting proposals relating to the LNL out to consultation but any final decisions are required to be made by full Council (as Licensing Authority)

- 7.2 Whilst the Council has a wide discretion in relation to the operation of the LNL it was obliged at the time of adopting the levy to have regard to:
- a) the costs of policing and other arrangements for the reduction and prevention of crime and disorder in connection with the supply of alcohol between midnight and 6am; and
 - b) the desirability of raising revenue to be applied to tackle alcohol related crime and disorder and the management of night time economy.

These would also be relevant considerations when considering if the scheme should be amended or cease to apply.

- 7.3 Council should consider the consultation responses as detailed in the report to Licensing Committee of 8 August 2022. As indicated in the main body of that report there is a statutory requirement to consult the relevant local policing body, the chief officer of Police and holders of late night authorisations before a final decision is made to implement, vary or revoke a levy scheme. Various advertising requirements also need to be met. The legislation itself does not provide any further timetable or detail as to how the consultation should be carried out. Each of the steps required by the legislation have now been taken.
- 7.4 Should a decision be made that the LNL is to cease then it is a statutory requirement that notice has to be published on the Council's website and in a local newspaper as well as being sent to all holders of relevant late night authorisations, the relevant local policing body and the relevant chief officer of police. It is proposed that those functions be delegated to officers.

Ann Barrett, Team Leader Legal Services
30 August 2022

8. **Other relevant comments**

8.1 Not applicable

9. **Crime and Disorder Implications (If Applicable)**

9.1 Not applicable

10. **Social value considerations (If Applicable)**

10.1 Not applicable

11. **Regard to the NHS Constitution (If Applicable)**

11.1 Not applicable

12. **Equality Impact Assessment (EIA)**

12.1 Has the equality impact of the proposals in this report been assessed?

Yes



Attached as Appendix 1, and due regard will be given to any implications identified in it.

13. **Data Protection Impact Assessment (DPIA)**

13.1 Has the data protection impact of the proposals in this report been assessed?

No



A DPIA is not required because it is not applicable to the proposal.

14. **Carbon Impact Assessment (CIA)**

14.1 Has the carbon impact of the proposals in this report been assessed?

No



A CIA is not required because it is not applicable to the proposal.

15. **List of background papers relied upon in writing this report (not including published documents or confidential or exempt information)**

15.1 Consultation responses from holders of late night authorisations, Chief Officer of Police and the Nottinghamshire Police and Crime Commissioner.

16. **Published documents referred to in this report**

16.1 Police Reform and Social Responsibility Act 2011, Chapter 2 of Part 2
The Late Night Levy (Application and Administration) Regulations 2012
The Late Night Levy (Expenses, Exemptions and Reductions) Regulations 2012
Reports to, and minutes of meetings of the Licensing Committee held on 6 May and 8 August 2022.

Councillor Audrey Dinnall
Chair of the Licensing Committee