

Residents' & Environmental Services Policy Overview Committee - Major Review 2016/17 - Shisha Bars, Lounges and Cafes

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REASON FOR ITEM

The report will provide the Committee with details of suggested recommendations for the review into Shisha Bars, Lounges and Cafes..

OPTIONS OPEN TO THE COMMITTEE

The Committee is asked to consider the information provided and discuss possible draft recommendations for the review.

INFORMATION

1. At the last meeting of the Committee, Members gave consideration to the report which had been commissioned by Westminster City Council which looked at the public health implications of Shisha Smoking.
2. The Committee considered the recommendations contained in that report and asked that officers give consideration to the appropriateness of the recommendations to Hillingdon.
3. Prior to the meeting, Members will be provided with possible recommendations of the review, after officers have considered the feasibility and appropriateness of them.

APPENDIX

Appendix A - Scoping report for the review.



Residents' & Environmental Services Policy Overview & Scrutiny Committee Review Scoping Report

Shisha Bars, Lounges and Cafes

1. REVIEW OBJECTIVES

Aim and background to review

To look at the controls this Council and its partners have in relation to Shisha Bars, Lounges and Cafes in the Borough and to look at developing a strategy to deal with the health impacts and the nuisance, amenity and harm caused by unregulated shisha smoking.

The review could look at ways of engaging with both shisha smokers and businesses to raise awareness of the health and amenity impacts of shisha smoking, to help drive behaviour change. Possible outcomes for a review could be:

Regulate the Activity – a range of regulatory tools can be used to help limit the impact of shisha smoking, involving different services and agencies. The Council needs to best utilise the available powers in a coordinated and cost effective way.

Lobbying and Partnership – with no specific regulatory system in place to manage public shisha smoking, there is could be an opportunity to lobby for changes to legislation to

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enable better regulation of commercial premises offering this service. Existing powers are used to good effect in some cases, but on their own they do not adequately support the Council to work with shisha businesses to ensure they are compliant within a reasonable timeframe.

Shisha smoking is a London and nation-wide issue and it is important to further develop the Council's relationships with partner agencies, working jointly, sharing learning and moving forward with a unified position on shisha smoking, ensuring the Council can get the best results from our collective efforts.

Terms of Reference

1. To understand the health and amenity impacts of shisha smoking.
2. To examine the range of regulatory tools which could be used to help mitigate the impact of shisha smoking, working with different services and partners.
3. To look at the extent of the problem of unauthorised shisha bars, lounges and cafes in the Borough.
4. To assess the impact of shisha bars, lounges and cafes on residents who live close to these premises
5. To look at what other local authorities are doing in relation to regulating shisha bars, lounges and cafes.
6. To look at options available, and the development of a strategy, if appropriate and report to Cabinet as appropriate.

2. INFORMATION AND ANALYSIS

Shisha smoking is a way of smoking tobacco or herbal smoking product (which can be flavoured) through a waterpipe or hookah. Businesses are not required to have a specific licence for shisha smoking, and there is no definitive list of premises within the Borough of Hillingdon. However, the Council is aware of a large number of premises which offer shisha smoking through its licensing, trading standards, planning and enforcement functions.

Despite widely held misconceptions about the relative safety of shisha smoking – sometimes due to the misapprehension that smoking the tobacco through water 'filters' it of toxins – shisha smoking is at least as harmful to health as cigarette smoking. Public shisha smoking and the premises in which it takes place can also give rise to or contribute towards a number of amenity and quality of life issues, such as unauthorised or dangerous structures, noise and smells particularly late at night. In addition, shisha products sold in

the UK are mainly illicit, with no duties paid. Whilst some of the health and amenity concerns can be managed using a range of existing regulatory powers, some areas of concern remain.

Current context

The Council has a number of controls in relation to the operation of shisha bars which are enforced by various teams from across the Council:

Trading Standards

Trading Standards has controls over tobacco as follows:

1. Sale of tobacco to under 18's

Tobacco cannot be sold to persons under the age of 18.

- Proxy sales are also illegal (whereby tobacco is sold to an adult purchasing on behalf of a young person).
- The manner in which shisha is used is such that the managers of a shisha business need to be particularly vigilant. Shisha customers will normally share pipes and best practice would be that the age of EVERYONE smoking should be checked.
- (It may be a sensible precaution not to allow under-18s into the building but this is not a requirement under the legislation).
- The following notice must also be displayed anywhere that tobacco is served.

2. Labelling of the tobacco products

The legislation covering the labelling of tobacco products is detailed

- Where the product is supplied in a water pipe to the customer eg chosen from a "menu", then the water pipes themselves should be labelled with the same written health warnings and pictures that are required on conventional packs.
- There may be difficulties in labelling the pipes and it may be possible to comply with the spirit of the law by other means eg on menus, or on cards given with the pipes.

3. Non-duty paid product

Enforcement of non-duty paid product is the responsibility of Her Majesty's Revenue and Customs (HMRC). However, Trading Standards work closely with HMRC and would draw any concerns to their attention.

Food Health and Safety Team

The Food Health and Safety Team have controls around smoke-free places. Smoke free is governed by the Health Act and includes the following three powers:

1. A person who smokes in a smoke-free place commits an offence as follows:

- A smoke free place is either an enclosed or substantially enclosed premises used by members of the public or used in the course of paid or voluntary work.
- Shisha is a different way of smoking which poses a serious risk to health, and smoke free legislation applies in the same way whether or not the substance being smoked contains tobacco.
- Subject to other controls, shisha operators may set up at premises where smoking is carried out in the open air, or undercover in a partly enclosed space. Evidence must prove that the space is more than 50% open (non substantially enclosed.)

2. A person in management control of a smoke-free premise who fails to cause a person there to stop smoking commits an offence.

- Shisha operators often provide facilities for smoking shisha under cover claiming that they are non-substantially enclosed.

3. Failure to display signage is an offence.

- At least one non smoking sign must be displayed in a smoke free premises.

Environmental Protection Unit

The Environmental Protection Unit has input into controls through:

1. The Planning Process

During the planning application process, a noise assessment and a noise management statement would normally be required to demonstrate how noise would be mitigated and minimised.

Consideration would be given to the siting of a lounge, the hours of operation and what management controls would be in place.

2. Receipt of a complaint

Where complaints of noise and / or fumes are received about a premises, this can be dealt with under the Environment Protection Act 1990 as statutory nuisance.

There is no fixed level for nuisance defined in the legislation but it must seriously affect an individual's use or enjoyment of their property for a period of time and be a frequent problem.

The Council's Anti-Social Behaviour Investigation Team may get involved where there are issues of noise nuisance out of hours and will carry out monitoring visits where appropriate.

Planning

In the majority of cases, planning permission is required for the change of use of a property to a shisha lounge, and for any structure (extension or outbuilding / shelter) that is built to accommodate shisha pipe smoking.

In the absence of planning permission, such changes of use and structures are unauthorised. If they result in harm to the area, planning enforcement notices can be served on the owner and occupier.

There are two types of notices which could be served: A 'Material Change of Use' notice can require the cessation of the use, with the removal of shisha pipes etc. from the premises, and an 'Operational Development' notice can require the demolition of the structure.

The approval of the relevant Planning Committee is required to serve such notices. Notices take effect in 1 month unless an appeal is made against them to the Secretary of State, and after the effective date there is a period for compliance which is typically 1 to 3 months.

The use / structure only becomes illegal after the expiry of the notice period. Prosecution through the criminal courts is possible for non compliance.

Responsibilities

This review will concern a number of Council services within in Residents Services: Licensing, Trading Standards, Food Health & Safety, Environmental Protection Unit, Planning Enforcement and Public Health. The services which support the Licensing function are covered under the Portfolios of the Cabinet Member for Community, Commerce and Regeneration, the Cabinet Member for Planning, Transportation & Recycling and the Cabinet Member for Social Services, Housing, Health & Wellbeing. External organisations involved are other local authorities.

Current intelligence, best practice and research

A number of other local authorities have undertaken studies and reviews which could help the review in terms of consideration of recommendations and best practice.

Further information

Throughout the review, Members will be made of aware of publications and studies which will help inform Members during the review.

Public Health Implications of Shisha Smoking in London (2013) Dr Mohammed Jawad, Imperial College London. Published by Westminster City Council

3. EVIDENCE & ENQUIRY

Information will be provided on the number of shisha bars, lounges and cafes within the Borough, both regulated and unregulated. Information on the practices of surrounding Boroughs will also be presented to Members to help the review formulate suggested recommendations.

More detail will be provided on the health & safety impact of shisha bars, together with the controls the Council and its partners have in enforcing the regulations around these premises. Information will also be provided on the legislative framework around shisha premises.

Witness testimony

Witnesses will be invited from Council services such as Licensing, Trading Standards, Food Health & Safety, Environmental Protection Unit, Planning Enforcement and Public Health. In addition contact could be made with other neighbouring local authorities to look at their controls and to look at best practise which this Council could adopt.

Lines of enquiry

What is the extent of shisha smoking within the Borough?

What current control does this Council have in relation to enforcing the various implications of shisha smoking in the Borough?

What are the health risks to shisha smokers and to those who live in close proximity to shisha bars, lounges and cafes?

What education is provided by the Council in relation to informing residents of the potential health risks associated with shisha smoking?

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What are other local authorities doing differently to this Council in terms of controlling the problems associated with shisha smoking?

Emerging conclusions or themes for development

These will emerge and become apparent as the review progresses.

4. REVIEW PLANNING & ASSESSMENT

Proposed timeframe & milestones for the review up to Cabinet and beyond in terms of monitoring:

Meeting Date	Action	Purpose / Outcome
24 January 2017	Agree Scoping Report	Information and analysis plus witness evidence from internal sources
22 February 2017	Witness Session 1	Evidence & enquiry - witness evidence from internal sources and other local authorities
22 March 2017	Witness Session 2	Evidence & enquiry - Final witness session and suggested outcomes for the review
26 April 2017	Draft Suggested Recommendations	Proposals – agree recommendations

Resource requirements

None.

Equalities impact

The review will give consideration to the impact of shisha smoking and the premises used for this practice. The effect on certain communities within the Borough will be considered.