

**Cheltenham Borough Council**  
**Cabinet – 21 May 2013**  
**Proposal to Adopt a Late Night Levy**

|                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|-------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Accountable member</b>     | <b>Cabinet Member Housing and Safety - Councillor Peter Jeffries</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>Accountable officer</b>    | <b>Executive Director - Grahame Lewis</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>Ward(s) affected</b>       | <b>All</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>Key Decision</b>           | <b>Yes</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>Executive summary</b>      | <p>Part 2 of the Police Reform and Social Responsibility Act 2011 introduced a new discretionary power for Licensing Authorities to introduce a late night levy.</p> <p>The levy can be charged to persons who are licensed to sell alcohol between midnight and 6am as a means of raising a contribution towards the costs of policing the late-night economy.</p> <p>This report examines the possibility of making a proposal to introduce a levy in Cheltenham, the process &amp; consequences of doing so and explains the options available to the Council to design the levy.</p>                      |
| <b>Recommendations</b>        | <p><b>Cabinet is recommended to;</b></p> <ol style="list-style-type: none"> <li><b>1. Make a proposal to adopt a Late Night Levy in Cheltenham;</b></li> <li><b>2. Resolve that the Council should consult on proposals for the introduction of a levy;</b></li> <li><b>3. Approve the draft consultation document attached at Appendix 2;</b></li> <li><b>4. Delegate authority to the Executive Director to undertake the necessary consultation; and</b></li> <li><b>5. Note the arrangements for the operation of a late night levy with a target date for implementation of 1 April 2014.</b></li> </ol> |
| <b>Financial implications</b> | <p>The Council will be able to retain up to 30% of the net levy income received. This will be used to fund services provided to tackle late night alcohol-related crime and disorder and services connected to the management of the night-time economy, as outlined in paragraph 1.10 to this report.</p> <p><b>Contact officer: Sarah Didcote</b></p> <p><b>sarah.didcote@cheltenham.gov.uk, 01242 26 4125</b></p>                                                                                                                                                                                          |

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| <b>Legal implications</b>                                                  | As set out in the report.<br><br><b>Contact officer: Sarah Farooqi</b><br><br><b>sarah.farooqi@tewkesbury.gov.uk, 01684 272693</b>                                                                                                                                                                                                        |
| <b>HR implications (including learning and organisational development)</b> | No direct HR implication in this report. However there is the potential of additional work for those in the licensing team with regards to processing applications from licence holders wishing to be exempt from the levy.<br><br><b>Contact officer: Donna Sheffield</b><br><br><b>donna.sheffield@cheltenham.gov.uk, 01242 77 4972</b> |
| <b>Key risks</b>                                                           | <b>As Identified in Appendix 1</b>                                                                                                                                                                                                                                                                                                        |
| <b>Corporate and community plan Implications</b>                           | <b>Enhancing and protecting our environment</b><br><br><b>We attract more visitors and investors to Cheltenham</b><br><br><b>Communities feel safe and are safe</b>                                                                                                                                                                       |

## **1. Background**

- 1.1** Cheltenham has a vibrant night-time economy that far exceeds other towns of similar sizes. The town offers a rich choice of entertainment and facilities making it a destination attracting usually high numbers of visitors some travelling considerable distances to enjoy what the late night economy has to offer.
- 1.2** The town also hosts a number of internationally renowned festivals throughout the year including one of the biggest race festivals in the UK, the 'National Hunt Festival', attracting hundreds of thousands of visitors to the town, at times, many of whom also enjoy the vibrant night time economy.
- 1.3** Although the vast majority of people visiting the town do so safely and responsibly, an active night-time economy nonetheless demands additional resource and cost for the council, police and other partners to deal with associated crime, disorder and other anti-social behaviour.
- 1.4** Part 2 of the Police Reform and Social Responsibility Act 2011 ("2011 Act" hereafter) introduced a new discretionary power for Licensing Authorities to introduce a late night levy ("the levy" hereafter) to apply in their districts.
- 1.5** The new discretionary power, if adopted by the Council, enables the Council to charge a levy to persons who are licensed to sell alcohol late at night, as a means of raising a contribution towards the costs of policing the late-night economy. It is important to note that the rationale is not to restrict the extent of the late night economy but to ensure a contribution towards the consequential costs.

## **2. Introduction of the Levy Statutory Criteria**

- 2.1** The Council must consider the desirability of introducing a levy in relation to the matters described in section 125(3) of the Police Reform and Social Responsibility Act 2011. These are the costs of policing and other arrangements for the reduction or prevention of crime and disorder, in connection with the supply of alcohol between midnight and 6am.
- 2.2** Prior to making a proposal to adopt the levy, the Council should discuss the need for a levy with the relevant PCC and the relevant Chief Officer of Police. The Council has had discussions with the relevant PCC and relevant Chief Officer of Police and both have indicated their support of the introduction of a late night levy.
- 2.3** If the Council resolves to make a proposal to adopt the levy, it must consult on its proposal with residents, the PCC, the Chief Constable and all premises licence and club premises certificate holders whose authorisations permit the supply of alcohol during the late night supply period.
- 2.4** It is not prescribed how long the Council should consult on its proposal for. The Home Office guidance states that the consultation "...is expected to be proportionate and targeted, so that the type and scale of engagement is relative to the potential impacts of the proposal." (para. 1.12)
- 2.5** Since the regulations do not prescribe how long the Council should consult, it is recommended that a 12 week consultation be undertaken in accordance with the HM Government's Code of Practice on Consultation.
- 2.6** At the conclusion of the consultation, Cabinet will assess the consultation responses. The final decision to introduce the levy and if so its design will be made by the Licensing Authority i.e. Full Council.

## **3. Implementation of the Levy**

- 3.1** Following a decision to adopt the levy, the Council must notify the PCC, Chief Constable, neighbouring authorities and all holders of a licence or certificate in relation to premises which permit the supply of alcohol within the late night supply period.
- 3.2** The notice must specify the start date for the levy, the late night supply period, any exemptions

and reductions, and how the revenue will be shared between the police force and licensing authority.

- 3.3 Holders of a licence or certificate that will be affected by the decision to adopt the levy must be given the opportunity to apply for a free variation of their licence to exclude themselves from the late night supply period. The cost of processing free variations will be a deductible expense from the levy receipts in year zero which is the first year in which the levy is introduced.
- 3.4 The guidance suggests that the Council sets the start date of the levy no less than three months after the notifications have been sent to permit adequate time for licence holders to apply for a variation of their licences. (para. 1.15)

#### 4. **Characteristics of the Levy**

- 4.1 Subject to exemptions that may be applied, the levy must have effect in the whole borough.
- 4.2 The levy will be payable by the holders of a premises licence or club premises certificate which authorise the sale or supply of alcohol on any days during a period (the "late night supply period") beginning on or after midnight and ending at or before 6am regardless of whether the premises are actually operating during the period.
- 4.3 The late night supply period can be for any length between midnight and 6am but must be the same every day. The Council can decide that it would be appropriate that certain types of premises should not pay the levy and can set the late night supply period to suit the opening times of premises in their local area.
- 4.4 The levy will not apply to Temporary Event Notices that authorise the sale of alcohol during the late night supply period.

#### 5. **Permitted Exemptions & Reductions**

- 5.1 The Late Night Levy (Expenses, Exemptions and Reductions) Regulations 2012 prescribe a number of permitted exemption categories from the levy. These exemption categories are discretionary and the Council can decide which, if any, should apply.
- 5.2 These exemption categories are:
  - 5.2.1 **Premises with overnight accommodation:** This exemption is not applicable to any premises which serve alcohol to members of the public who are not staying overnight at the premises, such as a hotel bar which can be accessed by the general public.
  - 5.2.2 **Theatres and cinemas:** Premises in this category must ensure that, during the late night supply period, the sale of alcohol is only made for consumption on the premises to ticket holders, participants in the production or invited guests to a private event at the premises.
  - 5.2.3 **Bingo halls:** Premises in this category must be licensed and regulated under the Gambling Act 2005.
  - 5.2.4 **Community Amateur Sports Clubs:** Premises in this category must have relief from business rates (Section 658 of the Corporation Tax Act 2010).
  - 5.2.5 **Community premises:** Premises in this category must have successfully applied for the removal of the mandatory designated premises supervisor ("DPS") requirement and demonstrated that they operate responsibly.
  - 5.2.6 **Country village pubs:** In England, premises in this category must be the sole pub situated within a designated rural settlement with a population of less than 3,000.
  - 5.2.7 **New Year's Eve:** Premises which have a relevant late-night authorisation by virtue of their being permitted to supply alcohol for consumption on the premises on 1st January in every year.

**5.2.8 Business Improvement Districts (“BIDs”):** Licensing authorities can offer an exemption from the levy for premises which participate in BIDs that operate in the night-time economy and have a satisfactory crime and disorder focus.

**5.3** The Council may decide to use the levy to promote and support participation by premises in business-led best practice schemes by deciding to apply a 30% reduction for premises that participate in such schemes. The 30% reduction is a flat rate and there are no cumulative discounts applicable, for example, where a premises participates in more than one best practice scheme.

**5.4** Qualifying best practice schemes are schemes that have:

**5.4.1** a clear rationale as to why the scheme’s objectives and activities will, or are likely to, result in a reduction of alcohol-related crime and disorder,

**5.4.2** a requirement for active participation in the scheme by members, and

**5.4.3** a mechanism to identify and remove in a timely manner those members who do not participate appropriately.

**5.5** The Council has the discretion to determine how best practice schemes can demonstrate that they meet these benchmarks.

## **6. The Levy Charge and Collection**

**6.1** The amount of the levy is prescribed nationally and based on the current licence fee system under the Licensing Act 2003, with holders being placed in bands based on their premises rateable value. The annual charges for the levy will be:

| <b>Rateable Value Bands (based on the existing fee bands)</b> | <b>A</b><br>No rateable value to £4,300 | <b>B</b><br>£4,301 to £33,000 | <b>C</b><br>£33,001 to £87,000 | <b>D</b><br>£87,001 to £125,000 | <b>E</b><br>£125,001 and above | <b>D x 2</b><br>Multiplier applies to premises in category D that primarily or exclusively sell alcohol | <b>E x 3</b><br>Multiplier applies to premises in category E that primarily or exclusively sell alcohol |
|---------------------------------------------------------------|-----------------------------------------|-------------------------------|--------------------------------|---------------------------------|--------------------------------|---------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------|
| <b>Levy Charges</b>                                           | £299                                    | £768                          | £1,259                         | £1,365                          | £1,493                         | £2,730                                                                                                  | £4,440                                                                                                  |

**6.2** Any payment of the levy which is owed can be recovered as a debt due to the Council. Non-payment of the levy will result in suspension of a premises licence or suspension of club premises certificate.

### **Levy Revenue**

**6.3** Section 131(4) of the 2011 Act stipulates that the Council must pay at least 70% of the net income of the levy to Police and Crime Commissioner (“PCC” hereafter). The Council will be able to retain up to 30% of the net levy revenue to fund services it provides to tackle late night alcohol-related crime and disorder and services connected to the management of the night-time economy. These activities must have regard to the connection with the supply of alcohol during the late night supply period and related to arrangements for:

- a) the reduction or prevention of crime and disorder;
- b) the promotion of public safety;
- c) the reduction or prevention of public nuisance; and/or
- d) the cleaning of any relevant highway or relevant land in its area.

**6.4** Whilst the regulations and guidance prescribe what the Council must spend its portion of the levy on, it does not place similar spending restrictions on PCC other than to say they should “...be spent on tackling alcohol-related crime and disorder in the area in which the levy was raised.”

- 6.5 The Council can deduct the costs it incurs in connection with the introduction (or variation), administration, collection and enforcement of the levy, prior to the levy revenue being apportioned. The Late Night Levy (Expenses, Exemptions and Reductions) Regulations 2012 describe relevant expenses as expenses incurred by the Council in connection to:
- the preparation and publication of the consultation document, including publishing it online and sending details to the PCC, the relevant chief officer of police and all premises licence and club premises certificate holders whose authorisations permit the supply of alcohol after midnight on any day,
  - the collection of payments of the late night levy,
  - the enforcement of the late night levy requirement,
  - its application of the net amount of levy payments in accordance with section 131(2) of the Act, (the cost of processing applications for a variation in relation to the introduction of the levy)
  - its publication of a statement in accordance with section 130(5) of the Act.
- 6.6 The Council is required to publish on its website an estimate of the costs it will deduct from the levy revenue each year.

## 7. The Local Picture & Impact

- 7.1 The proposal at this stage is for Cabinet to give approval to start the process to introduce the levy, to gather additional information as to the likely costs and consequences, to consult widely on the proposals so that full Council can be fully informed and able to make a final decision.
- 7.2 The Council has set out in its Corporate Strategy a priority to strengthen communities through making communities feel safe and ensuring they are safe. The same priority sets out measures to promote partnership working with Gloucestershire Constabulary and the PCC. The adoption of a levy in Cheltenham will contribute to the promotion of this priority for the benefit of the borough.
- 7.3 The Council is required to consider the desirability of introducing the levy in relation to the matters relating to the costs of policing and other arrangements for the reduction or prevention of crime and disorder in connection with the supply of alcohol during the specified late night supply period.
- 7.4 It is a well established fact that Monday, Friday and Saturday nights place the greatest resource demands on policing the late night economy. Details obtained from Cheltenham South LPA estimate that the costs associated with policing these three nights are £47,000 for a Monday, £58,000 for a Friday and £73,000 for a Saturday. In addition to these three nights, additional police resources are also required for "hotspot nights" e.g. Bank holidays, fresher week, exam result night etc. The cost of policing "hotspot nights" is estimated to be in the region of £326,000 per annum.
- 7.5 Initial views have been sought from the PCC and Chief Constable and both have responded in support of the levy being introduced in Cheltenham. Additional comments from both are outlined and reflected in the proposed levy design for Cheltenham.
- 7.6 Another consideration with regard to the impact of introducing the levy in Cheltenham is the additional cost that will be placed on local businesses. In Cheltenham, assuming the levy will apply from 00:01 to 6am, 135 premises will become subject to the levy broken down below.

| Fee Band | # of premises | Levy                 | Gross Revenue      |
|----------|---------------|----------------------|--------------------|
| A        | 4             | £299                 | £1,196.00          |
| B        | 80            | £768                 | £61,440.00         |
| C        | 25            | £1259                | £31,475.00         |
| D        | 9             | £1365                | £12,285.00         |
| E        | 17            | £1493                | £25,381.00         |
|          |               | <b>Total (Gross)</b> | <b>£131,777.00</b> |

- 7.7 Members are to note that the gross figure quoted above is based on the assumption that the levy will apply from 00:01 to 6am and does not take into account any exemptions, reductions or the

numbers of premises that may apply for a free variation of their licence so it is likely that the total quoted above will be lower. The cost of collecting the levy is currently the subject of detailed consideration. Furthermore, the outcome of the formal consultation will help to inform consideration of the impact. The regular monitoring and review process will also assess the impact.

- 7.8 The levy for the majority of the premises (Band B) equates to £2 a day.
- 7.9 There are currently 43 licensed premises taking part in the Night Safe scheme of which 39 would, on paper, qualify for the 30% reduction. The combined reduction for the 39 premises would total £12,019.
- 7.10 The members of the local Night Safe scheme have been fully engaged on the progress of the levy and there is, largely, support for the levy to be introduced in the borough.

## **8. Proposed Design for Cheltenham**

- 8.1 The proposed design for a levy is set out below. The proposed design is of course subject to the outcome of the formal consultation process.

### **Proposed late night supply period**

- 8.2 It is proposed that the late night supply period be 00:01 to 06:00.
- 8.3 The PCC and Chief Constable have initially commented that the supply period should be midnight to 06:00. There are 97 alcohol licensed premises whose terminal hour is midnight. If the late night supply period is set to start from 00:00 these premises will technically be subject to the levy for the one minute between 00:00 to 00:01. It is considered unreasonable to include these premises particularly because they are all likely to apply for a free variation which will place undue costs on the levy because the Council will be able to recover the costs it incurred from free applications from the gross income.

### **Proposed exemption categories**

- 8.4 It is not proposed that any exemption categories be applied.
- 8.5 All late night alcohol licensed premises do contribute, to some extent, to the cost of policing the late night economy. Further rationale for not applying any exemptions is that this approach creates a level playing field for all affected premises and keeps administrative burdens and costs to a minimum.

### **Proposed reduction categories**

- 8.6 In Cheltenham, the two qualifying schemes that would be eligible for a reduction would be the Night Safe scheme and Best Bar None.
- 8.7 The Council can decide to adjust or remove certain categories of exemption and/or reductions but it will have to follow the same procedure for consultation as it did when initially introducing the levy.
- 8.8 It is proposed that premises actively participating in the local Night Safe and Best Bar None schemes be eligible for the prescribed 30% reduction.
- 8.9 There is also a reduction category for premises in receipt of small business rate relief but it is not proposed that the reduction be applied to these premises. Some of the aforementioned premises are already members of the local Night Safe scheme and will therefore already be eligible for the reduction. Furthermore, the Council is eager to encourage premises to actively participate in schemes such as Night Safe and Best Bar None that actively work to reduce crime and disorder in the late night economy.

## **Revenue Split**

- 8.11 In order to use the levy in the most efficient and cost effective manner, it is proposed that rather

than see the levy revenue split between two separate programmes, it is our intention to reach agreement with the Police and Crime Commissioner to develop a single programme delivered in partnership between the Council and the Police in line with guidance.

**9. Policy Considerations**

- 9.1 The Council’s Licensing Act 2003 Policy Statement sets out an intention to discharge its licensing responsibilities by linking to and supporting Government and other Council strategies. In addition to specific strategies, the policy also sets out the Council’s intention to continue to develop appropriate partnership arrangements in meeting the licensing objectives – these being the prevention of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm.
- 9.2 The adoption of a levy in Cheltenham will promote the approach set out in the Council’s licensing policy as it will develop an appropriate partnership arrangement to promote the licensing objectives.

**10. How will success be measured?**

- 10.1 If adopted, a levy will apply indefinitely until the Council decide that it will cease to apply. The guidance suggests that the Council should review the requirements for the levy at appropriate intervals. A decision that the levy should cease to apply can only be made at the end of a levy year.
- 10.2 The intention of the levy is to raise funds to contribute towards the costs of policing the late-night economy. Success will therefore be shown if the net income produced by the levy results in a sum that enables the Council and Police to develop and support initiatives which will improve the late night experience for residents and visitors in Cheltenham.
- 10.3 The Council’s Policy Statement seeks to promote a diverse cultural and entertainment value that attracts people of all ages to Cheltenham. Adoption of a levy will assist in further reducing crime, disorder and anti-social behaviour linked to the late night economy. This will promote confidence in Cheltenham as a safe place to live and visit. This will be measured by crime, anti-social behaviour and confidence statistics.

**11. Proposed Timetable For Implementation**

|                        |                                                                                                                                            |
|------------------------|--------------------------------------------------------------------------------------------------------------------------------------------|
| 21 May 2013            | Cabinet Report, Design of the Levy & Design of Consultation                                                                                |
| 3 June 2013            | Statutory Consultation starts                                                                                                              |
| 26 August 2013         | End of Statutory Consultation, Consideration of Outcome of Consultation and Finalisation of Proposals [Further Consultation, if necessary] |
| October 2013           | Report to Cabinet                                                                                                                          |
| November 2013          | Report to full Council                                                                                                                     |
| December 2013          | Notification of Decision                                                                                                                   |
| January 2014           | Determination of Minor Amendments to Vary Hours                                                                                            |
| 1 April 2014           | Implementation and Start First Levy Year                                                                                                   |
| April 2015 and ongoing | Review                                                                                                                                     |

**12. Alternative Options Considered**

- 12.1 If Cabinet resolves not to make a proposal to adopt the levy in Cheltenham that in effect would be



the end of the process subject to the normal call-in and motion in Council procedures.

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| <b>Appendices</b>             | <ol style="list-style-type: none"><li>1. Risk Assessment</li><li>2. Draft Consultation Document</li><li>3. Amended Late Night Levy Guidance (December 2012)</li></ol>                                                                                                                                                                                                                                                                                                 |
| <b>Background information</b> | <ol style="list-style-type: none"><li>1. The Late Night Levy (Expenses, Exemptions and Reductions) Regulations 2012</li><li>2. The Late Night Levy (Application and Administration) Regulations 2012</li><li>3. Chapter 2, Part 2 of the Police Reform and Social Responsibility Act 2011</li><li>4. Licensing Act 2003 Licensing Policy Statement - Approved by Council, 10th of February 2012</li><li>5. HM Government's Code of Practice on Consultation</li></ol> |

| The risk  |                                                                                                                                                                                                  |            |             | Original risk score<br>(impact x likelihood) |                |       | Managing risk |        |          |                     |                              |
|-----------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|-------------|----------------------------------------------|----------------|-------|---------------|--------|----------|---------------------|------------------------------|
| Risk ref. | Risk description                                                                                                                                                                                 | Risk Owner | Date raised | Impact 1-5                                   | Likelihood 1-6 | Score | Control       | Action | Deadline | Responsible officer | Transferred to risk register |
|           | The implementation of the levy could have an economic impact if prospective investors are reluctant to invest in the town or existing premises opting to close earlier to avoid paying the levy. |            | 20/5/13     | 2                                            | 3              | 6     |               |        |          |                     |                              |
|           |                                                                                                                                                                                                  |            |             |                                              |                |       |               |        |          |                     |                              |
|           |                                                                                                                                                                                                  |            |             |                                              |                |       |               |        |          |                     |                              |
|           |                                                                                                                                                                                                  |            |             |                                              |                |       |               |        |          |                     |                              |
|           |                                                                                                                                                                                                  |            |             |                                              |                |       |               |        |          |                     |                              |

**Explanatory notes**

**Impact** – an assessment of the impact if the risk occurs on a scale of 1-5 (1 being least impact and 5 being major or critical)

**Likelihood** – how likely is it that the risk will occur on a scale of 1-6  
(1 being almost impossible, 2 is very low, 3 is low, 4 significant, 5 high and 6 a very high probability)

**Control** - Either: Reduce / Accept / Transfer to 3rd party / Close